

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS



PROFESSIONAL TRAINING SERIES No. 7

Training Manual on Human Rights Monitoring



UNITED NATIONS
New York and Geneva, 2001

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HR/P/PT/7

UNITED NATIONS PUBLICATION

<i>Sales No.</i> E.01.XIV.2

ISBN 92-1-154137-9

ISSN 1020-1688

NOTE TO MANUAL USERS

This manual is one component of a two-part package of materials for training on human rights monitoring for UN human rights officers and other human rights monitors. The human rights monitoring package also includes a loose-leaf trainer's guide. The two components of the package are designed to complement each other and, taken together, provide the basis for the conduct of programmes for human rights officers in field operations and for other human rights monitors, under the approach developed by the United Nations Office of the High Commissioner for Human Rights.

This **Training Manual** (Component One of the package) provides practical guidance principally for the conduct of human rights monitoring in United Nations field operations, but it may also be useful to other human rights monitors.

The **Trainer's Guide** (Component Two of the package) provides elements of training methodology, instructions and tips for trainers, additional exercises, and sample training tools, such as overhead transparencies, to be used in combination with the Manual in conducting training courses for human rights monitors.

Manual users interested in obtaining copies of the Trainer's Guide should contact the Office of the High Commissioner for Human Rights.

FOREWORD.....

Recent years have witnessed a considerable increase in the number of United Nations presence in the field, either for post-conflict reconstruction, or with preventive and confidence-building functions, and a corresponding increase in the number of United Nations personnel employed in the field.

A growing number of United Nations field operations established in recent years, under either the coordination of the Office of the High Commissioner for Human Rights (OHCHR) or other United Nations auspices, have included a human rights mandate (in Angola, Burundi, Cambodia, Colombia, El Salvador, Former Yugoslavia, Guatemala, Haiti, Rwanda, Sierra Leone, and elsewhere). This intensification of field work is one of the most significant developments in the area of human rights protection and promotion in the last decade of the twentieth century. While the mandate of these field operations has varied, a major task they have been required to perform has been monitoring the human rights situation in the country of operation.

Human rights work — whether of a monitoring or a promotional nature — has become a specialized profession which requires adequate preparation, specific technical skills, and significant substantive knowledge in order to be effectively conducted. Human rights officers are being employed in the field on an unprecedented scale as a result of the recognition that human rights components provide a constructive contribution to the work of field operations.

It is in this context that OHCHR has been seeking ways to contribute to strengthening and professionalizing United Nations action for the advancement of human rights through field operations, an area to which I attach the highest priority as High Commissioner. The development of methodology for the effective conduct of human rights monitoring has been a central focus of work of OHCHR for several years. This Manual is offered as the culmination of OHCHR's efforts to consolidate the United Nations experience in the area of human rights monitoring. It is hoped that officials in charge of human rights monitoring, especially within field operations established by the United Nations or regional organizations, but also from governments, national human rights institutions and non-governmental organizations, will find it a useful contribution to their work.

As part of a wider programme being conducted by OHCHR in the context of the United Nations Decade for Human Rights Education (1995-2004), the Manual is also offered as a tool to foster human rights promotion and protection throughout the world.

Mary Robinson
High Commissioner for Human Rights

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PREFACE

Through its increased involvement in field work in recent years, the United Nations agencies and programmes as well as the United Nations Secretariat have collectively developed a great deal of experience in both organizational and methodological aspects of field operations. Human rights monitoring has been a major and recurrent — although not the only — function of United Nations field operations. This Manual is part of OHCHR effort to consolidate and record the collective experience of the United Nations — with specific regard to human rights monitoring — in a way that it could be usefully incorporated into future United Nations efforts.

OHCHR has long been involved in developing methodology for the effective conduct of human rights monitoring. This is both in recognition of the importance of the human rights monitoring function as a tool to improve protection of human rights, as well as to stimulate dialogue with governments and contribute to the development of national capacities in this regard.

In particular, OHCHR has been engaged in several training initiatives for United Nations field personnel with human rights monitoring functions — in Bosnia and Herzegovina, Croatia, Rwanda, as well as in numerous pre-deployment training initiatives. It has also developed methodological materials for use by human rights monitors, including but not limited to those officers employed in United Nations operations, which are now incorporated in this Manual.

This Manual is intended to be a further contribution to these ongoing efforts. Undoubtedly, owing to the specificity of the country of operation, the mandate, the political context, and other factors, each field operation has its particularities which must be carefully taken into consideration when dealing with all policy and management matters related to the operation. The Manual will nonetheless be useful to provide a general framework for the *methodological* aspects of such operations, with particular regard to human rights monitoring.

The Manual seeks to integrate and consolidate existing expertise on the subject of human rights monitoring. It is mainly based on the experience developed by the United Nations in recent years, through the work of various human rights field operations, including, for example, the HRFOR Field Guidance prepared in 1996 by the Human Rights Field Operation in Rwanda, the *Manuel d'Haïti* developed in 1993 by the International Civilian Mission in Haiti — UN/OAS (MICIVIH), the *Manuel de Vérification* produced in 1994 by the United Nations Mission in Guatemala (MINUGUA), and *La Guía metodológica para el trabajo de la división de derechos humanos de la Misión de observadores de las Naciones Unidas para El Salvador* developed by the United Nations Observation Mission in El Salvador (ONUSAL) in 1992.

The Manual also incorporates the experience and materials developed by the Office of the High Commissioner for Human Rights in providing training on human rights monitoring to United Nations and other international staff (including UNCRO, UNPREDEP and UNPROFOR staff in the Former Yugoslavia in 1995, OSCE staff in Bosnia and Herzegovina in 1996, and the training programmes for peace-keeping

personnel organized by OHCHR since 1996 at the UN Staff College), as well as the experience of the various field offices established under the High Commissioner's responsibility and entrusted with a monitoring mandate, including Cambodia, the Democratic Republic of Congo, Burundi, Colombia, Bosnia and Herzegovina, the Federal Republic of Yugoslavia, and Croatia.

In addition, the Manual draws upon the experience in human rights monitoring and field work of many non-governmental organizations, individuals and humanitarian organizations.

It is complemented by a Trainer's Guide which is intended to assist trainers in preparing human rights officers to effectively and professionally perform human rights monitoring functions, and to apply the methodology contained in the Manual to their specific tasks.

The Office of the High Commissioner for Human Rights wishes to convey thanks to Professor David Weissbrodt, who took principal responsibility for developing the first and second draft of this Manual, but also to Jennifer Prestholdt, Ben Majekodunmi, and The McKnight Foundation for their assistance to Professor Weissbrodt in preparing the manuscript, as well as to many other individuals for providing useful comments, suggestions, and information, including Patrick Ball, Claire Bellmann, Agnès Callamard, Andrew Clapham, Sandra Coliver, Pascal Daudin, Jean-François Durieux, Jon Ebersole, Jean-François Gareau, Shinobu Garrigues, Caroline Hunt, Dietrich Kappeler, Scott Leckie, Iain Levine, Leanne MacMillan, John McConnell, Hernán Reyes, Patricia Schaffer, Jacques Stroun, Michel Veuthey, Margaret Weigers, Kirsten Young, members of the staff of the United Nations High Commissioner for Human Rights, and many whose writings are cited in the bibliography. In addition, Adama Dieng, Leonardo Franco, Kristin Høgdahl, Ian Martin, Dennis McNamara, William G. O'Neill, several heads of present United Nations human rights field operations and others have reviewed the Training Manual and given very helpful guidance.

This Manual reflects many recognized principles of human rights monitoring which should be respected by United Nations human rights field operations, and — as such — is meant to be a contribution to increased effectiveness of human rights field work. Although primarily addressed to United Nations human rights monitors, it is hoped that it will prove equally useful for human rights monitors of other organizations, whether of an inter-governmental or non-governmental nature.

As experience evolves in this relatively new endeavour of human rights field operations, the numerous suggestions and ideas in the Manual will no doubt need to be improved and applied in revised form to different situations. For this reason, the Manual is also made available in electronic format, so that it can more easily be modified, applied, and split into teaching modules as required by particular operations. All those who consult and use this Manual are encouraged to suggest ways in which it can be improved.

Part One



INTRODUCTION TO THE TRAINING MANUAL

.....Chapter I

INTRODUCTION

Key concepts

The developing experience, doctrine and methodology in human rights field operations, including human rights monitoring, should be made accessible to future human rights officers and should be supplemented in light of the specific mandate, circumstances and judgement of the operation's leadership.

***“Monitoring”** is the active collection, verification and immediate use of information to improve human rights protection.*

A. Need for the Training Manual

1. The United Nations has mounted human rights field operations in such countries as Bosnia-Herzegovina, Burundi, Cambodia, El Salvador, Guatemala, Haiti and Rwanda. A key function of all such operations has been monitoring the human rights situation in the country of operation. Each of them have largely developed their own methodology and structure for conducting field work, including human rights monitoring. This process is slow and increases the time needed for a human rights operation to become effective — six months, a year or longer. By the time the decision is taken to establish an operation, the human rights situation in the country is usually critical. Further delay must be avoided.

2. Increasingly, the United Nations has been developing considerable experience in human rights field operations and gathering a group of individuals who have served in the field. This Training Manual seeks to draw together that expertise — with particular regard to the performance of human rights monitoring duties — and make it accessible to future human rights officers (HROs) so that they can be more effectively trained for systematic and professional work.

3. The need to send staff into the field is usually so urgent that there is no time for thoroughly training HROs in advance of deployment. Also, factors such as particular language requirements, willingness to accept physical risk, and need for country expertise have sometimes resulted in the recruitment of HROs who have had disparate levels of experience with the various tasks they will pursue. For these reasons, there is a great need for the on-site training of HROs. It is critical that HROs receive comprehensive training that goes beyond education about human rights norms and procedures, and

includes guidance about techniques and practical work — including human rights monitoring work.

4. Accordingly, this *Training Manual* provides an overview of the *doctrine and methodology of human rights monitoring*, primarily as developed through the work of, and to be applied by United Nations human rights field operations. It sets forth applicable international human rights and humanitarian law; approaches to identifying human rights violations, information-gathering, interviewing, visits to persons in detention, visits to displaced persons in camps, monitoring the return of refugees and internally displaced persons, trial observation, election observation, monitoring demonstrations, monitoring economic rights, preparation of reports, interventions with local authorities and other follow-up; history of United Nations monitoring standards; etc. In addition, the Manual provides suggestions for norms applicable to the work of HROs in field operations and how they can handle the challenges of stress and security they will encounter.

5. This Training Manual is intended to be used for generic pre-deployment training of human rights monitors or as a basis to develop country-specific manuals. In this latter case, it needs to be supplemented and reviewed in the light of the mandate, factual situation, and other contexts of future human rights operations. The present Training Manual incorporates many broadly accepted principles of monitoring, which should be observed by all United Nations field operations. Each operation, however, will have a different mandate, different resources, and will be confronted by different human rights problems in a wide variety of contexts. The present Manual, in attempting to provide a methodological and training tool for such a wide range of operations, remains generic and, accordingly, *needs to be supplemented for use in each human rights field operation in light of its specific mandate and circumstances as well as the judgement of its leadership*. Indeed, many aspects of this Manual incorporate policy judgements which should be carefully reviewed by the head of the human rights operation to make sure that they fit the needs of the operation. Similarly, HROs should seek policy guidance from the leadership of the human rights operation on such questions.

6. Each human rights field operation receives its terms of reference or *mandate* from the authorizing United Nations institution — e.g., the Security Council or the Economic and Social Council (ECOSOC) — or on the basis of an agreement between the United Nations and the host country. Those mandates are often similar from one operation to another, but there are differences. Accordingly, the focus and the extent of a human rights monitoring mandate may vary considerably in each operation. While the present Manual can provide advice as to how such mandates can be interpreted and as to the international legal norms underlying the principal aspects of typical monitoring mandates from past operations, authoritative guidance can only be developed once the mandate of the specific operation has been determined. Hence, as soon as a field operation is authorized, work must begin to supplement this Manual by adding materials specifically relevant to the new operation.

7. The present generic Manual is intended for use in different situations and, accordingly, it does not contain country-specific data; it does, however, outline the *kinds of country-specific materials which should be provided for training* of HROs to effectively perform their monitoring tasks, including information about geography, history, economy, population, governmental system, religions, languages, ethnic conflicts, the status of refugees and internally displaced persons, culture and customs, ratifications of

human rights treaties, other international organizations present in the country, non-governmental organizations, and other information about the human rights situation. Hence, this Manual provides advice as to how it can be supplemented for use in particular country situations. In this regard, supplementary material should take into account the needs assessment which usually precedes the authorization of a human rights field operation. As soon as the operation is actually initiated, the relevant contextual materials need to be assembled. (See **Chapter II: “The Local Context”**.)

8. This Training Manual contains some chapters which may need to be supplemented and others which need not be used because they are not relevant to the mandate of the particular field operation. For example, some chapters, such as **Chapter IX: “Visits to Persons in Detention”** or **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and/or Internally Displaced Persons (IDPs)”**, may be supplemented through addition of country specific information. At the same time, the mandate of each field operation will be different; it is unlikely that any single operation will include within its mandate all of the different chapters of **Part III “The Monitoring Function”**. Hence, for example, the final Field Training Manual for a particular operation may not need several sections on such subjects as **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”** or **Chapter XIV: “Election Observation”**.

9. The chief for the field operation should be identified as early as possible, so that s/he can make the policy and organizational decisions which should be used to supplement and apply this Manual to the particular operation. Indeed, the chief of operations should promptly select an individual who can do the critical work of *supplementing this Manual*. The person who eventually takes responsibility for training in the human rights operation should ideally be given responsibility for adapting the Manual.

10. This “training officer” should work in close consultation with the chief of the operation, and with other start-up staff. Work on updating the Manual can begin at the Geneva/New York Headquarters if the training officer has access to copies of the new mandate and to information on the country of operation — including details on the human rights and political situation, as well as the local working conditions. Particular attention should be given to the needs assessment which should, and often does, precede the authorization of a human rights field operation.

11. As soon as possible, the training officer should be deployed to the country of operation. Using the chapters of the Manual as a base, and under the direction of the chief of operation, supplementary material can be developed in a few weeks. A number of contextual materials will need to be assembled. (See **Chapter II: “The Local Context”**.)

12. The supplementary material for the Training Manual need not be complete. Priority should be on making the *most essential information* available for training of new staff members as they arrive, and to use the Training Manual with the supplementary information as a means of orienting new HROs and also defining the operation’s methodology and policy relative to the particular situation.

13. Subsequently, the supplementary training material *should be updated* as the situation evolves in the country and as the field operation itself develops. Chapters may need to be updated in response to a particular event. For example, the imminent return of 100,000 refugees may require an update of training, operations policy and methodology for monitoring the human rights of returnees.

14. In updated versions of the supplementary training materials the training officer should work closely with other HROs on each chapter. Accordingly, for example, the HRO(s) responsible for monitoring detention conditions (if any) can assist in developing further the methodology and training materials for **Chapter IX: “Visits to Persons in Detention”**. As far as possible, HROs within the operation should be provided with an opportunity to participate in the regular updating and evolution of the supplementary training material. Every officer will have a contribution to make and the involvement of all staff members helps to ensure that the manual with its supplementary training material are a reflection of wide experience, and also that everyone is involved in improving and defining the work they do.

B. Target beneficiaries

15. This Training Manual is intended for several direct beneficiaries and a larger indirect audience. The Training Manual is addressed first to **those responsible for training HROs in the performance of human rights monitoring functions** in United Nations field operations. The training can be conducted prior to the deployment of the HROs to the country of operation, or on-site. Secondly, the Training Manual is addressed to the **HRO of a field operation who is selected to supplement and adjust it** in the light of the mandate, circumstances and policies of the particular operation — in other words to produce a country/operation-specific version of the Manual — so that it can be used for guidance to all HROs. The Training Manual should also be useful to the chief of each human rights field operation in developing policies for the particular operation. Further, this Training Manual with its related Trainer’s Guide will be useful to the **officers responsible for providing initial or follow-up training to HROs in the country of operation**. The Training Manual with contextual supplementary materials will be useful to the **those HROs who will receive their orientation and instruction**, either prior to or following deployment.

16. The Training Manual may also be beneficial to **partner organizations** — such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), the International Committee of the Red Cross (ICRC), the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE) — that wish to train their staff on human rights monitoring.

17. In addition, the manual may assist **other intergovernmental or non-governmental organizations** engaged in human rights work to develop their own methodologies and train their staff.

18. The ultimate beneficiaries of the manual will be the individuals and communities whose human rights are threatened or violated and who can depend upon the assistance that may be offered through human rights field operations.

C. Objectives

19. The overall objective of the Manual is to *improve the efficiency, professionalism and impact of human rights field operations* in implementing their monitoring mandates. The specific objectives of the Manual are:

- a) to provide information on international human standards relevant to United Nations field operations;
- b) to provide information on techniques for human rights monitoring and encourage the development of the relevant skills by United Nations human rights officers and other human rights professionals.

20. The Manual is principally intended for training of staff in human rights field operations, which are on-site for a *significant period of time* (e.g., at least six months) with a *considerable staff* (e.g., at least ten and usually more) to perform primarily a monitoring function. Most of the chapters of the Manual, however, deal with techniques which may also apply to smaller, shorter and narrower human rights activities.

21. Manual users should keep in mind that the Manual is not specific to any one field operation or single country. Every field operation will be different from its predecessors, because mandates are different, and so are the human rights problems and circumstances of each country. Also, the Manual focuses on one possible function of field operations only, i.e. monitoring of human rights violations.

22. Finally, the *Manual and human rights field operations* do *not provide a panacea* for violations or conflict. HROs should remember that they often cannot change events, and should not feel responsible for things they cannot change. The actions of HROs are also limited by the international human rights norms they are seeking to implement and by basic principles of monitoring (do no harm, respect the mandate, exercise good judgement, etc.) For further elaboration of these principles, see **Part V: “The Human Rights Officer”** and **Chapter V: “Basic Principles of Monitoring”**.

D. Definition of key terms

1. Human rights” and “international humanitarian law”

23. Human rights are universal legal guarantees protecting individuals and groups against actions by governments which interfere with fundamental freedoms and human dignity. Human rights law obliges governments to do some things, and prevents them

from doing others. Some of the most frequently cited characteristics of human rights are as follow:

- ✓ focus on dignity of the human being
- ✓ legally protected
- ✓ internationally guaranteed
- ✓ protect the individual and groups
- ✓ oblige States and State actors
- ✓ cannot be waived/taken away
- ✓ equal and interdependent
- ✓ universal

24. Earlier in this century, the term “human rights” was defined as those rights guaranteed by the International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights with its Optional Protocols). Over the years, however, international and regional human rights instruments have made more explicit the rights set forth in the International Bill of Human Rights. “Human rights” are now defined with far more detail and specificity. International human rights law is, therefore, more protective of vulnerable individuals and groups, including children, indigenous groups, refugees and displaced persons and women. In addition, some human rights instruments have expanded the definition by elaborating new rights.¹

25. **“International humanitarian law”** can be defined as that part of international law which is designed to ensure respect for general principles of humanity in situations of international armed conflict, and (to a lesser extent) to internal armed conflict. Growing from customary international law, early efforts at codification, and treaties adopted at the Hague Peace Conferences of 1899 and 1907, international humanitarian law has its principal sources in the four Geneva Conventions of 1949 and the two 1977 Protocols Additional to those Conventions.

26. While most human rights are perceived as individual rights vis-à-vis the Government, human rights norms may also apply to non-State actors (such as *armed opposition groups*, corporations, international financial institutions and individuals who perpetrate domestic violence) who commit human rights abuses. The campaign to abolish slavery, one of the oldest efforts to protect human rights, was an attempt to prevent private actors from keeping or trading in slaves.² By Common Article 3 of the 1949 Geneva Conventions and their 1977 Protocols, international humanitarian law applies to armed opposition groups. Further, a series of treaties exist relating to hijackers, kidnappers of diplomats, etc. More recently, international human rights norms have been addressing the responsibility of governments to restrain individuals from committing human rights abuses in the areas of domestic violence, female genital mutilation, etc. The Maastricht Guidelines on Violations of Economic, Social and

¹See, for example, the Declaration on the Rights of Disabled Persons, G.A. res. 3447 (XXX), 30 UN GAOR Supp. (No. 34) at 88, UN Doc. A/10034 (1975); and the Declaration on the Right to Development, G.A. res. 41/128, Annex, 41, UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986).

²See General Act and Declaration of Brussels of 1890, Convention of Saint-Germain-en-Laye of 1919, and the Slavery Convention of 1926, 60 L.N.T.S. 253, *entered into force* March 9, 1927.

Cultural Rights (adopted 26 January 1997 by a group of 30 international legal experts³) state:

... The obligation to protect requires states to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the rights to work or the right to just and favourable conditions of work ... (guideline 6)

27. In sum, currently the term “*human rights*” should be viewed, for the purposes of this Manual, as incorporating both the *rights traditionally defined by the International Bill of Human Rights*, as well as the expansion of that definition to include *rights guaranteed by international humanitarian law*. Further, human rights norms are *now perceived to be enforceable against some non-State actors*, or at least to make governments responsible for preventing certain abuses by individuals.⁴ It is important to note, however, that the mandate of many UN human rights monitoring operations may and should be defined in terms of the human rights most critical in a particular country and most capable of being addressed by a limited number of HROs.

2. “Monitoring”

28. “*Monitoring*” is a broad term describing the *active collection, verification and immediate use* of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies and other immediate follow-up. The term includes evaluative activities at the UN headquarters or operation’s central office as well as first hand fact-gathering and other work in the field. In addition, monitoring has a temporal quality in that it generally takes place over a protracted period of time.

3. “Fact-finding”

29. “*Fact-finding*” describes a process of drawing conclusions of fact from monitoring activities. Hence, “fact-finding” is necessarily a narrower term than “monitoring”. Fact-finding entails a great deal of *information gathering* in order to *establish and verify* the facts surrounding an alleged *human rights violation*. Moreover, fact-finding means *pursuing reliability* through the use of generally accepted procedures and by establishing a reputation for fairness and impartiality.

4. “Observation”

30. “*Observation*” usually refers to the more passive process of *watching events* such as assemblies, trials, elections and demonstrations. It is an aspect of human rights monitoring which requires an on-site presence.

³Published in HRQ, Feb. 1997, vol. 20, no. 1.

⁴See Andrew Clapham, *Human Rights in the Private Sphere* 95-133 (1993).

5. “Human rights violations” and “human rights abuses”

31. “*Human rights violations*” include *governmental transgressions of the rights guaranteed by national, regional and international human rights law* and acts and omissions directly attributable to the State involving the failure to implement legal obligations derived from human rights standards. Violations occur when a law, policy or practice deliberately contravenes or ignores obligations held by the State concerned or when the State fails to achieve a required standard of conduct or result. Additional violations occur when a State withdraws or removes existing human rights protections.

32. All human rights — civil, cultural, economic, political and social — impose three distinct types of obligations on governments: obligations to respect, protect and fulfil. The failure of a government to perform any of these obligations constitutes a violation of human rights.

33. Although the full realization of some aspects of certain rights might only be achievable in a progressive manner, this does not alter the nature of the legal obligations of States, nor does it mean that all rights possess some components which are always subject to immediate implementation.

34. With specific regard to economic, social and cultural rights, violations can also occur when a State fails to satisfy “minimum essential levels of the rights” found in the ICESCR, and thus a State in which “any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is, *prima facie*, violating the ICESCR”. Such minimum core obligations apply irrespective of the availability of resources in the country concerned or any other actors and difficulties.

35. Any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of any human rights constitutes a violation of human rights.

36. The phrase “*human rights abuses*” is used in this Manual as a broader term than “violations”, and includes violative *conduct committed by non-State actors*.

6. “Human rights officer”

37. A “human rights officer” is a member of the staff of a United Nations human rights organization or field operation, who performs monitoring, reporting, technical assistance, promotion, or any other professional function. As previously mentioned, this Manual focuses on only one of the possible functions of a human rights officer in a field operation, that of monitoring the human rights situation. It is in this context that the term “human rights officer (HRO)” is to be intended in the Manual. In a UN field operation, HROs may work in area offices (away from the central office) or in the central office analysing information, writing reports, conducting various activities, etc.

38. The principal work of an HRO is not generally secretarial or to provide computer, logistical or other backup assistance to the field operation. Such functions are performed by support staff. To preserve the international character of the field operation, nationals of the country in which the operation is located do not usually serve as HROs, but national staff may perform many other functions for the operation.

Part Two



LOCAL CONTEXT AND INTERNATIONAL STANDARDS

.....Chapter II

THE LOCAL CONTEXT

Key concepts

The mandate of a human rights field operation usually comes from the Security Council or other UN body, an agreement with the Government, or both.

It is detailed for implementation in light of international human rights and humanitarian law as well as the pre-deployment needs assessment.

It is applied in the context of the people, history, Government, geography, economy, and international human rights and humanitarian law obligations of the country.

1. As discussed in **Chapter I: “Introduction”**, this Training Manual and any training programme based on it need to be supplemented for use in each human rights field operation in light of the operation’s context — including its mandate, the factual circumstances, and the policy judgement of its leadership.
2. This chapter outlines the information which must be assembled about the context, including the specific mandate and country circumstances in order to supplement this Training Manual and to prepare for the training of HROs and others staff.
3. Each human rights field operation receives its terms of reference or **mandate** from the authorizing **UN body** (e.g., the Security Council or the Economic and Social Council (ECOSOC)) or on the basis of an **agreement** between the UN and the host country. Accordingly, the first step would be to acquire and carefully study a copy of the Security Council resolution, UN agreement with the Government and/or other document establishing the human rights field operation.
4. The mandate can be understood in the light of previous mandates given to human rights field operations and the way they have been interpreted and applied. **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**, and **Part III: “The Monitoring Function”** track the interpretation given to the mandate of earlier human rights operations and the relevant provisions of international human rights and humanitarian law. After studying the precise terms of reference, it should be possible to supplement those chapters. It may also be possible to remove or exclude from training those elements of the chapters which are not relevant.

5. Furthermore, before the UN has established most human rights field operations, it has fielded a preparatory or assessment mission to the expected site for a short period to develop recommendations in regard to the needs which are evidenced, precise terms of reference for the operation to respond to those needs, staffing requirements, expected budget, time scale for mounting the operation, overall design for the operation, relationship of the human rights component with other UN and international operations in the country and other significant aspects of the planning. The report of that needs assessment will assist in interpreting the mandate, including its monitoring aspects, as well as developing information about the factual context in which the operation will be working.

6. In addition to very carefully focused assessment of the mandate, HROs would benefit from **background information about the country** and its human rights situation. Accordingly, from the needs assessment and from other sources, information about the following subjects should be collected and summarized for presentation to new HROs:

- ✓ geography (including topography, climate and maps);
- ✓ brief history of the country;
- ✓ economy (structure, production, fields of employment, unemployment);
- ✓ population (including distribution, relevant ethnic and other composition,
- ✓ significant expatriate groups — see also refugees below);
- ✓ governmental system:
 - ┆ constitution;
 - ┆ legal system;
 - ┆ national, regional, provincial and local structures of Government:
 - legislative structures;
 - judicial system;
 - human rights commissions or ombudsman offices;
 - defence forces and internal security forces;
 - prison structures (persons held, staff, facilities, practices);
 - ┆ criminal justice and law enforcement:
 - penal code;
 - criminal procedure code and practice;
 - ┆ political system and situation;
- ✓ religions and related tensions;
- ✓ languages and related tensions;
- ✓ the situation of groups needing special protection, including women, children, minorities, disabled, indigenous people, and other;
- ✓ internal influences, including militia, revolutionary movements, ethnic conflicts, etc.;
- ✓ the status, number and situation of refugees and internally displaced persons (both from inside and outside the country);
- ✓ culture and customs (relevant to work of HROs);

- ✓ anniversary dates of political, historical, or other significance;
- ✓ how the human rights operation and other international agencies have been
- ✓ or are expected to be perceived by the local population;
- ✓ ratifications or other adherences to human rights and other relevant treaties (including the UN Charter and privileges and immunities of the UN);
- ✓ other international organizations present in the country;
- ✓ international, national and local human rights and similar non-governmental organizations (e.g., women's associations, youth organizations, minorities associations) in the country; and
- ✓ other information about the human rights situation.

7. These topics can be the subject of brief written summaries and/or oral presentations during training sessions. Much information on the above topics can be found in the “*Country Frameworks*” prepared by the Office of the High Commissioner for Human Rights, which may need to be supplemented — for purposes of training — with additional and direct sources of information on the country and topics concerned. The outline of the Country Frameworks, with its annexed checklist of standards, is contained in **Appendix I** to this chapter. Should the Country Framework not be available from OHCHR, the outline provides useful guidance for the collection of the information needed for the training.

8. The above materials may require more than photocopying and sometimes translation. For example, the HROs should not only receive a copy of the criminal procedure code, but also an analysis of areas where the local law falls short of international standards. Another document might explain in simple terms how the criminal justice system actually functions, including the procedures for investigation, arrest, detention, interrogation, release pending trial, trial, appeal, etc.

9. In developing the information mentioned above and producing brief summaries for use in training, it will be useful to gather a number of documents, which should then become part of a **library/resource room** for the central office and area offices of the field operation:

- ✓ this Training Manual and the related training guide;
- ✓ copies of the mandate of the field operation (in relevant languages);
- ✓ a set of international human rights instruments and other relevant norms (possibly also in the local language, if different from the field operation's working language);
- ✓ any agreements between the operation and the local or national authorities authorizing access for HROs and their other activities (these agreements should show the signature of the authorities in all relevant language versions);
- ✓ any agreements between the field operation, the ICRC, the UNHCR and other organizations, and/or any agreement between the field operation's Headquarters and any other UN or international organization present in the country of operation;
- ✓ the needs assessment report which preceded the operation;
- ✓ maps of the country and relevant areas, cities, provinces, etc.;
- ✓ a copy of the country's Constitution, criminal code and criminal procedure codes;
- ✓ other relevant statutes and treaties;

- ✓ an organization chart or other explanation of the national and local administrative structures;
- ✓ an organization chart or other explanation of the judicial system;
- ✓ an organization chart or other explanation of the police and prison structures;
- ✓ a list of local non-governmental organizations dealing with human rights issues;
- ✓ copies of UN, governmental, and non-governmental reports about the human rights situation;
- ✓ copies of relevant newspaper clippings; and
- ✓ mandate and methods of work of any United Nations human rights mechanism relevant to the country of operation (High Commissioner for Human Rights, treaty body, Special Rapporteurs — both thematic and country).

10. After this Training Manual has been supplemented in light of the mandate, circumstances, and the judgement of the human rights operation leadership and as the operation gets established, a number of *additional documents should be prepared* and made available to HROs, the central office library, and area offices:

- ✓ supplementary training material for the country of operation;
- ✓ an organization chart and reporting channels of the field operation;
- ✓ any standard operating procedures, administrative guidelines, codes of conduct, and field directives issued by the operation;
- ✓ contact information for the central office and area offices;
- ✓ a supply of relevant reporting and other forms;
- ✓ summaries about the context of the operation (identified above);
- ✓ appropriate external reports produced by the operation;
- ✓ any press releases issued by the operation; and
- ✓ organization chart of the Office of the High Commissioner for Human Rights.

Appendix I to Chapter II

OHCHR Country Framework

[Short Name of Country]

GENERAL CONTEXT

| Official name of country:

| Geographic location:

| Area:

| Terrain (topography):

| Infrastructure:

| Capital city:

| Other major cities:

| Climate:

| Water resources:

| Ethnic groups:

| Languages:

| Religions:

HISTORICAL CONTEXT/POLITICAL CONTEXT

| Historical brief:

| Self-determination (foreign occupation; alien domination; colonial presence; racist regimes; independence movements):

HISTORICAL CONTEXT/POLITICAL CONTEXT

I Parties to the conflict:

I Peace process/agreement:

I Recent political transitions (First elections; revolution; coup d'état; new constitution):

I Form of government:

I Principal political parties:

I Conflict level (international armed conflict; internal armed conflict; state of emergency; civil disorder/sporadic acts of violence; normality; post-conflict reconstruction; etc.):

I Relationships with neighbouring countries:

I Membership in political/military/regional alliances:

I Legally sanctioned discrimination (race, colour, gender, language, religion, opinion, origin, property, birth, sexual orientation, other status):

POPULATION AND DEMOGRAPHIC CONTEXT

I Population (total/%; female/male):

I Annual population growth rate (%):

I Total population under age of 15 (number/%; female/male):

POPULATION AND DEMOGRAPHIC CONTEXT

- | Fertility rate (no. of children) (by gender):
- | % of population living in urban areas (by gender and age):
- | % of population living in rural areas (by gender and age):
- | Status of civil registration system (effective reg. of births, deaths, marriages):
- | Date of last census:

REFUGEES AND IDPs

- | Significant IDP concentrations (including numbers, demographic compositions and areas of origin and refuge):
- | Significant refugee presence/inflow/outflow (including numbers, demographic compositions and areas of origin and refuge):

DEVELOPMENT CONTEXT

ECONOMIC DATA

- | GNP (US\$ billions):
- | GNP per capita (US\$):
- | Real GDP per capita (US\$):
- | External debt (US\$) as % of GNP:
- | Principal industries/principal natural resources:

UNDP HUMAN DEVELOPMENT INDICES

- | General development rating (High/medium/low human development; LDC, industrialized, etc.):
- | Human Development Index (HDI):
- | Gender Development Index (GDI):
- | Gender Empowerment Measure (GEM):
- | Human Poverty Index (HPI):

DEVELOPMENT CONTEXT	
EMPLOYMENT	
	Average income (total/female/male):
	Unemployment rates (total/female/male):
INFANT AND MATERNAL SURVIVAL	
	Infant mortality rate (total/female/male):
	Child mortality rate (%):
	Under-five mortality rate (total/female/male):
	Maternal mortality rate (%):
	Survival rate to grade 5 (%):
	Underweight prevalence under 5 years:
	Percentage of births attended by trained health personnel:
	Percentage of 1 year-old children immunized against measles:
EDUCATION	
	Primary school enrolment ratio (total/female/male):
	Secondary school enrolment ratio (total/female/male):
	Tertiary school enrolment ratio (total/female/male):
	Adult literacy rates (total/female/male):
	Free primary school education:
	Mandatory primary school education:
	Free secondary school education:
	Mandatory secondary school education:
HEALTH	
	Life expectancy at birth (total/female/male):
	Percentage of population with access to primary health services:
	Contraceptive prevalence rate (%):
	Legislation or policy prohibiting family planning to unmarried, below a given age, without spousal or parental consent:
HOUSING	
	No. of persons per room, or average floor area per person (excluding bathroom):
	% of population with access to adequate sanitation:

DEVELOPMENT CONTEXT

- I % of population with access to safe drinking water:
- I Women in Government/Parliament:
- I Social spending vs. military expenditures:

LEGAL CONTEXT

INTERNATIONAL LEGAL CONTEXT

- I Human rights treaties signed/ratified/acceded to:

<ul style="list-style-type: none"> ○ ICESCR ○ ICCPR ○ ICCPR Op. 1 ○ ICCPR Op. 2 ○ CRC ○ MWC ○ CERD ○ CEDAW ○ CEDAW Optional Protocol (March 1999) 	<ul style="list-style-type: none"> ○ CAT ○ Refugees 1951/Protocol ○ Geneva Conv. I ○ Geneva Conv. II ○ Geneva Conv. III ○ Geneva Conv. IV ○ Geneva Protocol Ad. I ○ Geneva Protocol Ad. II 	<ul style="list-style-type: none"> ○ ILO Conventions ○ UNESCO Instruments ○ Other HR Treaties ○ Regional HR Instruments: <ul style="list-style-type: none"> ○ OAS Instruments ○ OAU Instruments ○ Council of Europe Instruments ○ OSCE Instruments
--	--	---
- I Treaty reservations:
- I Status of treaty reporting:
- I Agreement with ICRC/ICRC presence:

INTERNAL LEGAL CONTEXT

- I Legal system (common law; civil law; socialist; Islamic; traditional; hybrid; other):
 - Independence of the judiciary:
 - Judicial remedies against State agencies/officials before the judiciary:
- I Court system:

INSTITUTIONAL CONTEXT

I National plan of action adopted:

I Existing Governmental (Executive) HR institutions:

I Existing *Paris Principles* institutions (HR commission or ombudsman):

I Existing parliamentary HR bodies:

I Active non-governmental human rights organizations:

I Principal women's organizations:

I Principal children's advocacy organizations:

I Principal labour unions:

I Leading human rights institutes (academic and research):

UNITED NATIONS CONTEXT

- | |
|--|
| I CHR Country Rapporteur/Representative: |
| I Major CHR thematic mechanism references: |
| I TC requested from OHCHR: |
| I Previous TC provided by OHCHR: |
| I Membership in UN bodies: |
| I UN agencies and programmes present: |
| I UNDAF/HURIST country: |
| I Resident Coordinator: |
| I Designated Security Official (DSO): |
| I UN duty station rating: |
| I Peace-keeping (DPKO); special political (DPA); or special humanitarian (OCHA) missions;
OHCHR Field Presence: |

HUMAN RIGHTS OVERVIEW

Provide a brief description and analytical presentation of the prevailing human rights situation, identifying its key features, principal challenges and recurrent violations, with particular attention to the situation of women, children, persons living in extreme poverty, minorities, indigenous peoples, occupied populations, IDPs, and other groups necessitating particular human rights attention, including the most vulnerable.

Due attention should be paid to the full range of civil, cultural, economic, political and social rights, including the right to development. In analysing the contextual data included in the framework above, desk officers may wish to refer to the annexed checklist for overview and analysis. Full use should be made of the country-specific findings and recommendations of the treaty bodies, special rapporteurs and working groups of the Commission on Human Rights, and other internal sources.

POLITICAL MAP

[Attach a political map here]

Annex: Checklist for Overview and Analysis

○ Ratifications	○ Recognition as a person before the law	○ Right to property	○ Right to health
○ Conflict or emergency situation	○ Equal protection of the law	○ Freedom of thought, conscience and religion	○ Right to adequate food
○ Development situation	○ Right to effective remedy for violations	○ Freedom of opinion, expression and information	○ Right to adequate clothing
○ Situation of women	○ Arbitrary arrest, detention or exile	○ Freedom of assembly	○ Right to adequate housing
○ Situation of children	○ Fair trial	○ Freedom of association	○ Right to necessary social services
○ Situation of minorities	○ Presumption of innocence	○ Right to take part in government, access to public service, and free and fair elections	○ Right to security for unemployment, sickness, disability, widowhood, old age, or lack of livelihood
○ Situation of indigenous peoples	○ Retroactive penal measures		
○ Situation of other vulnerable groups	○ Interference with privacy, family, home or correspondence	○ Right to social security	○ Right to special care for motherhood & childhood
○ Self-determination	○ Attacks on honour and reputation	○ Right to work, free choice of employment, favourable conditions, and unemployment protection	○ Right to education
○ Discrimination	○ Freedom of movement and residence		○ Right to participate in cultural life
○ Life, liberty and security of the person	○ Right to leave and return	○ Right to equal pay for equal work	○ Rights of authorship
○ Slavery	○ Right to asylum	○ Just and favourable remuneration	○ Right enabling social and international order
○ Torture, cruel, inhuman, degrading treatment/punishment	○ Right to nationality	○ Right to form and join trade unions	
	○ Right to marriage and family	○ Right to rest and leisure	

.....Chapter III

APPLICABLE

INTERNATIONAL

HUMAN RIGHTS AND

HUMANITARIAN LAW:

THE FRAMEWORK.....

Key concepts

*The International Bill of Human Rights provides the **core definition of human rights law** in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.*

*Humanitarian law is principally based on the **four Geneva Conventions** of 1949 and two Protocols of 1977 relating to **international and non-international armed conflict**.*

*There are certain very **basic minimum rights** which cannot be the subject of **suspension** even during armed conflicts or other public emergencies; they are found in **Article 4 of the Covenant** on Civil and Political Rights and **Common Article 3** to the Geneva Conventions.*

A. Introduction

1. Every HRO should have a good knowledge of the *rights guaranteed* by international human rights and humanitarian law insofar as *relevant to the mandate* of the operation. This chapter provides the framework for international human rights and humanitarian law, clarifies sources and legal force of international norms, explains the link between human rights and humanitarian law, and discusses the relevance of such law to the work of HROs.

2. International *human rights law* proclaims broad guarantees for the fundamental rights of all human beings. In addition, international *humanitarian law*, as set forth in the four Geneva Conventions of 1949 and the Additional Protocols of 1977, governs the treatment of combatants and civilians during times of international and internal *armed conflict*. International humanitarian law reaffirms the principle that, in situations of armed conflict, those persons not directly participating in the hostilities shall be treated humanely.

B. Legal force of human rights and humanitarian law instruments

3. HROs may notice that multilateral **treaties** are often given different names, *e.g.*, charter, covenant, convention, and protocol. All are treaties among nations which carry **legally binding obligations** according to their language. Except for the UN Charter, which under its Article 103 should prevail in the case of conflict with another treaty, all other treaties are of the same legal effect. The term “protocol” is used for a multilateral treaty which would expand or modify the effect of the convention, covenant, or other treaty with which it is associated.

4. Other internationally agreed texts are referred to as declaration, body of principles, guidelines, etc. The principal difference between treaties and this second type of documents is that treaties may be formally accepted by governments (by ratification or accession) and are thus considered to be legally binding agreements among nations. Documents such as **declarations, guidelines, minimum rules, bodies of principles, vary as to their binding effect** depending upon the degree to which, for example, they authoritatively interpret treaty obligations, reflect customary international law or general principles of law, reflect customary international law in the process of formation, or are considered to reflect best practices without having more binding legal effect.

5. The term “*instrument*” is often used as a generic term to denote either a treaty or another standard-setting document, such as a declaration, body of principles, guidelines, etc.

C. Relevance of international standards

6. HROs need to be aware of *international human rights standards* because those norms define their mandate, provide an international identity to the UN operation, establish legal obligations for the Government, and therefore provide the basis to require respect for human rights from the Government and other actors.

7. International human rights standards are the principal normative point of reference for HROs operating under the auspices of the United Nations. These cannot

be replaced or superseded by the national standards or experience of the country of origin of the HRO, however familiar the officer may be with them. Whether monitoring Government compliance, reporting violations, intervening with local authorities, or offering advice, the legitimate basis for any action of HROs is the international norms and standards contained in the full body of UN and regional human rights instruments.

1. Defining the mandate through the UN Charter, other treaties, and relevant norms

a. UN Charter

8. Whatever the precise *mandate* of the field operation in a particular situation, it will ultimately be *based upon the authority of the United Nations under the UN Charter*. The UN Charter is both the *most prominent treaty* among nations and *contains fundamental human rights* provisions. (See UN Charter Arts. 1, 55, 56, 103.) *UN Charter Article 55* defines the basic human rights objectives of the UN in providing that

the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

9. By ratifying the UN Charter, Member States in *Article 56* “pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

10. **Treaties**, including the Charter, constitute the **primary sources of international law**, including international human rights law. Hence, if the mandate indicates that the human rights operation should monitor and promote the protection of human rights, “*human rights*” will be defined by the terms of the UN Charter as well as the other treaties and relevant instruments promulgated by the international community. If the mandate is more precise (*e.g.*, monitoring free and fair elections, the return of refugees, or ethnic discrimination), the rights it identifies can be found and explicated through human rights treaties and other human rights instruments as well as relevant international customary law and general principles of law.

b. International Bill of Human Rights

11. The UN General Assembly defined the human rights obligations of UN Member States in the *International Bill of Human Rights*, which is comprised of:

- ✓ Universal Declaration of Human Rights;
- ✓ International Covenant on Economic, Social and Cultural Rights; and
- ✓ International Covenant on Civil and Political Rights and its first Optional Protocol.

c. International Covenant on Civil and Political Rights

12. The *Covenant on Civil and Political Rights* establishes an international minimum standard of conduct for all States parties to it, *ensuring* the rights of self-determination; legal redress; equality; life; liberty; freedom of movement; fair, public, and speedy trial of criminal charges; privacy; freedom of expression, thought, conscience, and religion; peaceful assembly; freedom of association (including trade union rights and political parties); family; and participation in public affairs; but *forbidding* torture; “cruel, inhuman or degrading treatment or punishment”; slavery; arbitrary arrest; double jeopardy; and imprisonment for debt.

d. International Covenant on Economic, Social and Cultural Rights

13. The *Covenant on Economic, Social and Cultural Rights* establishes international minimum standards for States which have ratified this text to take steps to respect, protect and fulfil economic, social and cultural rights. This Covenant requires States parties to devote the maximum of their available resources to the most efficient and rapid manner in order to ensure the full, and in some cases progressive, realization of the rights it recognizes. The rights ensured in the Covenant include: the right to gain a living by work; to have safe and healthy working conditions; to enjoy trade union rights; to receive social security; to have protection for the family; to possess adequate housing and clothing; to be free from hunger; to receive health care; to obtain free public education; and to participate in cultural life, creative activity, and scientific research. The Covenant also strictly prohibits discrimination with respect to economic, social and cultural rights and ensures the equal rights of men and women to the enjoyment of these rights.

e. Specialized treaties

14. The UN has further codified and more specifically defined international human rights law in a *number of treaties relating to various subjects* initially identified by the International Bill of Human Rights. Treaties create legal obligations for those nations that are party to them, but are generally not binding on the international community as a whole. Treaties may, however, create general international law — that is binding on *all* States — when such agreements are intended for adherence by States generally, are in fact widely accepted, and restate general principles of law.

15. Aside from the UN Charter and the International Bill of Human Rights, the most significant UN treaties that have received enough ratifications or accessions to enter into force include (in order of their date of entry into force):

- ✓ Convention on the Prevention and Punishment of the Crime of Genocide;
- ✓ Convention relating to the Status of Refugees;
- ✓ Protocol relating to the Status of Refugees;
- ✓ International Convention on the Elimination of All Forms of Racial Discrimination;
- ✓ Convention on the Elimination of All Forms of Discrimination Against Women;
- ✓ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- ✓ Convention on the Rights of the Child; and
- ✓ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Second ICCPR Protocol).

16. In order for a *treaty to apply* to a particular country, the *State* (i.e. the country) must have *ratified* or otherwise formally adhered to the treaty. Hence, it is important for the HRO to check whether the State where the UN field operation is established has ratified the treaty. Some States attach *reservations* or other limitations on their ratification. Accordingly, it is also important to verify whether such a reservation/limitation has been asserted by the State as to the rights which might be relevant to an HRO's work. It should be noted that even if a reservation has been asserted, the *reservation may be invalid* if it violates the object and purpose of the treaty.

f. Treaty bodies

17. Pursuant to *six of the principal human rights treaties*, committees have been established to oversee their implementation. Those *six treaty bodies* are the Human Rights Committee (under the Covenant on Civil and Political Rights); the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women; the Committee Against Torture; and the Committee on the Rights of the Child. The six treaty bodies regularly **review reports by States parties** as to their compliance with the respective treaties. Most of these bodies issue *general comments and recommendations* that reflect their experience in reviewing the States reports. In this way, they can provide authoritative interpretations of the treaty provisions. In addition, in periodically examining the extent to which the treaties have been implemented by States parties, through the analysis of the State reports, the treaty bodies issue *concluding observations* which describe and address particular areas where States parties should change legislation, policy and practice in order to promote compliance with the treaty in question. Concluding observations are often a valuable source of information of human rights workers. Moreover, three of the treaty bodies — the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee Against Torture — may under certain conditions receive **individual communications** complaining about violations of those treaties and thus issue adjudicative decisions interpreting and applying treaty provisions. While the other treaty bodies cannot yet receive formal complaints in the form of individual communications, they do issue pronouncements interpreting and applying treaty provision, as well as indicating — albeit often in an *ad hoc* manner — that State parties should alter behaviour in order to secure compliance with their treaty obligations.

g. Related UN non-treaty instruments

18. *In addition to treaties*, the United Nations has overseen the development and adoption of dozens of *declarations*, codes, rules, guidelines, principles, resolutions, *and other instruments that serve to interpret and expand on* the general human rights obligations of Member States under Articles 55 and 56 of the UN Charter and may reflect customary international law. The Universal Declaration of Human Rights is the most prominent of those human rights instruments, which not only provides an authoritative, comprehensive, and nearly contemporaneous interpretation of the human rights

obligations under the UN Charter, but also has provisions which have been recognized as reflective of customary international law binding on all States irrespective of whether they are party to the treaties which also contains those provisions. Among the other prominent instruments which are not treaties but which are of great importance in the field of human rights (in order of their date of adoption) are:

- ✓ Standard Minimum Rules for the Treatment of Prisoners;
- ✓ Declaration on the Rights of Disabled Persons;
- ✓ Code of Conduct for Law Enforcement Officials;
- ✓ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
- ✓ Standards Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)
- ✓ Declaration on the Right to Development;
- ✓ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- ✓ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- ✓ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- ✓ Declaration on the Protection of All Persons from Enforced Disappearances;
- ✓ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities;
- ✓ Declaration on the Elimination of Violence Against Women;
- ✓ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

h. Other United Nations treaties and instruments

19. The United Nations is not the only global organization which has issued or facilitated the issuance of worldwide human rights standards. Others include *UN specialized agencies* (such as the International Labour Organization (ILO) and the UN Educational, Scientific, and Cultural Organization (UNESCO)) as well as the International Committee of the Red Cross (ICRC).

20. As one of the oldest existing intergovernmental organizations, ILO has promulgated 183 recommendations and 176 conventions, including several treaties relating to human rights. UNESCO has promulgated several treaties related to human rights, for example, the Convention against Discrimination in Education, 429 U.N.T.S. 93, *entered into force* May 22, 1962.

i. Geneva Conventions and Protocols

21. The *International Committee of the Red Cross* has, since the mid-19th century, convened governmental conferences to draft treaties protecting soldiers and sailors wounded in armed conflict, prisoners of war, and civilians in times of war. These treaties constitute the core of international humanitarian law which is designed to ensure respect for general principles of humanity during periods of international and

non-international armed conflict. In the context of armed conflicts, international humanitarian law provides a stronger and far more detailed basis for the protection of human rights than the International Bill of Human Rights and other UN human rights instruments.

22. The principal multilateral treaties that legislate *international humanitarian law* — the *four Geneva Conventions of 1949* — have been ratified by more governments than other human rights treaties, aside from the UN Charter and the Convention on the Rights of the Child. The two Additional *Protocols of 1977* extend and make more specific the protections of the 1949 Geneva Conventions to international and non-international armed conflicts. The Conventions and Protocols are as follows:

- ✓ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)
- ✓ Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)
- ✓ Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)
- ✓ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)
- ✓ Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)
- ✓ Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)

23. Many provisions of the four Geneva Conventions, the two Protocols, and the Hague Conventions of 1899 and 1907 are broadly accepted as restating customary international humanitarian law applicable to all countries. *Humanitarian law applies specifically to armed conflict situations*, which would ordinarily qualify as “*public emergencies*”.

j. Limitations on rights

24. Under certain *specific conditions* set forth in the relevant international human rights treaties, limitations can be imposed by States on the exercise of some human rights. It should be clear, however, that limitations on rights should be seen as the exception, rather than the rule. Limitations on rights, where they are permitted, are **specified in the texts** of the various human rights treaties. In general, such limitations and restrictions must be those which are **determined by law** and **necessary in a democratic society** to:

- ✓ ensure respect for the rights and freedoms of others; and
- ✓ meet the just requirements of public order, public health or morals, national security or public safety.

Limitations on rights imposed outside or beyond the above-mentioned conditions are not tolerated by international human rights law.

k. States of emergency and derogations

25. Under the specific and strict conditions indicated in Article 4 (1) of the International Covenant on Civil and Political Rights, international *human rights law allows States to derogate from* (that is, temporarily suspend) rights during periods of “public emergency”. Article 4 (1) of ICCPR states:

In time of public emergency which *threatens the life of the nation* and the existence of which is *officially proclaimed*, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the *extent strictly required by the exigencies of the situation*, provided that such measures are *not inconsistent with their other obligations* under international law and *do not involve discrimination* solely on the ground of race, colour, sex, language, religion or social origin.

26. There is, however, a group of rights which can never be restricted nor derogated — including in the situation described in Article 4 of ICCPR. These **non-derogable rights** include: the right to be free from arbitrary deprivation of life; torture and other ill-treatment; slavery; imprisonment for debt; retroactive penalty; non-recognition of the law; and infringement of freedom of thought, conscience, and religion (Article 4 (2)).

27. ICCPR provisions underline the exceptional nature of derogations from rights guaranteed in the Covenant. The substantive and procedural conditions under which derogations from rights are permitted by international law should be carefully noted:

- ✓ existence of a threat to the life of the nation;
- ✓ official proclamation of the state of emergency;
- ✓ derogations to be strictly required by the exigencies of the situation;
- ✓ derogations not to be inconsistent with other international obligations of the State;
- ✓ derogations not be discriminatory;
- ✓ non-derogable rights to be respected.

28. Article 4 (3) further requires that States introducing derogations from rights should immediately inform, through the UN Secretary-General, the other States Parties to ICCPR of the provisions from which they have derogated and of the reasons for the derogations.

l. Applicability of international human rights and humanitarian law

29. As explained above and in Chapter I, international humanitarian law is that body of international law which applies to situations of armed conflict — both international and non-international. It establishes protections for individuals and limits on methods and means of warfare by belligerent States.

30. In times of conflict, *human rights law continues to apply*. However, since armed conflict situations would typically qualify as “public emergencies” as defined by Article 4 of ICCPR, it is possible and likely that in such situations restrictions and derogations to human rights may be introduced by States (under the conditions mentioned above). It is therefore likely that the highest level of protection to individuals in situations of armed conflict be provided by international humanitarian law provisions.

31. The following table highlights the applicability of international human rights and humanitarian law in various situations, corresponding to different levels of conflict:

Applicability of Human Rights and Humanitarian Law¹

Situation	Applicable Law
1. International Armed Conflict Including wars between States, and against colonial domination, alien occupation, racist regimes, in exercise of the right to self-determination.	Four Geneva Conventions of 1949 (1) Wounded and sick in the field (2) Shipwrecked (3) Prisoners of War (4) Civilian Persons (under occupation) Additional Protocol I of 1977 Other human rights provisions (insofar as non-derogable or no emergency declared)
2. Non-International Armed Conflict Civil war or other situation in which organized armed forces, under responsible command, exercise such control over part of the territory so as to permit sustained and concerted military operations and to implement humanitarian law.	Common Article 3 of the Geneva Conventions (applies to Government and armed opposition force) Additional Protocol II of 1977 (more restrictive field of application) Other human rights provisions (insofar as non-derogable or no emergency declared)
3. State of Emergency Disturbances, riots, isolated and sporadic acts of violence, and other public emergency which threaten the life of the nation, in which measures normally compatible with the Constitution and laws are inadequate to address the situation. State of emergency must be officially declared	All human rights , with the following exceptions: Derogations from certain rights may be permissible to the extent strictly required by the exigencies of the situation, and only if not inconsistent with other requirements under international law (including Geneva Conventions and Protocols). No discrimination solely on the basis of race, colour, sex, language, religion, or social origin. No derogation is permissible with regard to arbitrary deprivation of life, torture, slavery, or imprisonment for failure to fulfil a contractual obligation.
4. Other Internal Tensions Disturbances, riots, and isolated acts of violence which do not qualify as public emergency threatening the life of the nation. No state of emergency declared	All human rights (but as to each right, see any relevant limitation. Rights can be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society).

¹Standard OHCHR Training Packages for Police and for Peace-keepers

Situation	Applicable Law
5. Normal Situations	All human rights (but as to each right, see any relevant limitation. Rights can be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society).

m. *Most protective standard*

32. Since there are inconsistencies and gaps between the protections afforded by various human rights and humanitarian law instruments, as well as by national and local laws, the individual should be entitled to the most protective provisions of applicable international, national, or local laws. Accordingly, if humanitarian law affords better rights protections than human rights law, humanitarian law should be applied — and *vice versa*.

n. *Regional protection of human rights*

33. In addition to the UN mechanisms for implementing human rights, regional structures now operate in *Africa, the Americas, and Europe*. The rights protected by these structures derive from, and are similar to, those of the International Bill of Human Rights, but each of the structures has developed unique approaches to seeking assurance that the rights are put into practice. While the following materials often focus on UN and other worldwide standards, regional standards may be quite important in particular circumstances, for example because the country has ratified *significant regional human rights treaties* which the Government considers *more persuasive* or because those regional instruments are *given prominence in the agreement* with the UN human rights operation (for example, the Dayton Agreements on the conflict in Bosnia and Herzegovina confer the European Convention for the Protection of Human Rights and Fundamental Freedoms with equal status *vis-à-vis* domestic law). The three main regional treaties² on human rights which are referred to in this Manual are the following:

- ✓ African Charter on Human and Peoples' Rights (Banjul Charter)
- ✓ American Convention on Human Rights (American Convention)
- ✓ European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

²For a comprehensive collection of regional human rights instruments, see United Nations Office of the High Commissioner for Human Rights, *Human Rights: A Compilation of International Instruments — Volume II, Regional Instruments*, New York and Geneva, 1997.

2. Relevance of international standards to the identity of the human rights field operation and to its effectiveness

34. As indicated above, this Manual focuses on international human rights norms because they ordinarily define the mandate of the human rights operation. (See also **Part III, Chapter VI: “Identification and Prioritization of Efforts Regarding Human Rights Violations”**.) Moreover, those norms define the *international character* of the field operation, are capable of being explained in a manual intended to cover situations anywhere in the world, and are most likely to be persuasive as international minimum standards.

a. *International character of the operation*

35. *Legitimacy* is the most important asset of a human rights field operation. It rests on the understanding that the operation is just and is representative of the *will of the international community* as a whole rather than some partial interest. This *legitimacy* is further enhanced by the *composition of the field operation*, typically including personnel from a broad spectrum of countries.

36. *The basis of human rights field operations in international law provides further support for the legitimacy of the operations* as reflecting the will of the international community. Indeed, it would be unlikely that the Government or the people of the country in which the operation is located would find HROs convincing if each officer argued that the Government should follow the human rights approaches of her/his own nation. The international minimum standards provide a point of basic agreement not only among nations, but also among the HROs as to what they should monitor, promote, or recommend.

b. *Usefulness of international standards*

37. This Training Manual focuses on worldwide human rights standards because field operations may be mounted anywhere in the world and it would, as a practical matter, be very difficult to cover all the regional and national human rights standards which might be relevant in a particular situation. HROs should not, however, conclude that this Manual discusses all the relevant standards.

38. While the *mandate of a UN operation is based upon UN human rights standards* such as those discussed in this Manual, an agreement between the Government and the UN may define the mandate by referring also to other international norms, regional human rights treaties, the constitution of the country, or other standards. Indeed, if the mandate refers to those non-UN standards or if the non-UN standards are more protective or persuasive, HROs should become acquainted with whatever standards are most helpful to their work. For example, in some countries *regional standards* may be better known and better respected than nearly identical international standards. In those circumstances, HROs would be well advised to use regional standards. Similarly, the constitution or national law may incorporate regional standards, so that they should be prominently used. Another example might be found in a country in which the

constitution or the national law reflects the substance of international standards. Indeed, from the perspective of the individual in most countries, the most important means of protecting human rights and for implementing international law is through *the national legislation, courts, and administrative agencies*. The HRO may be more effective in referring to the constitution or national law to achieve protection for human rights.

39. A third example of the usefulness of non-UN human rights standards might be found in a country where the constitution, national law, or practice is even more protective of human rights than international law. After all, human rights treaties provide only international *minimum* standards. There is nothing to prevent a country from giving greater human rights protection than international standards provide. As indicated above, the individual should be entitled to the most protective provisions of applicable international, national, or local laws. Accordingly, the HRO should use *whatever standards are most protective*.

40. In general, however, HROs will find that there is more protection for human rights under international law than under national law and practice. Accordingly, officers need training on how to invoke the broader protections and profit from international insights as to how human rights can be implemented. The following chapter provides a basis for such training.

.....Chapter IV

OVERVIEW OF

INTERNATIONAL

HUMAN RIGHTS AND

HUMANITARIAN LAW

STANDARDS

Key concepts

Human rights officers should be aware of the whole range of international human rights norms, including civil, cultural, economic, political and social rights, although the specific focus of their monitoring work may vary based on the specific mandate of each field operation.

International human rights law contains specific provisions for groups requiring special protection, such as refugees, internally displaced people, women, minorities and children.

International human rights and humanitarian law requires States to prosecute and punish those responsible for violations of such law, for the purpose of ending impunity.

A. Introduction

1. This chapter provides a brief summary of international human rights and humanitarian law standards applicable to the work of HROs. In addition, more detailed coverage of standards relating to specific areas of international human rights may be found in **Part Three: “The Monitoring Function”**, in the chapters relating to such areas as elections, detention, economic, social and cultural rights, internally displaced persons, refugees, fair trial, and others.

2. The HRO should be aware, however, that this summary provides *only a brief view* of the larger constellation of international human rights and humanitarian law norms. The present Training Manual focuses on *only a few basic international human rights* and humanitarian law norms without suggesting that these are the only rights of concern to HROs. In order to narrow the scope of this chapter, the rights discussed were chosen

principally because of their relevance to previous UN human rights observer mandates and field operations. HROs are encouraged to refer to other texts containing more extensive information on human rights and humanitarian law, some of which are listed in the Bibliography at the end of the Manual.

3. The following international human rights and humanitarian law *principles will be discussed* in this chapter: right not to be arbitrarily deprived of life; right to personal integrity; right to liberty and security of person; rights in the administration of justice; freedom of opinion and expression; freedom of association and assembly; freedom of movement and residence; rights of refugees and internally displaced persons; the human rights of women; rights of minorities; right to non-discriminatory treatment; right to property; right to housing and other economic, social and cultural rights; impunity; and other human rights standards.

B. Right not to be arbitrarily deprived of life

1. International standards

a. *International human rights law*

4. Pursuant to Article 3 of the Universal Declaration of Human Rights, “Everyone has the right to life, liberty and security of person.” Article 6 of the Covenant on Civil and Political Rights states that, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The Human Rights Committee has noted that Article 6 enunciates “a right which should not be interpreted narrowly.”¹ Article 4 of the Covenant on Civil and Political Rights provides that the right to be free from arbitrary killing is **non-derogable**, that is, it cannot be suspended even in times of emergency.

5. Article 4(1) of the American Convention declares, “Every person has the right to have his life respected. This right shall be protected by law... No one shall be arbitrarily deprived of his life.” Furthermore, Article 4 of the Banjul Charter guarantees that “[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” Article 2(1) of the European Convention provides that “Everyone’s right to life shall be protected by law.”

¹Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 6 (1994).

b. International humanitarian law

6. International humanitarian law also protects the right not to be arbitrarily deprived of life. *Common Article 3 in the four Geneva Conventions* prohibits “at any time and in any place whatsoever ... violence to life and person, in particular murder of all kinds” against persons taking no active part in an armed conflict not of an international character. Article 4 of Additional Protocol II also prohibits “violence to the life, health and physical or mental well-being of persons [who do not take a direct part or who have ceased to take part in non-international hostilities], in particular murder...”.

7. As to periods of international armed conflict, willful killings of protected persons (civilians, prisoners of war and soldiers *hors de combat*) under the Geneva Conventions constitute grave breaches of international humanitarian law. (See First Geneva Convention, Article 50; Second Geneva Convention, Article 51; Third Geneva Convention, Article 130; Fourth Geneva Convention, Article 147; Additional Protocol I, Article 85.)

8. Article 12 of both the First Geneva Convention and the Second Geneva Convention state that armed forces and others who are wounded or sick “shall be treated humanely... Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular they shall not be murdered or exterminated...”.

9. Article 13 of the Third Geneva Convention states that prisoners of war “must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention...”.

10. Article 32 of the Fourth Geneva Convention forbids any measure which causes “physical suffering or extermination of protected persons [civilians who are in the power of a party to an international armed conflict] in their hands. This prohibition applies not only to murder ... but also to brutality applied by civilian or military agents.”

2. Violations of the right not to be arbitrarily deprived of life

a. Arbitrary execution

11. An arbitrary execution is the **killing of a person perpetrated by an agent of the State or any other person acting under Government authority** or with its complicity, tolerance, or acquiescence, but **without any or due judicial process**. Executions resulting from a death sentence issued by a court, are also arbitrary executions if the fair trial guarantees provided in Articles 14 and 15 of the Covenant on Civil and Political Rights are not respected.

12. Arbitrary executions (to be distinguished from executions after a fair trial) often are *killings under suspicious circumstances* with the following characteristics:

- (1) Death occurred when the person was in the hands of law enforcement officials (for example in police custody), public officials or other persons acting in an official capacity;

- (2) The death was not followed by an official inquiry. The authorities did not carry out an adequate autopsy of the victim or did not take the necessary steps to obtain relevant evidence (medical report, signs of previous torture, etc.).
13. Arbitrary executions include killings committed for political reasons, deaths following torture or any other cruel, inhuman or degrading treatment, and killings following kidnapping or forced disappearance, if the conditions mentioned are present.

b. Investigation of arbitrary executions

14. The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution² contain important guidance for States and for HROs. The Principles are set forth under three headings: Prevention, Investigation and Legal Proceedings. Pursuant to Principle 1, governments shall **prohibit by law** all extra-legal, arbitrary and summary executions. Furthermore, governments shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. The *Principles reaffirm the duty of the Government to investigate all arbitrary and summary executions*. The Principles further provide:

Principle 7. Qualified inspectors, including medical personnel or an equivalent independent authority, shall conduct **inspections** in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of its function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

Principle 8. Governments shall make every effort to **prevent** extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to **investigate** reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject...

Principle 12. The body of the deceased shall not be disposed of until an adequate **autopsy** is conducted... Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred...

Principle 13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent

²The Principles were recommended in 1988 by the Committee on Crime Prevention and Control. The Principles were adopted by the Economic and Social Council in its resolution 1989/65, annex, of 24 May 1989, and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989.

possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

15. Use of these procedures during death investigations should produce the evidence necessary for increased detection and disclosure of other executions. These standards also provide international observers with *guidelines to evaluate investigations of suspicious deaths*. The Principles are augmented and explained by United Nations, Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.³ Relevant information is also contained in the United Nations Guidelines for the Conduct of United Nations Inquiries Into Allegations of Massacres.⁴

c. Limits on the use of force by government officials to prevent arbitrary executions

16. The Human Rights Committee, commenting on Article 6 of the Covenant on Civil and Political Rights, stated that:

The protection against arbitrary deprivation of life which is explicitly required by the third sentence of Article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.⁵

17. Killings committed pursuant to a legitimate use of force authorized by law are not considered to be arbitrary executions. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply **non-violent means** before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall **minimize damage and injury**, and respect and preserve human life.

18. Article 3 of the United Nations Code of Conduct for Law Enforcement Officials⁶ establishes that “Law enforcement officials may use force only when **strictly necessary** and to the **extent required for the performance of their duty**.” Moreover, the Commentary to Article 3 states:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime in affecting or assisting in

³UN Doc.ST/CSDHA/12 (1991).

⁴UN Doc. DPI/1710 (1995).

⁵Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 6 (1994).

⁶Adopted by General Assembly resolution 34/169 of 17 December 1979.

the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

19. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide for the following guidelines on this matter:⁷

i. General principles on the use of force

Non-violent means are to be attempted first⁸

Force is to be used only when strictly necessary⁹

Force is to be used only for lawful law enforcement purposes¹⁰

No exceptions or excuses shall be allowed for unlawful use of force¹¹

Use of force is to be always proportional to lawful objectives¹²

Restraint is to be exercised in the use of force¹³

Damage and injury are to be minimized¹⁴

A range of means for differentiated use of force is to be made available¹⁵

All officers are to be trained in the use of the various means for differentiated use of force¹⁶

All officers are to be trained in use of non-violent means¹⁷

⁷The following summary of international standards on the use of force and firearms by law enforcement officials is drawn from the publication: *International Human Rights Standards for Law Enforcement — A Pocket Book on Human Rights for the Police*, United Nations High Commissioner for Human Rights, 1996.

⁸Principles on Force & Firearms, principle 4.

⁹Principles on Force & Firearms, principles 4 and 5.

¹⁰Principles on Force & Firearms, principles 5 and 7.

¹¹Principles on Force & Firearms, principle 8.

¹²Principles on Force & Firearms, principles 2 and 5(a).

¹³Principles on Force & Firearms, principles 2, 5(a) and 9.

¹⁴Principles on Force & Firearms, principle 5(b).

¹⁵Principles on Force & Firearms, principle 2.

¹⁶Principles on Force & Firearms, principles 4, 19, and 20.

¹⁷Principles on Force & Firearms, principles 4 and 20.

ii. Accountability for the use of force and firearms

All incidents of the use of force or firearms shall be followed by reporting and review by superior officials.¹⁸

Superior officials shall be held responsible for the actions of police under their command if the superior official knew or should have known of abuses but failed to take concrete action.¹⁹

Officials who refuse unlawful superior orders shall be given immunity.²⁰

Officials who commit abuses of these rules shall not be excused on the grounds that they were following superior orders.²¹

iii. Permissible circumstances for the use of firearms

*Firearms are to be used only in extreme circumstances.*²²

Firearms are to be used only in self-defence or defence of others against imminent threat of death or serious injury²³

-or-

To prevent a particularly serious crime that involves a grave threat to life²⁴

-or-

To arrest or prevent the escape of a person posing such a threat and who is resisting efforts to stop the threat²⁵

-and-

In every case, only when less extreme measures are insufficient.²⁶

*Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.*²⁷

iv. Procedures for the use of firearms

The officer should identify him/herself as a police official²⁸

-and-

give a clear warning²⁹

-and-

allow adequate time for warning to be obeyed,³⁰

¹⁸Principles on Force & Firearms, principles 6, 11(f), and 22.

¹⁹Principles on Force & Firearms, principle 24.

²⁰Principles on Force & Firearms, principle 25.

²¹Principles on Force & Firearms, principle 26.

²²Principles on Force & Firearms, principle 4.

²³Principles on Force & Firearms, principle 9.

²⁴Principles on Force & Firearms, principle 9.

²⁵Principles on Force & Firearms, principle 9.

²⁶Principles on Force & Firearms, principle 9.

²⁷Principles on Force & Firearms, principle 9.

²⁸Principles on Force & Firearms, principle 10.

²⁹Principles on Force & Firearms, principle 10.

³⁰Principles on Force & Firearms, principle 10.

-but-

such precautions shall not be required if the delay would result in death or serious injury to the officer or others³¹

-or-

It is clearly pointless or inappropriate in the circumstances to do so.³²

v. After the use of firearms

Medical aid is to be rendered to all injured persons.³³

The relatives or friends of those affected are to be notified.³⁴

Investigation are to be allowed for where requested or required.³⁵

A full and detailed report of the incident is to be provided.³⁶

20. Under international law, **States are obliged to carry out impartial and exhaustive investigations into all allegations of arbitrary executions**, including killings using firearms, with a view to clarifying the circumstances, identifying those responsible, bringing them to justice, compensating the victims or their families, and taking all necessary action to prevent the recurrence of similar acts in the future. **The result of such investigations must be made public** (UN Principles on the Effective Prevention and Investigations of Extra-legal, Arbitrary and Summary Executions).

21. Because the excessive use of force and firearms may result in arbitrary killing, this topic is covered under the heading “Right not to be arbitrarily deprived of life”. It should be noted, however, that the excessive use of force and firearms may also result in violations of other fundamental rights, including the right to personal integrity (see below).

d. Genocide

22. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide requires State Parties “to punish ... genocide, whether committed in time of peace or time of war.” (Art. I). The Convention defines genocide as committing one of the following acts with *intent to destroy, in whole or in part, a national, ethnical, racial or religious group*:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

³¹Principles on Force & Firearms, principle 10.

³²Principles on Force & Firearms, principle 10.

³³Principles on Force & Firearms, principle 5(c).

³⁴Principles on Force & Firearms, principle 5(d).

³⁵Principles on Force & Firearms, principles 6, 11(f), 22 and 23.

³⁶Principles on Force & Firearms, principle 22.

- (e) Forcibly transferring children of the group to another group.
- 23. It should be noted that genocide does not require killing, but may involve the other actions identified by the Convention if committed with genocidal intent and particularly if large numbers are involved.

e. Attempted arbitrary execution

24. The attempt to carry out an arbitrary execution, which fails for reasons beyond the initial intention of one or more Government agents, constitutes an attempted arbitrary execution. Any such attempts should be the subject of an **inquiry** taking into account the following elements:
- (a) The possible political, trade union, religious or associative activity exercised by the victim.
 - (b) The function or scope of activity of the supposed author of the attempted arbitrary execution.
 - (c) Any extortion, harassment, threat or stalking undergone by the victim or relatives prior to the execution attempt.
 - (d) The use, in the attempted killing, of means capable of obtaining the expected result.
 - (e) The form and means of the execution attempt.

f. Death threats

25. Any action or statement, explicit or implicit, likely to instil in a person a **justified fear of becoming the victim** of an arbitrary execution is a death threat. HROs should devote attention to death threats:
- (a) arising from members of the armed forces or any other public institutions;
 - (b) arising from individuals or paramilitary groups related to the authorities or acting with the complicity of or the tacit approval of the authorities;
 - (c) when there is reason to believe that these threats are part of a practice of arbitrary executions; when the threat is precise; and when there is reason to believe that the threat will be followed by action.
26. Accordingly, an HRO should give priority to making inquiries about cases where human life is endangered. The inquiries should attempt to establish that there was an arbitrary execution, an attempted arbitrary execution, or a death threat by identifying the elements of the violations as discussed in **Chapter VI: “Identification and Prioritization of Efforts Regarding Human Rights Violations”**.

C. Right to personal integrity

1. International standards

a. *International human rights law*

27. Pursuant to Article 5 of the Universal Declaration of Human Rights, “No one shall be subjected to **torture** or to **cruel, inhuman or degrading treatment or punishment**.” Article 7 of the Covenant on Civil and Political Rights also guarantees the right to be free from torture. The Human Rights Committee General Comment on Article 7 indicates that even in situations of public emergency this provision is **non-derogable**.³⁷

28. In addition, Article 10(1) of the Covenant on Civil and Political Rights provides that, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The Human Rights Committee, in its General Comment 21, interprets Article 10(1) as applying to “anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals — particularly psychiatric hospitals — detention camps or correctional institutions or elsewhere.”³⁸ Commenting on the interplay between Articles 7 and 10 of the Covenant on Civil and Political Rights, the Human Rights Committee stated in General Comment 21,

[N]ot only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.

29. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture in Article 1(1):

For the purposes of this Convention, the term “**torture**” means any act by which **severe pain or suffering**, whether physical or mental, is **intentionally inflicted** on a person for such **purposes** as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other **person acting in an official capacity**. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

³⁷Human Rights Committee, General Comment 7, Article 7 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 7 (1994).

³⁸Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 33 (1994).

30. The exception for “lawful sanctions” refers to lawfulness in both national and international law. Hence, it would not be lawful to impose a sanction which violates Rule 31 of the Standard Minimum Rules for Treatment of Prisoners, which *inter alia* forbids corporal punishment. Similarly, the Human Rights Committee has interpreted Article 7 of the Covenant on Civil and Political Rights, stating that “the **prohibition must extend to corporal punishment**, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary to this article.”

31. All of the regional human rights conventions prohibit torture and cruel or degrading treatment or punishment. (American Convention, Article 5(2); Banjul Charter, Article 5; European Convention, Article 3). The American Convention further provides in Article 5(1) that, “Every person has the right to have his physical, mental, and moral integrity respected.” Pursuant to Article 5 of the Banjul Charter, “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.” In addition, there are two regional treaties specifically focusing on torture: the Inter-American Convention to Prevent and Punish Torture, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

b. International humanitarian law

32. In *all four of the Geneva Conventions and the two Additional Protocols* there are provisions which either expressly or by implication forbid torture and other cruel, inhuman or degrading treatment or punishment. During international armed conflict, **torture is forbidden** as to those who are wounded and sick on land by the First Geneva Convention, Article 12; as to the wounded, sick and shipwrecked at sea by the Second Geneva Convention, Article 12; as to prisoners of war by the Third Geneva Convention, Articles 17 and 87; and as to civilians by the Fourth Geneva Convention, Article 32; Additional Protocol I, Article 75; Additional Protocol II, Article 4.

33. Civilians are also protected by Article 37 of the Fourth Geneva Convention, which provides that those civilians who are confined shall be “humanely treated”. Article 118 of the Fourth Geneva Convention forbids imprisonment “in premises without daylight and, in general, all forms of cruelty” against internees.

34. During periods of international armed conflict or wars of national liberation, Article 11 of Additional Protocol I prohibits endangering the “**physical or mental health and integrity of persons** who are in the power of the adverse party, or who are interned, detained or otherwise deprived of liberty...”. Article 75 also forbids “**outrages upon personal dignity**, in particular **humiliating and degrading treatment...**”.

35. As to non-international armed conflicts, Article 3 common to the four Geneva Conventions forbids “**cruel treatment and torture**” of persons taking no active part in the hostilities. Common Article 3 also proscribes “**outrages upon personal dignity**, in particular, humiliating and degrading treatment,” “**mutilation**, cruel treatment and torture.” Furthermore, Article 4 of Protocol II prohibits at any time and in any place whatsoever: “(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment... (c) outrages upon personal dignity, in

particular, humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault... (h) **threats** to commit any of the foregoing acts.”

2. Violations of the right to personal integrity

36. A violation of the right to personal integrity occurs when the State, through its agents or any other person acting in an official capacity, on its instigation or with its consent or acquiescence, applies torture or cruel, inhuman or degrading treatment, thus causing physical, psychological or moral suffering. The greater the extent to which the pain and suffering are serious and intentionally inflicted, the greater the likelihood that the treatment involves an attack to the integrity of the person.

37. In general, three categories of acts correspond to this type of violation:

- (a) Torture;
- (b) Cruel, inhuman or degrading treatment or punishment; and
- (c) Attempted execution

a. Torture

38. As defined by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- (a) obtaining from him or a third person information or a confession;
- (b) punishing him for an act he or a third person has committed or is suspected of having committed;
- (c) intimidating or coercing him or a third person; or
- (d) for any reason based on discrimination of any kind.

39. The above-described pain or suffering constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Behaviour that characterizes torture should, however, be construed broadly rather than narrowly. In any event, in this definition of torture, three elements should be emphasized:

- (a) acute suffering;
- (b) intentionally inflicted; and
- (c) by a public official or other person acting in an official capacity or on his instigation or with his consent or acquiescence.

40. Under this definition, rape is a form of torture. As discussed above, however, the HRO should note that pain or suffering arising only from, inherent in, or incidental to lawful sanctions may not fall within the definition of torture if the sanctions are acceptable under both domestic law and international human rights law. Conduct that is allowed under domestic law may be considered torture if it is unacceptable under

international instruments such as the Standard Minimum Rules for the Treatment of Prisoners.

b. Cruel, inhuman or degrading treatment or punishment

41. Torture is an aggravated form of cruel, inhuman or degrading treatment. *Not all cruel, inhuman and degrading treatment, however, constitutes “torture”. It is not always easy to establish a difference or a borderline.* For instance, do beatings which undoubtedly are cruel, inhuman and degrading treatment, come under the description of “torture”? After how many blows? Where is the threshold of intensity of suffering, the gravity of the wounds and injuries?

42. Pursuant to Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, **the obligations** contained in Articles 10, 11, 12 and 13 **apply to both torture and other forms of cruel, inhuman or degrading treatment or punishment.** Hence, Articles 12 and 13 require States to ensure that complaints of acts of both torture and cruel, inhuman or degrading treatment or punishment are investigated. Similarly, pursuant to Article 10, States are to include education and information regarding the prohibition against torture/cruel, inhuman or degrading treatment or punishment in the training of law enforcement personnel, medical personnel, public officials, etc.

43. *Defining an act as torture rather than cruel, inhuman or degrading treatment may, however, have important consequences.* For example, Article 4 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires each State Party to ensure that all acts of torture are offences under its criminal law. Furthermore, States shall ensure that victims of torture have an enforceable right to fair and adequate compensation (Article 14) and that any statement adduced by torture shall not be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statements were made (Article 15). These provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment do not apply to cruel, inhuman or degrading treatment or punishment.

44. The distinction between torture and cruel, inhuman or degrading treatment is not always easy. *Nor is it necessary for the HROs to make the distinction.* Torture as well as cruel, inhuman or degrading treatment constitute a violation of human rights as to which the HROs must gather information and report.

D. Right to liberty and security of person

1. International standards

45. In accordance with Article 3 of the Universal Declaration of Human Rights, “Everyone has the right to life, liberty and security of person.” In addition, Article 9 of the Universal Declaration states that, “No one shall be subjected to arbitrary arrest, detention or exile.”

46. Article 9(1) of the Covenant on Civil and Political Rights guarantees that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The Human Rights Committee has pointed out that “paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.”³⁹

47. The European Convention and the Banjul Charter also provide the right to liberty and security of person. (European Convention, Article 5(1); Banjul Charter, Article 6.) The American Convention in Article 7(2) states that, “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” Furthermore, Article 7(3) declares, “No one shall be subject to arbitrary arrest or imprisonment.”

48. For additional standards relating to the rights of detainees, see **Chapter IX: “Visits to Persons in Detention”**.

2. Violations of the right to liberty and security of person

a. Arbitrary detention

49. There is a violation of the right to individual liberty when a public official or any other person acting in an **official capacity** or with official instigation, consent or acquiescence, **deprives a person, without a valid reason, of his/her liberty** by confining him/her in a prison or any other detention facility or compels him/her to stay in an assigned residence.

50. Article 9 of the Covenant on Civil and Political Rights contains first of all a requirement of **legality** for arrest and detention. Deprivation of liberty is permissible only when it transpires on such grounds and in accordance with such procedures as are established by the law. The principle of legality is violated if somebody is arrested or detained on grounds which are not clearly established in law or which are contrary to such law.

51. Secondly, it prohibits “arbitrary” arrest. The concept of **arbitrary** goes beyond that of legality. The prohibition of arbitrariness provides for an additional limitation on the possibility to deprive a person of their liberty. It is not enough that the deprivation of liberty be provided by law. The law itself must also not be arbitrary, and the enforcement of the law must not take place arbitrarily. “Arbitrary” is more than against the law or unlawful. It must be interpreted more broadly, as containing elements of injustice, unreasonableness and disproportionality. Therefore, cases of deprivation of liberty provided for by law must not be unproportional, unjust or unpredictable, and the specific manner in which an arrest is made must not be discriminatory and must be appropriate and proportional in view of the circumstances of the case.

³⁹Human Rights Committee, General Comment 8, Article 9 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 8 (1994).

52. In addition, a violation of the rights of arrested persons indicated in Article 9 of the Covenant on Civil and Political Rights, or a combination of violations of those rights, can lead to arbitrary detention. For example, the Human Rights Committee has established that people who had been arrested without an arrest warrant and had not been informed of the grounds for the arrest, were being arbitrarily detained.

53. Detained persons shall be held only in officially recognized places of detention, and their family and legal representatives are to receive full information.⁴⁰

54. Juveniles are to be separated from adults, women from men and persons who have been convicted from persons who are awaiting trial.⁴¹

55. Decisions about the duration and legality of detention are to be made by a judicial or equivalent authority.⁴² Every detainee shall have the right to appear before a judicial authority and to have the legality of his/her detention reviewed.⁴³

b. Forced disappearance

56. According to General Comment No. 6 of the Human Rights Committee, States parties should take specific and effective measures to prevent the disappearance of individuals. The Declaration on the Protection of All Persons from Enforced Disappearance⁴⁴ contains detailed guidance on States' obligations on this matter. In general, enforced disappearances occur when:

a) persons are **arrested, detained or abducted against their will** or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support — direct or indirect — consent or acquiescence of the Government, and

b) followed by the Government's refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty.

57. The first criterion is that the person must have been arrested or abducted by a Government official or any other person acting in an **official capacity** or with his consent or acquiescence. Such State responsibility is often difficult to verify. Normally the perpetrators of an enforced disappearance cover their tracks carefully.

58. The likelihood of a disappearance is greater if the victims was involved in political, trade union or other association activities. The HRO should ask *whether the victim previously had been threatened because of his/her political activities or beliefs*. Have any other individuals in the same organizations been reported missing?

⁴⁰Principles of Detention or Imprisonment, principles 12 and 16(1); Standard Minimum Rules, rules 7, 44(3), and 92; Declaration on Enforced Disappearance, Article 10; Principles on Summary Execution, principle 6.

⁴¹Covenant on Civil and Political Rights, Art. 10; Children's Convention, Art. 37; Standard Minimum Rules, rules 5, 8, 53, 85(1), and 85(2); Principles of Detention or Imprisonment, principles 5(2) and 8.

⁴²Covenant on Civil and Political Rights, Art. 9(4); Principles of Detention or Imprisonment, principles 32 and 37; Declaration on Enforced Disappearance, Art. 10(1).

⁴³Covenant on Civil and Political Rights, Art. 9(4); Principles of Detention or Imprisonment, principle 32.

⁴⁴Adopted by General Assembly resolution 47/133 of 18 December 1992, UN Doc. A/RES/47/133, 32 I.L.M. 903 (1993).

59. The second element of the definition relates to the Government's refusal to acknowledge the arrest or admit knowledge of the person's whereabouts. The inquiry should include a search for the missing person in official or unofficial detention centres. This inquiry could be pursued by members of his family, friends, HROs, etc. HROs should question Government officials on the previous location and the present whereabouts of the missing person. *Only after the Government's refusal to provide information or in the absence of any information, can an HRO conclude that a case of enforced disappearance is involved.*

60. In short, one may assume that there is a *case of "enforced disappearance"* when the *inquiry leads nowhere*, when there is every reason to believe that *Government officials or people working for them are involved* in the disappearance, and when there are strong indications that the *disappearance was for political or similar reasons*.

61. In most cases, the Government will not admit that its officials or people working for them are involved in the disappearance and omits or refuses to carry out a proper enquiry.

62. The closer a case approaches this definition, the more it constitutes a serious and continuous violation of human rights.

E. Rights in the administration of justice

63. The administration of justice includes the functioning and independence of the **courts**; the role of **prosecutors**; the role of **lawyers**; the role of **law enforcement officials**; human rights during **criminal investigations**, **arrest** and **detention**; the right to a **fair trial**; standards for the protection of **prisoners**; **non-custodial measures**; the administration of **juvenile justice**; the rights of **minorities**, **non-nationals** and **refugees**; **women's** human rights in the legal system; protection and **redress for victims** of crime and abuses of power; the administration of justice under states of emergency; the right to habeas corpus, amparo or similar remedy; and the role of the courts in protecting economic and social rights. As to each of these subjects there are international standards, which are briefly summarized below. For a more detailed and complete treatment of these standards, see Office of the High Commissioner for Human Rights, Human Rights in the Administration of Justice (Professional Training Series, forthcoming); High Commissioner for Human Rights/Centre for Human Rights, Human Rights and Law Enforcement (Professional Training Series No. 5, 1997); and Office of the High Commissioner for Human Rights, Human Rights and Prisons (Professional Training Series, forthcoming).

1. Courts

64. Article 10 of the Universal Declaration of Human Rights states, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

65. This provision is amplified by Article 14(1) of the Covenant on Civil and Political Rights:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

66. More explicit protections for the **independence and impartiality of the tribunal** have been adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in the Basic Principles on the Independence of the Judiciary.⁴⁵ Principle 1 states that “[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary”. Principle 2 states that “[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.

67. According to Principle 6, “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

68. Principle 10 of the Basic Principles on the Independence of the Judiciary states that persons “selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law”. Principle 12 requires that judges “shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists”.

69. The Basic Principles on the Independence of the Judiciary also guarantee freedom of expression and association for judges; other *standards* regarding their *qualifications, selection and training; conditions of service and tenure; professional secrecy and immunity; as well as discipline, suspension and removal*.

70. The Human Rights Committee emphasizes that:

the provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14.”⁴⁶

⁴⁵A/CONF.121/22/Rev.1 paras. 58-59 (1985), endorsed by General Assembly resolution 40/146, Official Records of the General Assembly, Fortieth Session, Supplement No. 53, paras. 154-55, (A/40/53) 1986.

⁴⁶Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40, para. 144, (A/39/40), 1984.

2. Prosecutors

71. The Guidelines on the Role of Prosecutors⁴⁷ recognize that prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should contribute to fair and equitable criminal justice and the effective protection of citizens against crime. Accordingly, the Guidelines provide standards with regard to qualifications, selection and training of prosecutors; status and conditions of their service; guarantees for their freedom of expression and association; their role in criminal proceedings; the performance of their discretionary functions; alternatives to prosecution; prosecutors' relationship with other Government agencies or institutions; and disciplinary proceedings.

72. Principle 10 requires that “[t]he office of prosecutors shall be strictly separated from judicial functions”. Principle 12 states that “[p]rosecutors shall, in accordance with the law, perform their duties **fairly, consistently and expeditiously**, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system”.

73. Principles 13 to 16 further establish the duty for prosecutors to carry out their functions **impartially and without discrimination**; to take proper account of the position of the suspect and the victim; to give due attention to the prosecution of crimes committed by public officials, particularly grave violations of human rights; and to refuse to use evidence that they know was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights.

3. Lawyers

74. The Basic Principles on the Role of Lawyers⁴⁸ recognize that adequate protection of human rights requires **effective access to legal services** provided by an **independent legal profession**, and establish obligations for Governments to provide effective and equal access to lawyers for all without discrimination. The Principles guarantee access to lawyers and legal services; special safeguards in criminal justice matters; standards regarding qualifications and training; protections for the independence and functioning of lawyers; their freedom of expression and association; professional associations; and disciplinary proceedings.

4. Law enforcement officials

75. The Code of Conduct for Law Enforcement Officials⁴⁹ recognizes their duty, imposed upon them by law, to **serve the community** principally by **protecting all persons against illegal acts**, consistent with the high degree of responsibility required by their profession. The Code provides for the protection and respect by law

⁴⁷Eighth 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 189 (1990)

⁴⁸Eighth 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).

⁴⁹G.A. res. 34/169, annex, 34 UN GAOR Supp. (No. 46) at 186, UN Doc. A/34/46 (1979).

enforcement officials of human rights and dignity; limits their use of force to situations in which it is strictly necessary; notes their duty to keep certain matters confidential; forbids their use of torture or other ill-treatment; assures that they will protect the health of detainees; states that they will avoid corruption; and provides that they will respect the law. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁵⁰ have already been discussed in this chapter, **section B: “Right not to be arbitrarily deprived of life”** above. In addition, for a detailed analysis of international human rights standards relevant to law enforcement officials and functions, see UN High Commissioner/Centre for Human Rights, Human Rights and Law Enforcement (Professional Training Series No. 5, 1997).

5. Human rights during criminal investigations, arrest and detention

76. Article 9 of the Covenant on Civil and Political Rights provides that “No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” Further standards with regard to arrest and detention are discussed in **Chapter IX: “Visits to Persons in Detention”**.

6. Right to a fair trial

77. The right to fair trial is principally guaranteed by Articles 9, 14 and 15 of the Covenant on Civil and Political Rights. With regard to a criminal case, it includes the rights to be **informed promptly** of any charges upon arrest; to be **brought promptly before a judge** or similar judicial officer for an assessment of the legality of an arrest; to **equal treatment** before courts and tribunals; to a fair and usually **public hearing** by a **competent, independent and impartial tribunal** established by law; to be **presumed innocent**; to be informed promptly and in detail in a language one understands of the nature of **charges**; to have adequate time and facilities for the **preparation of a defence**; to communicate with **counsel** of one’s own choosing; to be tried **without undue delay**; to be **tried in one’s presence**; to **defend one’s self** in person or through legal assistance of one’s choice; to be informed that counsel will be appointed if one does not have sufficient funds and the interests of justice require appointment; to examine or have examined **witnesses**; to obtain the attendance and examination of witnesses on the same conditions as adverse witnesses; to have the free assistance of an **interpreter** if one cannot understand the language used in court; not to be compelled to testify against one’s self or to confess guilt; to have a conviction **reviewed by a higher tribunal** according to law; to be **compensated** for any punishment which is conclusively shown to be a miscarriage of justice; not to be convicted for any offence for which one has been finally convicted or acquitted (*non bis in idem*); not to be convicted for any act which did not constitute a criminal offence

⁵⁰Eighth 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 112 (1990).

under national or international law at the time of the conduct (**prohibition of retroactivity of criminal law**); to benefit from any subsequent decrease in punishment. For further discussion of fair trial standards, see **Chapter XIII: “Trial Observation and Monitoring the Administration of Justice”**. (See also this chapter, **section E-9: “Administration of juvenile justice”** and **section E-14 “The right to habeas corpus, amparo or similar remedy”** below.)

7. Standards for the protection of prisoners

78. Article 10 of the Covenant on Civil and Political Rights states, “All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 7 provides further, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” For further discussion of applicable standards, see **Chapter IX: “Visits to Persons in Detention”**.

8. Non-custodial measures

79. Article 9(3) of the Covenant on Civil and Political Rights states, “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement.” This norm is elaborated in United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).⁵¹

9. Administration of juvenile justice

80. Article 14(4) of the Covenant on Civil and Political Rights provides that juvenile persons shall be entitled to procedures that will **take account of their age** and the desirability of promoting their **rehabilitation**. Moreover, Article 40 of the Convention on the Rights of the Child states, *inter alia*, that any child alleged to have committed a criminal offence shall be treated in a manner consistent with the child’s sense of dignity and worth as well as the desirability of promoting the child’s reintegration in society. Such a child alleged to have infringed the penal law is entitled to the presumption of innocence; to be informed promptly of the charges; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and usually in the presence of the **child’s parents** or legal guardians.

81. The accused child should also not be compelled to give testimony or guilt, but should be able to examine or have examined adverse witnesses; to obtain the participation and examination of witnesses under conditions of equality; to have the free assistance of an interpreter, if needed; to have his privacy respected; and to have any adverse decision reviewed by a higher competent, independent and impartial authority or judicial body according to law.

⁵¹G.A. res. 45/110, annex, 45 UN GAOR Supp. (No. 49A) at 197, UN Doc. A/45/49 (1990).

82. In addition, Governments are requested to promote the establishment of measures for dealing with children in conflict with the law **without resorting to judicial proceedings**. Article 40 also requires that a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other **alternatives to institutional care** be available to ensure that children are dealt with in a manner appropriate to their well-being and **proportionate both to their circumstances and the offence**.

83. Article 37 of the Convention on the Rights of the Child provides that children deprived of their liberty shall be treated in a manner which takes into account the needs of the person of his or her age, and be **separated from adults** unless it is considered in the child's best interest not to do so.

84. Article 6 of the Covenant on Civil and Political Rights states that **sentence of death** shall not be imposed for crimes committed by persons below eighteen years of age.

85. These standards are further developed and clarified in a number of specific instruments, including the also United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁵²; the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)⁵³; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").⁵⁴

10. Rights of minorities, non-nationals and refugees

86. Article 26 of the Covenant on Civil and Political Rights provides,

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

87. As mentioned above, Article 14(3)(f) of the Covenant provides an accused person with the right to "have the free assistance of an interpreter if he cannot understand or speak the language used in court". Article 27 also provides minorities with the right to use their own language. Further protections are established in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.⁵⁵

88. Article 13 of the Covenant on Civil and Political Rights indicates that an *alien lawfully in the territory of a country may be expelled* only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against expulsion, to have the case reviewed, and to be represented for that purpose before the competent authority.

⁵²G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990).

⁵³G.A. res. 45/112, annex, 45 UN GAOR Supp. (No. 49A) at 201, UN Doc. A/45/49 (1990).

⁵⁴G.A. res. 40/33, annex, 40 UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985).

⁵⁵G.A. res. 47/135, annex, 47 UN GAOR Supp. (No. 49) at 210, UN Doc. A/47/49 (1993).

Additional protections are set forth in the Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live.⁵⁶

89. Article 16 of the Convention relating to the Status of Refugees as applied by the Protocol relating to the Status of Refugees, assures refugees *free access to the courts* of law and *equal treatment with nationals* of the country pertaining to access to the courts, including legal assistance. For further discussion of applicable standards, see **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”** and **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)”**.

11. The human rights of women in the administration of justice

90. As cited above, Article 26 of the Covenant on Civil and Political Rights establishes that “[a]ll persons are equal before the law and are entitled without any discrimination to the **equal protection of the law**”, and forbids discrimination on any ground including sex. Article 3 also provides that ratifying governments “undertake to ensure the **equal rights of men and women** to the enjoyment of all civil and political rights set forth in” the Covenant. In addition, Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women **forbids discrimination against women**. Article 2 of that Convention further obligates all ratifying governments to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”

91. Also relevant is the Declaration on the Elimination of Violence Against Women.⁵⁷ Of particular importance is that the definition of **“violence against women”** contained in article 1 of the Declaration includes “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women [...], whether occurring **in public or in private life**”. The definition encompasses, in addition to violence perpetrated or condoned by the State, violence occurring **within the family** (domestic violence), and **within the community** (article 2). The Declaration establishes the duty for the State — through its law enforcement and administration of justice systems — to **prevent, investigate and punish** all acts of violence against women, whether perpetrated by the State or by private persons, to provide women who are subjected to violence with access to the mechanisms of justice and to just and effective remedies, and to ensure that law enforcement officers and public officials concerned receive training to sensitize them to the needs of women.

⁵⁶G.A. res. 40/144, annex, 40 UN GAOR Supp. (No. 53) at 252, UN Doc. A/40/53 (1985).

⁵⁷G.A. res. 48/104, 48 UN GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993).

12. Protection and redress for victims of crime and abuses of power

92. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁵⁸ provides that victims of crime and/or abuse of power should receive **access to justice, prompt redress and fair treatment** (paras. 4-7); **restitution** (paras. 8-11); **compensation** (paras. 12-13); as well as the necessary material, medical, psychological and social **assistance** (paras. 14-17). Pursuant to paragraph 1, “**victims of crime**” mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. The definition of “**victims of abuse of power**” is identical to “victims of crime”, except that harm is caused by acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

93. There are a number of other practical concerns of victims, including the need for information about their rights, **participation in the accused’s trial** or other process of criminal justice, **privacy, freedom from harassment or retaliation** and reassurance about their **safety**.

13. The administration of justice under states of emergency

94. As discussed more fully in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**, Article 4 of the International Covenant on Civil and Political Rights states that governments *may derogate* from (that is, not apply) certain rights in times of *public emergency which threaten the life of the nation*, are properly *announced* and about which the *UN is notified*. There are, however, certain rights which are non-derogable including the right to be free from *discrimination; rights guaranteed under international law*, including the Geneva Conventions and the two Protocols; as well as the rights to be free from arbitrary deprivation of *life; torture* and other ill-treatment; *slavery; imprisonment for debt; retroactive penalty; non-recognition of the law*; and infringement of *freedom of thought, conscience and religion*. The following section (“The right to habeas corpus, amparo or similar remedy”) also contains important information relevant to the administration of justice in states of emergency.

14. The right to habeas corpus, amparo or similar remedy

95. While the Covenant on Civil and Political Rights does not use the terms “habeas corpus” or “amparo”, it contains several provisions which guarantee the essence of the

⁵⁸G.A. res. 40/34, annex, 40 UN GAOR Supp. (No. 53) at 214, UN Doc. A/40/53 (1985).

habeas corpus writ and aspects of the amparo procedure which are similar in impact to habeas corpus. Article 9 (3) states,

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...

96. Article 9(4) states,

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

97. The right to habeas corpus and related aspects of amparo are also inherent in Article 2(3), which states,

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

98. Although *habeas corpus* and the related aspects of *amparo* for challenging detention were not expressly made non-derogable under Article 4 of the International Covenant on Civil and Political Rights, habeas corpus/amparo have gradually been recognized as non-derogable. These developments have occurred because of the recognition that without the ability to challenge the legality of one's detention, especially in times of public emergency, one will never be assured of the other fundamental rights in the Covenant.

99. Two Advisory Opinions issued by the Inter-American Court of Human Rights have concurred in holding that habeas corpus and amparo — the legal remedies guaranteed in Articles 7(6) and 25(1) of the American Convention — may not be suspended, even in emergency situations, because they are among the “judicial guarantees essential” to protect the rights whose suspension Article 27(2) of the American Convention prohibits.⁵⁹ In the first opinion, the Court pointed out that habeas corpus performs a vital role in assuring that a person's life and physical integrity are respected. In its second Advisory Opinion, the Inter-American Court stated that the “essential” judicial guarantees not subject to derogation according to Article 27 include habeas corpus, amparo, and any other effective remedy before judges or competent

⁵⁹ Advisory Opinion of 9 May 1986, Inter-Am. C.H.R., 13 OEA/Ser.L/III.15, doc. 14 (1986) and Advisory Opinion of 6 October 1987, Inter-Am. C.H.R. 13 OEA/Ser.L/V/III.19, doc. 13 (1988).

tribunals which is designed to guarantee respect for the rights and freedoms whose suspension are not authorized by the American Convention.

15. Role of the courts in protecting economic and social rights

100. As discussed more fully in this chapter, in **section I: “Right to property”** and **section J: “Right to housing and other economic, social and cultural rights”** below, international human rights law (the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights in particular) protects a wide range of economic, social and cultural rights, including right to and in work, trade union rights, social security rights, family rights, the right to an adequate standard of living, housing and food rights, rights to health care, education rights and rights to cultural life. Although human rights law has traditionally focused primarily upon the role of the courts in protecting civil and political rights, judiciaries have an equally important role to play in securing compliance with the individual economic, social and cultural rights as well. In many countries, individuals and groups entitled to the enjoyment of particular economic, social and cultural rights are turning increasingly to the judicial system as a means of claiming these rights.

101. Although the judicial enforceability (justiciability) of economic, social and cultural rights has been the subject of some controversy, perspectives denying the justiciability of these rights have been repeatedly shown to be far more reflections of misunderstandings than grounded in the status of human rights law.⁶⁰ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights⁶¹ state, “Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time... States parties shall provide for effective remedies including, where appropriate, judicial remedies.”

102. Indeed, a new complaint procedure was established in connection with the European Social Charter in 1995 and negotiations are continuing within the UN context for a similar procedure under the Covenant on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights has stated, for example, that “Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be considered justiciable. [...] There are a number of other provisions in the Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10(3), 13(2)(a), 13(3), 13(4) and 15(3), which would seem to be capable of immediate application by judicial and other organs in many national legal systems”.⁶²

⁶⁰For a detailed discussion of the justiciability of one right, see: Scott Leckie, (1995), “The Justiciability of Housing Rights”, in *The Right to Complain about Economic, Social and Cultural Rights* (Coomans, van Hoof, Arambulo, Smith and Toebe, eds), pp. 35-72.

⁶¹UN Doc. E/CN.4/1987/17 (1987).

⁶²General Comment N.3, The nature of States parties’ obligations (article 2, paragraph 1, of the Covenant, para. 5.

F. Freedom of opinion and expression⁶³

103. Article 19 of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through the media and regardless of frontiers.”

104. The Covenant on Civil and Political Rights declares in Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions but these shall only be such as are provided by law and are necessary:
 - a) for the respect of the rights or reputation of others;
 - b) for the protection of national security or of public order (*ordre public*), or of public health and morals.

105. The Human Rights Committee has commented that Article 19(1) is “a right to which the Covenant permits no exception or restriction.”⁶⁴

106. The American Convention sets forth in Article 13 the right to freedom of thought and expression:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art or through any other medium of one’s choice.
2. The exercise of the right... shall not be subject to prior censorship...
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

⁶³For a more comprehensive review of international law relating to the right to freedom of expression, see *The Article 19 Freedom of Expression Handbook* (1993).

⁶⁴Human Rights Committee, General Comment 10, Article 19 (Nineteenth session, 1983), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 11 (1994).

107. Article 9(1) of the Banjul Charter states, “Every individual shall have the right to receive information.” Article 9(2) continues, “Every individual shall have the right to express and disseminate his opinions with the law.”

108. Pursuant to Article 9(1) of the European Convention, “Everyone has the right to freedom of thought, conscience and religion...”. In addition, Article 10(1) guarantees that “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”.

109. The right to freedom of opinion and expression is a basic right that acts as a cornerstone for many other rights, including political rights. For a more detailed examination of political rights guaranteed by international law, see **Chapter XIV: “Election Observation”**.

G. Freedom of association and assembly

110. Article 20 of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of peaceful assembly and association.”

111. The Covenant on Civil and Political Rights guarantees in Article 22(1) that, “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” Pursuant to Article 22(2), “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of rights and freedoms of others.”

112. Article 11(1) of the European Convention declares, “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” Article 16(1) of the American Convention recognizes that “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports or other purposes”. Both of these regional conventions contain limiting language that mirrors Article 22(2) of the Covenant on Civil and Political Rights. Pursuant to Article 10(1) of the Banjul Charter, “Every individual shall have the right to free association provided that he abides by the law.”

113. *Freedom of association* includes forming, joining and participating in *political parties, trade unions, NGOs, neighbourhood associations, women’s organizations, religious groups and student organizations*. The violation of these rights interfere with the proper working of a democratic society.

114. The right to *peaceful assembly* should be considered in tandem with the right to freedom of association. Article 21 of the Covenant on Civil and Political Rights guarantees that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with

the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” The right to freedom of peaceful assembly is also guaranteed by Article 15 of the American Convention and Article 11 of the Banjul Charter.

H. Freedom of movement and residence

115. Pursuant to Article 13(1) of the Universal Declaration of Human Rights, “Everyone has the right to freedom of movement and residence within the borders of each State.” Article 13(2) further declares, “Everyone has the right to leave any country, including his own, and to return to his country.”

116. Article 12 of the Covenant on Civil and Political Rights guarantees the right to freedom of movement and residence:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the protection of the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

117. The American Convention (Article 22) and Banjul Charter (Article 12) also guarantee the right to freedom of movement and residence. Government-imposed restrictions on the movement of women (for example, by requiring women to be accompanied by a male relative when travelling abroad) are clear violations of this right. Such restrictions also constitute a case of sex-based discrimination which is prohibited under the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights.

118. A Government’s refusal to issue a *passport or personal identification document* is considered to obstruct the exercise of this right, and is therefore a violation of the right to freedom of movement. HROs should also be aware of the *link between residency and nationality* — another fundamental human right protected by Article 15 of the Universal Declaration of Human Rights, and of the impact that a Government’s denial of residency rights may have on the enjoyment of the right to a nationality and vice versa.

119. *Forced population displacement* may also be a violation of international humanitarian law if it occurs during periods of armed conflict. Article 17(1) of the Protocol II to the Geneva Conventions states that “the displacement of the civilian population shall not

be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons demand”, in which cases “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, safety and nutrition”. Furthermore, according to Article 17(2) of Protocol II, “civilians shall not be compelled to leave their own territory for reasons connected with the conflict”.

I. Right to property

120. The Universal Declaration of Human Rights provides in Article 17, “Everyone has the right to own property alone as well as in association with others... No one shall be arbitrarily deprived of his property.” The two Covenants do not contain a similar provision. Indeed, Article 1 of the two Covenants provide, “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” The two Covenants also *forbid* discrimination on several grounds, including *discrimination on the basis of property*.

121. The right to property is closely *associated with the right to housing*. The Covenant on Economic, Social and Cultural Rights provides in Article 11, “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...”. The right to housing is discussed more fully below as an example of an economic right.

J. Right to housing and other economic, social and cultural rights

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

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

123. The Covenant recognizes a number of rights, including the right to work, trade union rights, social security rights, family rights, the right to an adequate standard of living, housing and food rights, rights to health care, education rights and rights to cultural life.

124. Economic, social and cultural rights are discussed more fully in **Chapter XVII: “Monitoring Economic, Social and Cultural Rights”**. As an example, however, of the application of such rights, the Committee on Economic, Social and Cultural Rights in 1991 issued General Comment No. 4 on the *right to adequate housing*:

“Pursuant to article 11(1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights...

Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing...

The right to adequate housing applies to everyone. While the reference to ‘himself and his family’ reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups...

In the Committee’s view, the right to housing... should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised... Secondly, the reference in article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities — all at a reasonable cost.”⁶⁵

⁶⁵Committee on Economic, Social and Cultural Rights, *Report on the Sixth Session, General Comment No. 4 (1991)*, Supp. No. 3, Annex III, at 114-15, UN Doc. E/1992/23 (1992) (footnotes omitted)

125. The Comment identifies seven aspects of the right to adequate housing: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁶⁶

126. General Comment No. 4 concludes: “[T]he Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁶⁷

127. In June 1997 the Committee on Economic, Social and Cultural Rights provided further guidance on forced evictions in its General Comment No. 7:⁶⁸

“In essence, the obligations of States Parties to the Covenant in relation to forced evictions are based on Article 11(1), read in conjunction with other relevant provisions. In particular, Article 2(1) obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in para. 3 above). Moreover, this approach is reinforced by Article 17(1) of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

Article 2(1) of the Covenant requires States Parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No.3 (1991) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply in relation to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards their government greatly reducing their responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that these are compatible with the

⁶⁶*Id.* at 115-17.

⁶⁷*Id.* at 119.

⁶⁸UN Doc. E/CN.4/C.12/1997/4 (1997).

obligations arising from the right to adequate housing and to repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

...The non-discrimination provisions of Articles 2(2) and 3 of the Covenant impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no forms of discrimination are involved.

Where some evictions may be justifiable, such as in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that those evictions are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected...”.

128. In addition to the relevant provisions of the Covenant on Economic, Social and Cultural Rights, international humanitarian law also contains provisions relevant to *forced evictions*. For example, Article 49 of the Fourth Geneva Convention states,

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited regardless of their motive.

129. Similarly for non-international armed conflicts, Article 17 of Protocol II of the Geneva Conventions states,

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

K. Rights of refugees and internally displaced persons

1. Refugees

130. The definition of “refugee” is set forth in Article 1 of the Convention relating to the Status of Refugees (as modified by Article 1 of the Protocol) as any person who “owing to a **well-founded fear** of being persecuted for reasons of **race, religion, nationality, membership of a particular social group or political opinion**, is outside of the country of his nationality and is unable, or owing to such fear, is unwilling

to avail himself of the protection of that country”. (See **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**.) Certain persons are excluded from refugee status if they have committed a crime against peace, war crime or crime against humanity; committed a serious non-political crime outside the country of refuge; or been guilty of acts contrary to the purposes and principles of the UN.

131. Regional refugee instruments have expanded the definition of refugee. The Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organization of African Unity,⁶⁹ broadens the definition of refugee by stating in Article 1(2): The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

132. A similar definition of refugee is applicable in Central America through the Cartegena Declaration. (See **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)”**.)

133. Central to the concept of refugee protection is the **principle of non-refoulement**. Article 33(1) of the Convention relating to the Status of Refugees states, “No Contracting State shall expel or return (*“refouler”*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

134. Article 31 of the Convention relating to the Status of Refugees *exempts refugees from normal immigration procedures* and provides that States “shall not impose penalties, on account of their illegal entry or presence, on refugees, who come in directly from another territory where their life or freedom was threatened...”.

135. Once refugee status has been granted by a receiving State, the Convention relating to the Status of Refugees guarantees certain **substantive rights** in such areas as freedom of religion, ownership of property, access to the courts, and other.

136. The UNHCR has noted in this context that **women** “share the protection problems experienced by all refugees... In addition..., refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services... [S]pecial efforts may be needed to resolve problems faced specifically by refugee women...⁷⁰ The UNHCR has further noted that the gender-related claims of women to asylum or refugee status usually can be established based on the “political opinion” or “particular social group” categories of the refugee definition.⁷¹

⁶⁹OAU Doc. CM/267/Rev. 1 (1969).

⁷⁰UNHCR, *Guidelines on the Protection of Refugee Women* 7-8, 36 (1991).

⁷¹*Id.*

137. Another important right drawn from international refugee law is the *right to seek asylum*. Article 14(1) of the Universal Declaration of Human Rights proclaims, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

138. Regional agreements that reinforce the rights of refugees have also been adopted. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa reaffirms the principle of *non-refoulement* and imposes upon member States the obligation to “...use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.”

139. The American Convention includes provisions similar to the Convention relating to the Status of Refugees. Article 22(7) states, “Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes.”

140. Moreover, pursuant to Article 22(8) of the American Convention, “In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.” (See also **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**.)

2. Internally displaced persons

141. Persecution that produces massive involuntary movements across borders generally also produces massive internal displacement. According to the Guiding Principles on Internal Displacement,⁷² internally displaced persons are:

“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed and internationally recognized State border.”

(See **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)”**.)

142. International human rights and humanitarian law instruments, including the Guiding Principles on Internal Displacement, provide legal protection against the human rights violations to which people displaced within their countries are often vulnerable.

143. Although IDPs often experience the same threats and violations of their human rights, they are unable to benefit from the protection provided by international refugee law because they have not crossed an international border. The General Assembly has, however, sometimes requested the United Nations High Commissioner for Refugees

⁷²UN document E/CN.4/1998/53/Add.2.

(UNHCR) to provide protection and other assistance to internally displaced populations. Several other United Nations structures, including the Office of the High Commissioner for Human Rights and the United Nations Children’s Fund, and many other inter-governmental and non-governmental organizations, also offer protection and assistance of varying forms. (See **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)”**.)

L. The human rights of women

144. International human rights law provides that (1) women and men are to receive *equal treatment*; and (2) special protections apply to women because of their status as a *vulnerable group*.

145. Article 1 of the Convention on the Elimination of Discrimination against Women defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Under this “non-discrimination model”, women’s rights are violated if women are denied the same rights as men.

146. Pursuant to Article 3 of the Covenant on Civil and Political Rights, “The States parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” The Human Rights Committee, in its General Comment No. 4, interpreted this provision to require not only measures of protection for women, but also **affirmative action** to ensure the positive enjoyment of enumerated rights. Affirmative action includes policies and activities which seek to strongly advance the rights of a vulnerable group through the adoption of measures which temporarily give special treatment or positive discrimination, to one group of people — to redress the inequalities. With specific regard to women, affirmative action is envisaged as a necessary strategy to achieve equality in Article 4 of the Convention on the Elimination of Discrimination against Women.

147. The Convention on the Elimination of Discrimination against Women reaffirms the obligation to accord women equality with men before the law (Article 15). In addition, the Convention on the Elimination of Discrimination against Women obligates States parties to take appropriate measures to *eliminate discrimination* against women in the fields of *public and political life* (Article 7), *education* (Article 10), *employment* (Article 11), *health care* (Article 12), *economic and social life* (Article 13), and *marriage and family relations* (Article 16).

148. Because of historically unequal power relations, women require special protection under international law. Article 6 of the Convention on the Elimination of Discrimination against Women calls upon States parties to suppress all forms of *traffic in and exploitation of women*. Furthermore, General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women states that *gender-based*

violence is a form of discrimination which seriously inhibits a woman's ability to enjoy rights and freedoms on a basis of equality with men.⁷³

149. As previously mentioned, the Declaration on the Elimination of Violence against Women specifically addresses the problem of *violence against women*, a term defined in Article 1 as: “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring **in public or private life**.”

150. This *definition* is broad and includes: *battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, violence related to exploitation, rape, sexual abuse and sexual harassment at work, school and elsewhere, trafficking in women, and forced prostitution*.

151. The obligations of the State with regard to the elimination of such acts are enunciated in Article 4 of the Declaration on the Elimination of Violence against Women. The State is obliged, *inter alia*, to condemn violence against women, and not to invoke any custom, tradition or religious consideration to avoid its obligations to eliminate violence against women; to pursue all appropriate means in adopting a policy to combat and prevent it; to refrain from engaging in violence against women; to prevent, investigate and punish acts of violence against women, whether perpetrated by the State or by private persons. For more information on international standards relating to the elimination of violence against women, see *Preliminary Report of the Special Rapporteur on violence against women*,⁷⁴ *Report of the Special Rapporteur on violence against women*,⁷⁵ and the two *Reports of the Special Rapporteur on violence against women, its causes and consequences*.⁷⁶

M. Rights of minorities

152. Article 27 of the Covenant on Civil and Political Rights proclaims, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Accordingly, international minority rights includes at a minimum: (1) principles of **equality** before the law and non-discrimination; (2) right to profess and practice one's own **religion**; (3) right to enjoy one's own **culture**; and (4) right to use one's own **language**.⁷⁷

⁷³Committee on the Elimination of Violence against Women, Eleventh Session, General recommendation 19, UN Doc. CEDAW/C/1992/L.1/Add.155 (1992).

⁷⁴UN Doc. E/CN.4/1995/42 (1995).

⁷⁵UN Doc. E/CN.4/1996/53 (1996).

⁷⁶UN Doc. E/CN.4/1997/47 (1997) and E/CN.4/1998/54 (1998).

⁷⁷See Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* 69-70 (1992).

153. The Declaration on Persons Belonging to National, Ethnic, Religious or Linguistic Minorities,⁷⁸ reaffirms the above-referenced minority rights in Article 2. In addition, pursuant to Article 1(1), States have an affirmative obligation to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”

N. Rights of the child⁷⁹

154. Under international human rights law, children have the right to special care and protection. Pursuant to Article 1 of the Convention on the Rights of the Child, “child” means “every human being **below the age of eighteen years** unless under the law applicable to the child, majority is attained earlier.”

155. The Convention on the Rights of the Child is the most comprehensive instrument on this subject, encompassing recognition of civil, cultural, economic, political and social rights, and of special protections specifically required for children. The Convention has been ratified by more nations than any other human rights treaty and thus represents a significant tool for HROs.

156. The Committee on the Rights of the Child has identified four cardinal principles for applying the Convention on the Rights of the Child:

- (1) **non-discrimination** (Art. 2). It is important to note that the Convention protects children from discrimination not only on the basis of their own circumstances, but also on the basis of circumstances of their parents, legal guardians or other members of their families;
- (2) **best interests** of the child (Art. 3), which should be a primary consideration in all actions concerning children undertaken by public or private bodies;
- (3) the rights to **life, survival and development** (Art. 6), which emphasize not only the right of children not be arbitrarily deprived of life, but also to a life which ensures their full physical, mental, spiritual, moral and social development; and
- (4) respect for the **views of the child** (Art. 12). Children should be able to express their opinions freely, and those opinions should be listened to and given due weight in accordance with the age and maturity of the child, in all matters affecting them.

157. While article 24(1) of the Covenant on Civil and Political Rights requires the State party to take special measures to protect children, the Convention on the Rights of the Child lists specific areas where States are obliged to take measures to protect children’s interests, including:

- (a) the protection of children from physical or mental **harm and neglect**;

⁷⁸G.A. res. 47/135, annex, 47 UN GAOR Supp. (No. 49) at 210, UN Doc. A/47/49 (1993).

⁷⁹For further information on the rights specific to children, please refer to **Chapter XII: “Children’s Rights”**.

- (b) special consideration to be accorded **children in conflict with the law**;
- (c) the right of **disabled children** to special treatment, education and care;
- (d) **health** care for all children;
- (e) free and compulsory primary **education**;
- (f) protection from **economic exploitation**;
- (g) protection from all forms of **sexual abuse and exploitation**; and
- (h) prohibition on the **recruitment** of children under the age of 15 **into the armed forces**.

158. Among children there are particularly *vulnerable groups* requiring attention: children *in detention*, children *deprived of their family* environment, *street children*, *child soldiers* (reflecting relevant provisions of the Geneva Conventions and Protocols), *refugee children*, *unaccompanied children* during *repatriation*, and children with *disabilities*.

159. Specific rules on children in detention are contained in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. For other information on the rights of children, with specific reference to the administration of justice, also refer to this chapter, **section E-9: “The administration of juvenile justice”**.

O. Right to non-discriminatory treatment

160. International human rights law establishes norms of equal protection and non-discrimination. The Universal Declaration of Human Rights states in Article 7, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

161. Article 2(1) of the Covenant on Civil and Political Rights provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

162. In addition, the Covenant on Civil and Political Rights provides for an independent right to equality in Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

163. The Human Rights Committee has noted that Article 26:

[D]oes not merely duplicate the guarantee already provided for in article 2 but provides for itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities Thus, when legislation is adopted by a State party, it must comply with the requirements of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

164. It is important to note that under Article 4 of the Covenant on Civil and Political Rights, the right to be free from discrimination is **non-derogable**, that is, it cannot be suspended even in times of public emergency.

165. Article 2(2) of the Covenant on Economic, Social and Cultural Rights states:

The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

166. The principle of non-discrimination is also expressly included in most of the “specialized” human rights treaties. As previously mentioned, the Convention on the Rights of the Child provides in Article 2 that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind [...].

167. Article 2(1) of the International Convention on the Elimination of All Forms of Racial Discrimination likewise forbids racial discrimination. Article 1(1) defines “**racial discrimination**” as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

168. Similarly, Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that “**discrimination against women**” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

169. Additionally, pursuant to Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, notably in the enjoyment of certain rights. General Recommendation XX(48) of the Committee on the Elimination of Racial Discrimination⁸⁰ states that, “Article 5 of the Convention contains the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list.” Pursuant to Articles 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, it is the obligation of the State party to ensure the effective implementation of the Convention.

170. In determining whether the right to non-discriminatory treatment has been violated, the *first* question to be posed is whether a discrimination exists: Any distinction between similarly situated individuals must be justified by reasonable and objective criteria. In other words, is the *distinction objectively or reasonably related to the aim of the law* or the practice? Is that aim itself consistent with recognized principles of human rights?

171. The *second* test of discrimination is whether a law or practice has a *discriminatory impact*. It is the application of this test which will often reveal “hidden” discrimination — such as that which routinely affects minority groups and women. If so, the HRO must assess whether the State has complied with its obligation — for example — under the Covenant on Civil and Political Rights (Art.26) to guarantee “equal and effective protection against discrimination”. Obviously, if the discrimination constitutes an intentional policy of the Government, the State has failed to fulfil its obligation in Article 26. The intention of the Government may be difficult to assess, but it may be inferred, for example, from the obvious and/or extremely disproportionate nature of the discrimination, from the seriousness of the consequences, or from related conduct or statements given by the authorities.

172. Even if the discrimination is not intentional, the Covenant “still sometimes requires States parties to take **affirmative action** in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant”. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.”⁸¹

173. Moreover, if the discrimination is based on “race, colour, descent, or national or ethnic origin”, the Convention on the Elimination of All Forms of Racial Discrimination requires *significant affirmative efforts to ensure equality*. Article 2(1)(c) of the Convention on the Elimination of All Forms of Racial Discrimination provides, “Each

⁸⁰UN Doc. CERD/48/Misc.6/Rev.2.

⁸¹Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 26 (1994).

State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” The Convention on the Elimination of All Forms of Discrimination Against Women contains a similar provision in Article 4, which states that “[a]doption by States parties of temporary special measures aimed at accelerating *de facto* equality shall not be considered discrimination [...]”.

174. The HRO should note that much discriminatory treatment is *perpetrated by non-State actors*. General Recommendation XX(48) on Article 5 of the Committee on the Elimination of Racial Discrimination states, “[t]o the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.” HROs should encourage institutions and non-governmental organizations to pursue inquiries as to individual cases of discrimination. Systematic practices may, however, make it necessary for UN officers to intervene, particularly if discriminatory treatment may trigger further violence. (See **Chapter VI: “Identification and Prioritization of Efforts Regarding Human Rights Violations”**.)

175. Under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, a State party may recognize the competence of the Committee on the Elimination of Racial Discrimination to receive communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. Hence, Article 14 provides a complaint mechanism for persons who believe that their right to non-discriminatory treatment has been violated. A similar complaint mechanism is available to individuals in States that have ratified the Optional Protocol to the Covenant on Civil and Political Rights.

P. Right to development

176. In 1986, the UN General Assembly adopted the Declaration on the Right to Development,⁸² which provides in Article 1: “The **right to development** is an inalienable human right by virtue of which every human person and all peoples are **entitled to participate in, contribute to and enjoy economic, social, cultural and political development**, in which all human rights and fundamental freedoms can be fully realized [...]” The Declaration recognizes development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”

⁸²G.A. res. 41/128, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986).

177. The right to development includes as its **key elements**: permanent sovereignty over natural resources; self-determination; popular participation; equality of opportunity; and the advancement of adequate conditions for the enjoyment of other civil, cultural, economic, political and social rights.

178. Article 2 states, “The human person is the central subject of development and should be the active participant and beneficiary of the right to development [...] .” The right to development is claimable both by individuals, and collectively by peoples. More importantly, the right **obliges** both **individual states** in their ensuring of equal and adequate access to essential resources, and **the international community** in its duty to promote fair development policies and effective international cooperation.

179. Monitoring and reporting on the right to development is a complex task, which may require careful consideration of the actions, policies, and impact of a host of actors, both within and outside the country of assignment. In addition to those of domestic government agents and departments, the activities of foreign governments, international financial institutions and even multinational corporations can be relevant to a proper assessment of this complex right. In addressing right to development issues, HROs should therefore be prepared to consult closely with the economic and social development agencies and programmes of the UN system which are present in the country, and which can serve as rich sources of country-specific development data and analysis (civil, cultural, economic, political and social).

Q. Impunity principles

180. The trend in international law has been to *foreclose a policy of impunity for grave violations of physical integrity*. The broad trend against impunity in international law can be seen in the final document of the World Conference on Human Rights, which declares that “States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.”⁸³

181. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide requires States parties “to punish... **genocide**, whether committed in time of peace or time of war.” (Article I.) Pursuant to Article IV of the Convention, persons who commit genocide “shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.” Impunity for genocide is clearly incompatible with the Convention.

182. **Crimes against humanity**, such as genocide, are considered international criminal offences. Article 5 of the Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity states, “Persons against whom there is evidence that they have committed crimes against humanity shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes.”

⁸³A/CONF.157-/23, second part, sect. B.5, para. 60.

183. Under Article 2 of the Covenant on Civil and Political Rights, States undertake to ensure to all individuals the rights specified in the Covenant. States are also required to take the necessary legislative and other measures to give effect to these rights. As such, the Covenant imposes a positive duty upon the States to take measures towards the implementation of the rights protected by the Covenant. Although the Covenant does not explicitly require States Parties to punish violations, the Human Rights Committee has interpreted the Covenant as requiring States to *investigate extra-judicial executions, torture and disappearances*, and to *bring to justice* those persons who are responsible. Furthermore, in a General Comment on Article 7 of the Covenant (which prohibits **torture**), the Committee stated: “The Committee has noted that some States have granted amnesty in respect to acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future.”

184. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly requires State Parties to institute criminal proceedings against torturers. Article 7 of the Convention requires that States extradite alleged torturers or “submit the case to [their] competent authorities for the purpose of prosecution.”

185. The UN Declaration on the Protection of All Persons from Enforced Disappearance states in Article 14 that any person allegedly responsible for an enforced disappearance shall be brought before competent authorities “for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction...”. In addition, Article 18(1) provides that “[p]ersons who have, or are alleged to have, committed [enforced disappearances] shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.”

186. The Security Council has reinforced the international efforts to ensure that impunity is not permitted for grave human rights violations by establishing 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**.⁸⁴

187. On the basis of these *two ad hoc tribunals*, the experience of the *Nuremburg and Tokyo Tribunals*, the related trials after World War II under *Control Council Law No. 10*, and a draft from the International Law Commission, the Statute of the permanent **International Criminal Court** was developed under the auspices of the UN General Assembly and agreed in Rome in July 1998. The conclusion of the treaty establishing the permanent court marks a significant step forward in the fight against impunity, and is a clear indication of the international community’s willingness to pursue prosecution and punishment of perpetrators of grave human rights violations.

⁸⁴Security Council resolutions 827 of 25 May 1993 and 955 of 8 November 1994.

188. The International Criminal Court has **jurisdiction** over the following crimes, if committed after the entry into force of the Court's Statute: (1) **genocide**; (2) **crimes against humanity**; (3) **war crimes**; and (4) **aggression** (Article 5 of the Statute). The Court may exercise its jurisdiction with respect to any of the above acts if a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor *by a State Party* or *by the United Nations Security Council* acting under Chapter VII of the United Nations, or if the Prosecutor has *initiated an investigation* in respect of such a crime.

189. The Statute also establishes some *pre-conditions* to the exercise of the Court's jurisdiction (Article 12). The Court may exercise its jurisdiction if one or more of the following States are Parties to the Statute or have accepted the jurisdiction of the Court: (a) the State on the territory of which the crime occurred or (b) the State of which the person accused of the crime is a national.

190. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities is also in the process of studying and possibly elaborating further principles relating to impunity with regard to both civil and political rights and economic, social and cultural rights.

R. Other international human rights law standards

191. There are many other human rights law standards in the two Covenants and in other human rights treaties or instruments. Simply because they are not discussed in this chapter does not make them any less worthy of concern. HROs should focus on the *human rights provisions which are most relevant to their operation's mandate*, but should acknowledge the importance of complying with all other human rights standards.

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).

- ✓ *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).

<i>CONFIDENTIAL</i>	
	Date of Report: ____/____/____ D M Y
	Summary Report Number: S-_____
Officer(s) Preparing Report: _____ _____	
Area Office: _____	

[illegible]

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

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

6. Attachments

Please append any documents or other materials which would help to explain the situation or recommendations.

7. Approval by Coordinator

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

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

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

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

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

CONFIDENTIAL

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

Relating to Summary Report Number: _____

Visit Report Number: V-_____

Officer(s) Preparing Report: _____

Area Office: _____

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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

.....Chapter X

MONITORING AND PROTECTING THE HUMAN RIGHTS OF REFUGEES AND/OR INTERNALLY DISPLACED PERSONS LIVING IN CAMPS

Key concepts

Before visiting a refugee/IDP camp and before interviewing refugees/IDPs, human rights officers should have a clear understanding of their objectives and approach, for example:

- | *obtaining information about human rights conditions in the country or region that produced the refugee /IDP flow;*
- | *examining the living conditions at the camp;*
- | *or others.*

HROs must adjust their methodology to fit the objectives of the visit. The objectives will help to establish:

- | *the factual and legal questions to be pursued;*
- | *the type of data to be collected;*
- | *the methods by which information is collected; and*
- | *the ways data may be analysed.*

An understanding of the role of the UNHCR and cooperation with the UNHCR are critical to any action undertaken by HROs in relation to refugees, including visiting camps.

A. Introduction

1. HROs come into contact with refugees and IDPs in many different circumstances. Two broad situations can, however, be identified:

- ✓ In “camps” where refugees and IDPs have settled, following displacement from their home countries or regions.
- ✓ Outside of any formal camp structure including, for example, a situation where refugees or IDPs are trying to reach a place of refuge, or have left a place of refuge to begin a return journey home.

2. This chapter looks at the role of a human rights operation in protecting the human rights of refugees and/or IDPs *in a camp situation*. The second broad area, concerning returning refugees (specifically — “returnees” within their own country) and IDPs outside of camps, is dealt with in the following chapter.

3. Under international law, the legal situations of refugees and IDPs are different from each other. Specifically, refugees benefit from the legal protection of several international instruments particular to their “refugee status”, and from the assistance of the United Nations High Commissioner for Refugees (UNHCR). Because they do not actually cross an international border out of their country, IDPs do not benefit from this legal regime, although the UNHCR is sometimes mandated to provide them with assistance.

4. In contrast, however, the practical situations of refugees and IDPs in a camp environment are often very similar, and the threats to the respect of their human rights identical. UN HROs working to monitor and protect the rights of refugees and IDPs will typically make use of the same mandate tools and undertake the same activities, with the same objectives, on behalf of both groups. It is for this reason that the monitoring and protection of the human rights of both refugees and IDPs in camps are addressed here together.

B. Overview of the human rights situation of refugees and internally displaced persons in camps

5. In essence, a refugee or IDP who reaches a camp is already a person who has suffered a series of serious human rights violations. In many cases, the fact of being obliged to leave one’s home itself entails violations of certain rights, such as the right to security of person, and the freedom to choose one’s residence. Very often, the factors which led to the displacement — discrimination, armed conflict, other forms of generalized violence, etc. — themselves involve violations of human rights.

6. The arrival and establishment of refugees and IDPs in camps should thus, ideally, represent an improvement upon the situation which they have fled. Camps should offer some sort of security against the threat of further human rights violations. They should also offer an environment in which the most basic requirements of life — food, water, shelter, care and affection (particularly for children) — can be provided. There are, however, many different factors which determine the extent to which camps provide a positive environment for the respect of human rights.

1. Some key factors which determine the human rights situation in camps

7. Such factors include, for example:

- ✓ **The conditions of flight and displacement of the refugees and IDPs:** where, for example, the displacement occurs in a very rapid, disorganized manner, people may be unable to bring any of their belongings with them. They may not have any food, tools, spare clothing and blankets or money. In these circumstances camp populations will require wide-ranging assistance if their camp life is to provide the bare minimum in standards of living.
- ✓ **The manner in which the camp was established:** whether, for example, the camp was created according to a detailed and pre-prepared plan of action; or whether the camp formed “spontaneously” with the arrival of an increasing number of refugees or IDPs. A planned camp will usually be better equipped to provide for the varying assistance needs of people in displacement.
- ✓ **Physical location:** closely linked to the previous point. A camp with an ideal physical location will be: sufficiently far from fighting and other causes of displacement as to provide refugees and IDPs shelter from these risks; sufficiently close to refugees and IDPs for them to be able to reach it in safety and good health with available transport facilities; within easy distance of food and water supplies; easily accessible by aid organisations; suitable for the construction of tents and other temporary housing; protected from adverse weather conditions, including flooding and high winds; etc. For example, where a camp is within a conflict zone, refugees and IDPs may be vulnerable to attack either within the camp or when outside in search of food or water.
- ✓ **The management/control of the camp:** this is of fundamental importance to the respect of the rights of its inhabitants. Where a camp is on the other side of an international border then its population, refugees, should be better protected from the risks they faced in their own country. However, it will be important to have a thorough understanding of the quality of rights protection that may be offered by the authorities (specifically police and military) in the country of refuge. Where a camp remains inside the country of origin of the displaced persons then it will be important to assess the type of protection offered by the authorities of this country, who may have been responsible for the original flight. Where a camp is under the management of international organizations, such as the UNHCR, much will depend on the resources available to these organizations and the extent to which local authorities respect the mandates and assistance offered.

2. Key human rights at risk

8. Human rights are interdependent and equal. However, in certain situations, the violation of one particular right can lead to a whole series of other rights violations, to the extent that it is essential to focus monitoring and protection efforts on these key rights. In general terms, and depending on the specific nature of the camp, the following human rights may be of particular concern:

- ✓ **The right to freedom of movement:** aside from the right itself, freedom of movement into and out of the camp will be essential to have access to cultivated fields, water sources, paid employment, etc.
- ✓ **Rights related to restrictions on freedom of movement:** internment or detention? Where freedom of movement is restricted, for example by local police or soldiers, then the camp may actually be a place of internment and its inhabitants may require legal protection related to detention and/or arbitrary detention, conditions of detention and the treatment of detainees. In conditions of armed conflict elements of international humanitarian law relative to the protection of non-combatants will also be particularly relevant.
- ✓ **Right to a name and nationality:** documentation papers: refugees and IDPs are often obliged to flee without any identity papers proving their name and nationality. These documents can be very important in the process of recognition of refugee status, or in the delivery of aid. They may become even more important once a process of return begins and the displaced person may need proof of identity for the journey home.
- ✓ **Economic, social and cultural rights:** related to the cultural and social integrity of minority groups, and related to economic progress of individuals are essential in a situation of displacement.
- ✓ **Access to education:** a right which is essential to all children in situations of displacement. Where a child is unable to attend primary school education over a 5-year period of displacement, for example, it may never again be possible for the child to recover those lost years. The 5 years of displacement will thus have a permanent and potentially limiting effect on the child's entire adult life.

9. This list provides a small indication of the rights to which special attention should be paid by HROs. A more detailed list of rights, in terms of international standards is provided below, relative to refugees and IDPs respectively.

3. Living in a refugee or IDP camp

10. A few brief paragraphs can do only very little to convey the physical, emotional and psychological pressures which are lived by refugees and IDPs in camps. It may be difficult to link one particular pressure with the violation of a specific human right; however, camp life can result in a harsh environment which may pose challenges to the respect of individual and group rights. HROs should endeavour to understand the reality of camp life, in whatever part of the world they may be working, and to link this reality with their analysis of, and response to, the human rights situation.

11. In a majority of refugee and IDP camps life is placed on hold for the duration of a person's stay. It is virtually impossible for people to make plans for the future when they have no idea how long they will remain where they are. Refugees and IDPs are rarely able to make progress economically, and may struggle to maintain a subsistence living. While marriages and births may continue it is difficult for a camp population to feel that it is moving forward in life. Conditions are typically extremely overcrowded. The resulting stress is exacerbated by other tensions and frustrations. Marriages are placed under tremendous strain. Community relations among people who have been displaced together may become awkward.

12. Hygiene and basic sanitation can be difficult to preserve with large concentrations of people living in temporary accommodation, and a prevalence of contagious illnesses can lead to death or permanent disability. Children often have only limited access to education. Adolescents, in particular, frequently find that there are no secondary, vocational or other further education opportunities suited to them. Massive unemployment is common among adults who are obliged to depend entirely on humanitarian assistance.

4. Characteristics specific to monitoring and protecting human rights in camps

13. A refugee/IDP camp is a very particular place with regards to monitoring and protecting human rights. Camps are often a mixing of different ethnic, religious, political and social groups — there may be several refugee/IDP communities or groups in a single camp — each with its own leadership, linked with the management of the camp. Their inhabitants bring with them historical loyalties and enmities. Power structures emerge and evolve. Camp economies develop. In effect a camp can become a microcosm of normal communities, but with the added pressures caused by displacement, as briefly described above. A combination of factors can thus create a very complex environment for human rights workers.

14. *Refugee/IDP camps differ greatly from one to the next, for example:*

- ✓ Size — some, with populations of several hundred thousand, may be similar to large cities, while others resemble small villages;
- ✓ Location — see above;
- ✓ Age — some are newly opened and others have been established for a number of years.
- ✓ Some camps *reflect a current emergency*; others indicate that the *emergency has passed* and there has been a consolidation of the situation facing refugees/IDPs.
- ✓ Some camps reflect the beginning of a solution through repatriation, local settlement or resettlement. IDPs or refugees, for example, may be transferred from their original camp of refuge to a smaller “returnee” camp closer to their home region, as part of a gradual process of return.
- ✓ Some camps allow refugees and displaced persons *to enter or leave without formality*. Other *camps are closed*.

- ✓ Some camps may be located in areas where former refugee/IDP residents have found new homes, but still have relatives or connections in the camp — so that the distinction between refugee and IDP on the one hand, and local resident on the other, becomes blurred, sometimes creating complicated human rights problems. Other camps are in *isolated locations*.
- ✓ Camps are often exposed to weather and climate conditions; hence, a visit and conditions in the camp may be affected by the season of the year.

15. These differences have implications for the monitoring function, whether the HROs are concerned with living conditions or with obtaining information on situations which may cause refugee/IDPs flows. For example, a newly opened camp dealing with an emergency situation, a hungry and exhausted population, as well as diseases may not be comparable with an older camp where refugees/IDPs have settled for several years. The process of obtaining information on refugee/IDP-producing situations would be quite different in open versus closed camps and new versus old, etc.

16. There may also be *differences with regard to the responsibility for managing the camps*. For example, the *UNHCR may have been involved* from the beginning in establishing the camp. The agency may have established a bilateral agreement with the receiving country or may have established a tri-lateral agreement between itself (the UNHCR), the country of refuge and the country of origin. The camp may fit within one of several UNHCR assistance categories (EM — emergency, CM — care and maintenance, LS — local settlement, RP — repatriation, or RE — resettlement), which have implications for sources of funding, duration of the project, etc.

C. Role, objectives and limits of a human rights operation with regard to refugees and IDPs in camps

17. The role and objectives of a human rights operation with regard to refugees and IDPs in camps will depend on numerous factors, including: the mandate and resources of the operation; the overall human rights situation in the country or region; the work of other organizations; and most of all the specific human rights situation of the refugees and IDPs themselves.

18. In general terms, the role and objectives of HROs can be divided into two categories: i) addressing the present and ongoing human rights situation of the refugees and IDPs themselves; and ii) addressing human rights issues outside of the camps, and which might not be of immediate or direct concern to the refugees/IDPs, but about which they can provide useful information.

1. Addressing the human rights situation of the refugees and IDPs

19. Dependant upon the above-listed factors, HROs can seek to monitor and protect the rights of refugees and IDPs in camps in several ways. It is important to emphasize, however, that the role of a human rights operation will need to be closely coordinated with the work of other organizations also providing assistance in the camps. With regard to refugees in particular, the UNHCR has the principal United Nations role.

a. *Monitoring*

20. The following aspects deserve particular attention for monitoring purposes:

- ✓ Freedom of movement in and out of, and within a camp.
- ✓ Respect of right to security of person within the camp — are all camp residents entirely safe from abuse of their rights by local authorities or by groups from among the refugees and IDPs? Particular attention should be paid to vulnerable groups. Women living in camps are often vulnerable to rape and other sexual abuse.
- ✓ Access to adequate education and health facilities, either within the camp or in the local area. Particular attention should be paid to problems of discrimination against the camp population.
- ✓ Living conditions within the camp: sanitation, clothing, shelter, access to clean water, food storage possibilities, etc.

21. It would not generally be the role of a UN human rights operation to visit a refugee camp managed by the UNHCR to review camp conditions. The UNHCR has the greatest experience and the most appropriate mandate to provide protection to refugees. However, the mandate and expertise of UN human rights operations can often be complementary to an HCR role, provided that there is adequate coordination.

b. *Taking action*

22. As with any abuse of human rights, HROs can seek to end the violation and to prevent its repetition. Monitoring, investigating and reporting are traditional human rights techniques, explained in detail in the relevant chapters of this Manual. With specific regard to the situation of refugees and IDPs in camps HROs should make every effort to remain in regular contact with camp populations and with local authorities. Through a regular presence and an understanding of the situation and vulnerability of camp populations, HROs can make a significant contribution to the respect of their human rights.

23. As camp populations frequently receive assistance from a wide variety of different international organizations and other sources, coordination between the human rights operation and these partners is essential (see below).

2. Addressing human rights issues outside of the camps about which the refugees and IDPs can provide useful information

24. As a priority, HROs should remember that they should never, through their action or presence, do harm to an individual. If it is likely that a refugee or IDP may be endangered by an HRO's enquiries into events that have occurred outside (or inside) the camp, then no attempt should be made to obtain the information. Notwithstanding this essential point, HROs may find that refugees and IDPs are a very useful source of information on the human rights situation in the country or region from which they have been displaced. This information can improve the United Nations' understanding of a problem and can help in identifying solutions. The testimony of refugees and IDPs may also be of use to International Tribunals in their investigation of certain types or categories of human rights violations.

25. A key purpose of gathering information from refugees and IDPs in camps may be to help prepare for the future return of the displaced community to their homes. As discussed in greater detail in **Chapter XI: "Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)"**, United Nations human rights operations in the countries and regions to which displaced people return can perform an essential function in facilitating the return process. A human rights operation will be well placed to help the reintegration of the returnee population into a community, and their long-term protection, by undertaking human rights promotion and training activities. A thorough understanding of the human rights situation in the country or region of return, gained through interviews with camp populations, is an essential base for such intervention.

26. The information might include details on:

- ✓ The factors which led the refugees/IDPs to flee their homes.
- ✓ The dates, location and nature of human rights violations such as the killing of civilians by soldiers.
- ✓ The alleged perpetrators of human rights violations.
- ✓ The identities of victims of human rights violations.
- ✓ The ongoing human rights situation in areas to which United Nations personnel have no access.
- ✓ Others factors.

27. In some instances, HROs may wish to obtain information on the general human rights situation. In others, they may be seeking details relative to a specific act.

3. Methodology for visiting camps

28. Depending on the different objectives of a particular visit to a camp, HROs will conduct different activities. Particularly for closed camps, much of the methodology is similar to that applied during visits to a place of detention (see **Chapter IX: "Visits to Persons in Detention"**). The methodology will focus either on observing the living

conditions within the camp, meeting with local authorities/organizations managing the camp, or on discussing with members of the camp population factors related to the current respect of their human rights and the human rights situation in their region of origin. Further details related to the methodology of working in camps are provided in subsequent sections of this chapter. The following list provides some general guidelines.

29. Methods for gathering information may include:

- ✓ Walking through the camp and noting conditions. Some criteria related to living conditions will be obvious to HROs, while others may require more specialist knowledge. In all situations HROs should assess conditions partly on the basis of discussions with camp inhabitants. Key issues are: access to an adequate supply of clean drinking water; access to adequate and suitable food (for different age and religious groups); suitable clothing and shelter (according to weather conditions and the numbers of persons per dwelling); access to health care; access to education facilities; suitable hygiene facilities; and general sanitation. “Access” means not only distance (the distance to be covered must be realistic given the transport available), but also cost and practical access in terms of safety and non-discrimination.
- ✓ Individual interviews (see **Chapter VIII: “Interviewing”**).
- ✓ Group interviews.
- ✓ Focus group discussions. These discussions should not generally cover any specific human rights violations to which the refugees/IDPs may have been witness. It would be inappropriate to ask individuals to bear witness to such acts in front of many other people and might place them at some risk.
- ✓ Surveys. Again, surveys should not be used to gather information on specific abuse of human rights.
- ✓ Consultation with other UN agency staff and NGOs.
- ✓ Collection of government statistics, etc.

30. The following are also important methodological points:

- ✓ Entering a camp: In order to enter the camp, HROs generally must get permission from the authorities managing the camp, for example, the national refugee administration, the UNHCR, or a voluntary agency.
- ✓ Speaking with a representative selection of people: Since the majority of adult refugees and internally displaced persons are likely to be women, HROs will need to interview more women than men refugees/IDPs. Women HROs should be preferred. If medical issues or accounts of torture are likely to occur, medical personnel should be included in the visiting team.
- ✓ The *HROs must neither encourage nor discourage persons to return or leave home*. Human rights staff can provide accurate information on the situation in the region of return, but the HROs should not become engaged in any form of campaign for or against return. Where the United Nations encourages return, this should be a decision taken by all relevant UN agencies present. With regard to refugees, UNHCR has the primary responsibility and expertise for such decisions.
- ✓ Avoid giving assurances which the HRO cannot guarantee: Refugees and IDPs in camps are in a vulnerable situation. They may look to visiting United Nations human rights staff for assistance and guidance, and may place undue confidence on the

presence of these personnel. As in all cases in which HROs come into contact with victims of human rights violations, they should be very careful not to give refugees or IDPs with whom they meet assurances which cannot be guaranteed (see **Chapter V: “Basic Principles of Monitoring”**) — for example, guaranteeing the future safety of an IDP from human rights abuse at the hands of local authorities. They should not promise the imminent delivery of humanitarian aid by other international organizations, and upon which the refugees/IDPs may base important decisions.

31. Whatever involvement they have, HROs can be faced with very difficult moral and emotional dilemmas in such situations. For example, if HROs were to assist with the departure of individuals to escape repression, they may well be assisting the forces of repression to get rid of a particular group or to impose “ethnic cleansing” on an area. Indeed, if the authorities or other forces of repression see that the field operation will assist with the departure of a repressed group, they may increase the repression to speed the departure.

D. International standards and the protection of refugees¹

32. When working with refugees who are living in a camp situation, HROs need to be familiar with the general standards of legal protection provided for by international refugee law. The various provisions of this body of law provide for minimum standards from which refugees in camps should benefit and to which they have a right. This section concentrates on civil and political rights, but economic, social and cultural rights are of equal importance.

1. Definition of a refugee

33. The *definition of “refugee”* is set forth in Article 1 of the Convention relating to the Status of Refugees (modified by Article 1 of the Protocol relating to the Status of Refugees) as any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.

34. Regional refugee instruments in Africa and Central America have expanded the definition of refugee to include persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.

¹For more discussion of the rights of refugees and internally displaced persons, see **Chapter IV: “Overview of International Human Rights and Humanitarian Law Standards”** and **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons”**.

2. Determining refugee status

35. In an emergency situation there is a need for immediate intervention to secure protection. Frequently, the Office of the United Nations High Commissioner for Refugees (UNHCR) *must take action before a formal determination of refugee status is possible*. Even though a formal individual determination is in many cases impractical, it is essential to assess, at least on a group basis, the applicability of refugee status.

3. The right to seek asylum and the principle of *non-refoulement*

36. Central to the concept of refugee protection, and to international refugee law is the principle of *non-refoulement*. Article 33(1) of the *Convention relating to the Status of Refugees prohibits State parties from expelling or returning* (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

37. Article 14(1) of the Universal Declaration of Human Rights provides, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. In addition, operative paragraph 2 of General Assembly Resolution 428(V) (adopting the Statute of the Office of the United Nations High Commissioner for Refugees) calls on States to cooperate with the High Commissioner in the performance of his/her functions, *inter alia*, by “admitting refugees to their territories”. An understanding of the role of the UNHCR and cooperation with the UNHCR are critical to any action with regard to refugees, including visiting camps. Accordingly, **Appendix 1** to this chapter contains an introduction to the UNHCR.

4. Minimum standards of treatment for refugees

38. The Executive Committee of the UNHCR has concluded that, after admission, asylum-seekers should be treated in accordance with certain minimum standards.² The following standards form the basis and framework for action by the UNHCR and governments to ensure protection of refugees in an emergency situation:

- ✓ asylum-seekers should not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful and they should not be subjected to restrictions on their movements other than those which are necessary in the interests of public health and order;
- ✓ they should enjoy the fundamental civil rights internationally recognized, in particular those set out in the Universal Declaration of Human Rights;

²Executive Committee of High Commissioner’s Programme, Conclusion No. 22 (XXXII, 1981) “Protection of Asylum Seekers in Situations of Large-Scale Influx”, Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, UN Doc. HCR/IP/2/Eng/REV.1994, at 48 (1995).

- ✓ they should be treated as persons whose tragic plight requires special understanding and sympathy; they should receive all necessary assistance and they should not be subject to cruel, inhuman or degrading treatment;
- ✓ there should be no discrimination on the grounds of race, religion, political opinion, nationality or country of origin;
- ✓ they are persons before the law enjoying free access to courts of law and other competent administrative authorities;
- ✓ the location of asylum-seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum-seekers should, as far as possible, be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State;
- ✓ they should be provided with food, shelter and basic sanitary and health facilities;
- ✓ family unity should be respected;
- ✓ all possible assistance should be given for the tracing of relatives;
- ✓ adequate provision should be made for the protection of minors and unaccompanied children;
- ✓ the sending and receiving of mail should be allowed;
- ✓ material assistance from friends or relatives should be permitted;
- ✓ appropriate arrangements should be made, where possible, for the registration of births, deaths and marriages;
- ✓ they should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution;
- ✓ they should be permitted to transfer assets which they had brought into the territory to the country where the durable solution is obtained; and
- ✓ all steps should be taken to facilitate voluntary repatriation.³

5. Using the Covenant on Civil and Political Rights to protect refugees

39. In addition, the Human Rights Committee has issued a General Comment setting forth the *rights of aliens under the International Covenant on Civil and Political Rights, and those aliens would include refugees*. The Human Rights Committee indicated that the rights prescribed in the Covenant apply to “all individuals within its territory and subject to [a ratifying Government’s] jurisdiction”.⁴ The Human Rights Committee thus identified the “general rule” “that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens” (including refugees and asylum seekers). For a more detailed discussion of these rights, see **Chapter IV: “Overview of International Human Rights and Humanitarian Law Standards”**.

³*Id.*; see also Executive Committee of High Commissioner’s Programme, Conclusion No. 40 (XXXVI, 1985) “Voluntary Repatriation”, Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, UN Doc. HCR/IP/2/Eng/REV.1994, at 86 (1995).

⁴See Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 18 (1994).

40. Limiting the protection afforded by the Covenant, the Human Rights Committee also indicated, “The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.”

41. Moreover: “Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant...”

- ✓ Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude.
- ✓ Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation.
- ✓ They have the right to liberty of movement and free choice of residence; they shall be free to leave the country.
- ✓ Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law.
- ✓ Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law.
- ✓ They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.
- ✓ They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them.
- ✓ Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age.
- ✓ Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language.
- ✓ Aliens are entitled to equal protection by the law.
- ✓ There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.”

42. As mentioned in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**, Article 4 of the Covenant on Civil and Political Rights permits derogations from most rights in “time of public emergency which threatens the life of a nation and the existence of which is officially proclaimed.”

Certain rights are non-derogable, that is, they may not be subject to limitation under Article 4; for example, a Government may not discriminate solely on the grounds of race, colour, sex, language, religion or social origin. Similarly, the Government may not, even in periods of public emergency, subject a person to arbitrary deprivation of life; torture or cruel, inhuman or degrading treatment or punishment; slavery; imprisonment for debt; retroactive punishment; non-recognition before the law; and deprivation of freedom of thought, conscience or religion.

43. The Human Rights Committee in its General Comment also noted that Covenant “Article 13... is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions... An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one... Discrimination may not be made between different categories of aliens in the application of article 13.”

44. In addition, certain economic, social and cultural rights are also implicated by the dependency of internally displaced persons and refugees living in camps. The most urgent survival needs must be met: food, water, emergency shelter, health care and sanitation. Material assistance should be fairly distributed among the occupants of refugee camps.

E. International standards relating to internally displaced persons

1. Definition

45. The “Guiding Principles on Internal Displacement”, which were submitted by the Representative of the Secretary-General on Internally Displaced Persons to the Commission on Human Rights in 1998, define internally displaced persons as:

“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed and internationally recognized State border.”

2. General human rights and humanitarian law protection

46. IDPs, like any other person, benefit from the legal protection of international human rights law and, in situations of armed conflict, from international humanitarian law. The UN Commission on Human Rights has nominated a Representative on internally displaced persons who monitors international protection of IDPs. The

UNHCR, UNICEF, the International Committee of the Red Cross, and many other inter-governmental and non-governmental organizations have developed programmes in many countries to provide protection and other assistance to IDPs.

47. While IDPs continue to benefit from all of the international human rights legal protection available to other persons, they do not benefit from the specialized protection of international refugee law because they have not crossed an international border. The fact of being displaced from ones' home places IDPs in a situation of vulnerability to human rights abuse, such that they may be in need of some additional protection above and beyond that available to other members of a population. Concern with the vulnerability of IDPs led the Commission on Human Rights to ask the Representative of the Secretary-General on Internally Displaced Persons to prepare an appropriate normative framework for protection and assistance for IDPs. Accordingly, in 1998 the Representative formulated the "Guiding Principles on Internal Displacement". The Guiding Principles are included in **Appendix II** to this chapter.

3. The Guiding Principles on Internal Displacement

48. The Guiding Principles are not as such legally binding upon States. However, the rights to which they refer are already defined in other international human rights instruments which are of a legally binding character. In fact, the Guiding Principles were not intended to provide a strict legal framework for the protection of IDPs; rather, they were created so as to draw upon elements of existing international human rights law which are of particular relevance to the protection of IDPs, and to apply those elements to the specific situations and threats experienced by IDPs. The body of Principles are intended, as their name suggests, to provide "guidance" in the application of international human rights instruments to the protection of IDPs.

49. Internally displaced persons who are living in camps are entitled to the same basic minimum standards of treatment as refugees in camps. Internal displacement typically implicates the following human rights, among others:

- ✓ the right to food;
- ✓ the right to shelter and adequate living conditions;
- ✓ the right to health care;
- ✓ the right to life and personal integrity;
- ✓ the right to work and to an adequate wage;
- ✓ freedom of residence and movement;
- ✓ the right to family unity; the right to education;
- ✓ the right to legal personality; and
- ✓ freedom of thought, association, expression and assembly.

50. HROs should refer to the Guiding Principles on Internal Displacement for assistance in applying existing international human rights law to the specific situation of IDPs. In addition, the comments by the Human Rights Committee on the Covenant on Civil and Political Rights, included in the previous section with regard to refugees, should be of use.

F. Coordination with UNHCR and other relevant agencies

51. Prior to visiting a refugee or IDP camp, HROs should meet with the staff of other relevant international and local organizations working on behalf of the camp population. There are two essential reasons for regular contact of this type to be maintained:

- ✓ First, HROs should coordinate their work with refugees/IDPs in camps, with those of other organizations, so as to ensure that there is no contradiction or duplication of efforts.
- ✓ Second, potential “partner” organizations can be of major assistance to HROs either through their specialist expertise (related, for example, to general health, nutrition or displacement issues) or through the provision of information on a human rights situation which they have gained through contact with a camp population.

52. For example, the **UNHCR** may have useful information on: conditions in a camp; the voluntariness of return; procedures for determining refugee status in a particular situation; the criteria used by the UNHCR for determining whether or not to “facilitate” a return of refugees/IDPs; leadership structures in a camp; etc.

53. The UN field operation should maintain its respect for the important work of partner organizations, each of which must maintain their independent responsibility for action within their distinct mandates. The ultimate objective of all interventions in refugee/IDP camps by any international organization should be to help improve the situation and respect for the human rights of the camp’s population. Coordination between organizations should remain focused on this goal.

54. Effective coordination requires that HROs have a thorough understanding of the mandate and operational activities of principal partners. When working with refugees, and sometimes IDPs, UNHCR will be the principal partner to a human rights operation.

G. Collecting background information

55. HROs should *prepare for their visit to a camp* by gathering background information as to:

- ✓ The history of the camp (from its origin to the present).
- ✓ The ministries, agencies, etc. with responsibility for managing or sharing management of the camp.
- ✓ The nature of the assistance programmes (*e.g.* water, health and nutrition, sanitation, food, shelter, tools, seeds and other agricultural inputs, social and community services, education, income generation, etc.).

- ✓ The demography of the camp, ethnic background, mortality, diseases, children in intensive feeding centres, etc.
- ✓ Other issues as determined by the objectives of the human rights operation.

56. Some major sources for this information might be:

- ✓ UNHCR sitrep reports (which may be monthly or more frequent in emergency situations) and meetings with UNHCR staff in-country.
- ✓ Government reports and statistics, as well as interviews with Government officials.
- ✓ NGO reports and meetings with in-country NGO staff.

H. Visit to the camp: identifying and interviewing individuals

57. HROs should meet with the camp authorities both at the beginning and the end of the visit. Often, local camp authorities have a standard tour of a camp that they provide for visitors from the international community. It may be possible for one officer to accompany these authorities on this formal visit, while others interview individual members of the camp population. As mentioned above, constant attention should be paid to the security of persons living in a camp. HROs should never place a person in danger through their questions or any other type of contact.

58. Bearing in mind the issue of security, one of the challenges of a camp visit is gaining access to the people who are the victims of human rights abuse, or who can provide useful information on a human rights situation. No general methodology can be defined for this work. HROs must rely upon their understanding of a general situation, any specific information available to them, and their own sensitivity to the precise situation in which they wish to interview refugees/IDPs. It should be possible when meeting with individuals to feel how comfortable they are providing information, and whether or not they feel safe doing so. An individual refugee/IDP is usually the person best placed to assess his or her own security. The principles mentioned in **Chapter VIII: “Interviewing”** on security of the people who come into contact with HROs are applicable to interviews and information gathering in camps as well.

59. When seeking general information, HROs should not, rely entirely on suggestions from refugee/IDP representatives in selecting individuals to interview — particularly if the objective of the monitoring is to investigate violations or conditions within the camp. Representatives may have their own political or other agenda and they may select refugees or IDPs on that basis. While it is useful to interview persons suggested by representatives, other refugees or IDPs should be identified by such techniques as:

- ✓ Random sample survey of refugee/IDP households: pick a couple of sections (or neighbourhoods) within the camp and interview each 10th or 20th household.
- ✓ Sample survey of selected neighbourhoods or households within the camp (selected on the basis of the religion of the refugees/IDPs, ethnic group, date of arrival, etc.).
- ✓ Random interviews at water sources.

- ✓ Random interviews during food distribution.
- ✓ Random interviews at the market-place in the camp.
- ✓ Random interviews at the camp clinic and the intensive feeding centre (which may provide access to the most vulnerable households).
- ✓ Interviews at the registration point (where newly arrived refugees/IDPs are supposed to be registered).
- ✓ Interviews of key persons, such as camp representatives, school teachers, nurses, market traders, refugees/IDPs working for NGOs, refugees/IDPs responsible for food distribution, etc.).

60. For further information on conducting interviews, see **Chapter VIII: “Interviewing”**.

61. There are particular difficulties in developing reliable information from interviews with refugees and displaced persons. The particularly vulnerable situation of refugees and IDPs may be such that they face pressures to exaggerate or conceal the truth about human rights violations they have experienced or witnessed.

62. For example, refugees/IDPs may exaggerate problems they have experienced if they believe that they will have a greater chance of receiving humanitarian assistance or refugee status. Indeed, it appears that the more dependent refugees or displaced persons may be upon outsiders the greater may be their tendency to exaggerate their plight — particularly on questions relating to their resources.⁵ Refugees and displaced persons may be somewhat less prone to exaggerate if the HRO is able to state convincingly that the information will not be used to determine aid levels or to provide other relief.

63. In sharp contrast, however, refugees/IDPs may understate the human rights violations they have experienced or witnessed for fear of further persecution. Again, HROs will have to make a careful assessment of the information being provided.

I. Monitoring conditions in the camp

64. Depending upon the mandate and resources of the human rights operation, and on the presence and role of other UN organizations such as the UNHCR or UNICEF, HROs may play a role in monitoring conditions within refugee or IDP camps. The term “conditions” is used here in a broad sense, and can refer to material conditions (such as shelter, food and health facilities) or to conditions related to the treatment of the camp population (such as respect of rights to freedom of movement, freedom of expression and security of person).

⁵Gaim Kibreab, *The Sudan, From Subsistence to Wage Labor: Refugee Settlements in the Central and Eastern Regions* 24 (1990).

1. Distribution systems

65. Officers should begin by *verifying that the basic material needs of the occupants are being met in a timely manner*. Occasionally camp populations are able to provide for their own needs. More often, however, they are dependent upon various forms of assistance. UNICEF and UNHCR have developed a series of standard specifications for certain common relief items.⁶ There should be an effective system in place to control stock levels of relief supplies; a system should also safeguard and prevent loss of supplies.

66. Where a camp population has only limited access to food, seeds, tools, clothing, medication and other necessities, supplies of these items will become extremely important. Any person or groups of persons with control over distribution will exercise considerable power and authority. While many distribution systems may be equitable, others might divert resources on the basis of payments, or according to a policy of discrimination against certain groups among the camp population. Any diversion of resources may be initiated by members of the camp population, by local authorities, or by a combination of the two.

67. Identifying and preventing a misuse of the distribution of resources can be extremely difficult, and may involve humanitarian workers in severe political and security issues. Where possible, HROs should ensure that all supplies are distributed in a fair manner so that everyone in the camp has access to *food, clothing*, etc. Particular attention should be paid to vulnerable groups among the camp population — including: minorities, the elderly, the ill, women and children (see below).

68. Camp residents should have access to an adequate supply of suitable food. Nutritional requirements will need to be assessed by specialist personnel — HROs should be aware of the need for a nutritional balance and should inform themselves of the principal indications of malnutrition so that they can recognize problems as they emerge.

2. Physical location and nature of the camp

69. HROs conducting a visit to a camp should determine whether it is a suitable and *well-planned site that provides adequate shelter for its occupants*. The camp should not be too densely populated. There should be adequate sanitary facilities. Shelter must provide protection from the elements, space to live, privacy and physical security.

70. There should be a process of consultation with the representatives of a displaced population as to the location and planning of a site. The following criteria are among the most important indicators:

- ✓ Water supply. There should be an adequate amount of potable water on a year-round basis.
- ✓ Topography and drainage. The site should be located above flood level, preferably on a gentle slope. At a minimum, the camp should be above the water table.

⁶*Id.* at 47.

- ✓ Adequate surface area. The site must allow sufficient usable space for the IDPs/refugees. WHO recommends a minimum 30 square metres per person in addition to land necessary for communal, agricultural and livestock-related activities.
- ✓ Security and protection. The camp should be removed from the frontier and potential military targets.
- ✓ Accessibility. The camp should be close to communications links and sources of necessary supplies.
- ✓ Environmental conditions. The area should be free from major environmental hazards. To the extent possible, suitable climatic conditions should be considered.
- ✓ Soil conditions. The soil should allow water absorption and the retention of human waste. In places separate from sanitation facilities, the soil should be suitable for vegetable gardens and small-scale agriculture.
- ✓ Vegetation. The site should have good ground cover. If wood must be used as cooking fuel, it should not come from the trees on site.
- ✓ Land rights. The camp's land should be exempt from the right of ownership or use by other people, as land disputes may cause local resentment.⁷

71. This list is provided by way of indication only. There are many different considerations which need to be taken into account when establishing a camp, and personnel with specialist experience (architectural, water, sanitation, etc) should be involved.

3. Health facilities

72. HROs should also devote attention to the *health* of residents at the camp, including sanitation and health services. Primary health care, with an emphasis on preventive care, should be provided at the camp. Special attention should be paid to mother and child health care. In particular, child immunizations should be available. More serious health problems should be referred to an appropriate treatment facility. Public health education should be provided. Moreover, a disease control plan should be in place for the prevention, control and treatment of communicable diseases. The HRO may check the camp's health records for high rates of mortality, morbidity, major communicable illnesses, etc.

4. Vulnerable groups and problems of sexual abuse

73. HROs should examine how the *security* of persons in the camp is being safeguarded. This issue is *especially relevant for refugee/IDP women and girls* who may be subjected to violence — including sexual violence — and whose security should be a particular concern of HROs. See UNHCR, *Sexual Violence against Refugees, Guidelines on Prevention and Response* (1995), including material on the potential security risks as well as possible remedial techniques.

⁷*Id.* at 58-60.

74. Some techniques include careful consultation with women at risk; better lighting or night patrolling in dangerous areas; careful relocation of water, toilets, refuse and other facilities; measures to diminish risks to women while they obtain food, firewood and similar commodities; relocation of sleeping facilities (particularly for women on their own or female heads of households); installation of fences or other protective barriers.

75. Some groups of a refugee/IDP population are vulnerable for other reasons. Malnourished women who are pregnant or breast-feeding their infants are at greatest risk⁸ from malnutrition, for example. They will need access to high quality food on a regular basis. Handicapped members of camp populations are also at tremendous disadvantage, as are unaccompanied children. HROs should identify vulnerable groups, their specific vulnerability and draw the attention of local authorities or aid organizations.

5. Psychological assistance and social welfare

76. HROs should ascertain whether the *social welfare service* needs of the IDPs/refugees are being met. As the trauma of becoming a displaced persons or refugee can create or exacerbate social and psychological problems, a social welfare service is necessary to identify and treat the refugees' or displaced persons' problems. Any social welfare programme should be culturally sensitive. Ideally, to the greatest extent possible, the social welfare programme should be organized and administered by members of the refugee/IDP community.

6. Access to education

77. Every child has the right to an *education*. HROs should note whether the educational needs of children in the camp are being met. Free compulsory primary education should be available to all children in the camp. Provision should be made for the education needs of older children, and particularly adolescents, including secondary and vocational education. As far as possible, all education services should allow children to follow a curriculum identical to that which other children in their home country or region are following, so that reintegration into a normal education system upon their return will be without problems. To the greatest extent possible, educational services should be organized and administered by members of the refugee/IDP community.

J. Conclusion

78. Aside from monitoring and seeking to protect specific human rights, HROs should also focus on the overall situation of refugees and IDPs living in camps — is their *human dignity* being respected? For many displaced populations, it is not only

⁸See UNHCR, *Guidelines on the Protection of Refugee Women* 49 and *passim* (1991).

individual violations of their rights which are distressing, but also a general environment in which they may feel that their basic worth as human beings is not being observed. The situation of displacement can be very traumatizing — it is essential that human rights personnel maintain this overview of the situation of displaced populations in camps and that they make every effort to prevent the creation of a situation which draws from the humanity and fundamental dignity of displaced persons.

Appendix I to Chapter X

Brief Introduction to United Nations High Commissioner for Refugees¹

The Office of the United Nations High Commissioner for Refugees (UNHCR) was created by a General Assembly resolution of 14 December 1950 and the organization began its work on 1 January 1951. The office was initially conceived with a limited three-year mandate, and was created in parallel with the 1951 Convention relating to the Status of Refugees with the objective of assisting people who became refugees prior to 1951. In 1967 a Protocol was added to the Convention removing the time limit and its provisions remain valid today. The mandate of UNHCR has been successively renewed by the General Assembly (for five-year periods) as successive refugee crises have occurred. The present mandate is due to expire at the end of 1998. The principal office of the UNHCR is in Geneva, but it maintains about 200 field offices around the world.

1. The UNHCR mandate

The mandate is contained in the UNHCR statute. The essential function of the UNHCR is to *provide international protection to refugees* no longer able to benefit from the protection of their own governments, and *to seek durable solutions* to their problems, by facilitating the voluntary repatriation of refugees, or their integration into new national communities in a climate of *safety* and *dignity*. The office of the High Commissioner is to be “entirely non-political” and “humanitarian and social”.

The statute gives the UNHCR competence to provide protection and assistance to refugees, that is, any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable, or owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country...”.

The scope of UNHCR’s work has broadened as the definition of a “refugee” has been extended over the years by a number of international instruments. In addition the UNHCR plays an increasing role in situations which involve internally displaced persons (IDPs). The UNHCR does not, in its statute, have a mandate to provide assistance to people falling within this category; however, the General Assembly and the Secretary-General have asked the organization on numerous occasions to use its experience and resources to assist people who are in effect “refugees within their own country”.

¹Largely based upon UNHCR, Handbook, *Voluntary Repatriation: International Protection* (1996)

The UNHCR's role has been extended still further by an interpretation of its mandate obligation to seek "durable solutions". The agency increasingly undertakes activities in the country of origin intended to create conditions which are conducive to the return of refugees, and other activities which involve "returnee monitoring". The UNHCR's efforts in the country of origin are intended to encourage and support the return process so that it is durable.

Protection of and assistance to refugees remain, however, UNHCR's primary functions, and within this context, the organization carries out many activities. Among these tasks are the provision of food, shelter, health services, education, social welfare, and income-generation activities.

UNHCR has defined its activities as falling within four principal forms of assistance: (1) emergency relief operations, (2) longer-term "care and maintenance" for refugees awaiting a solution to their situation, (3) local settlement programmes to help returnees integrate into the country of refuge and (4) repatriation programmes to help refugees return to their countries of origin.

2. The UNHCR's role in repatriation of refugees and/or IDPs

During a repatriation operation the UNHCR will invariably have at least one office in the country of refuge and another in the country of origin. The UNHCR's activities during repatriation therefore take place on both sides of the border.

Three terms can be used to summarize the UNHCR's repatriation activities:

a. The promotion of solutions

The "promotion of solutions" is the name given to the UNHCR's efforts to address the problems at the base of a refugee movement. These activities are thus concentrated in the country of origin and are initiated before repatriation begins. The promotion of solutions involves creating a national, regional, and international dialogue to discuss the situation. It can also involve negotiations with the parties to a conflict with a view to raising the humanitarian needs of a refugee population. The UNHCR considers that repatriation cannot be successful while the conditions that led to the displacement still exist.

b. The promotion of repatriation

The "promotion of repatriation" is the term which describes the UNHCR's active encouragement of repatriation. Once the minimum conditions required in the country of origin are reached, the UNHCR will begin to promote repatriation. UNHCR field staff may organize information campaigns to inform refugees (or IDPs) of the changed situation in their home country or region and of any peace or other relevant agreements that have been signed. Staff in displaced persons camps will help to participate in the repatriation by registering people who decide to return, providing any relevant counseling and monitoring the legal, physical, and material security of the returnees.

c. Facilitation

The term “facilitation” is used by UNHCR to indicate the assistance that it will provide to displaced people who wish to return home even when UNHCR staff do not feel that the minimum conditions necessary in the country or region of origin have been fulfilled. When refugees voluntarily decide to go home, the UNHCR will often provide them with assistance (such as transport and information on conditions in the country of origin) but will not actually “promote” the return.

3. The UNHCR in the country of origin

In the country of origin, other than the efforts developed as a part of “possible solutions” the UNHCR undertakes a number of different activities:

a. Returnee monitoring

The objective of returnee monitoring by UNHCR protection officers is to ensure that returnees are successfully able to reintegrate their communities. The authority through which the UNHCR carries out returnee monitoring is derived from its mandate obligation to seek “durable solutions”.

Protection officers monitoring the arrival and reintegration of returnees will focus on the extent to which the returnees are able to enjoy respect of their human rights on the same basis as other people within the community. The principal international law standard monitored by the UNHCR will thus be that of “non-discrimination”. Within this overall context of non-discrimination protection officers may place particular emphasis on the access of returnees to agricultural and residential land, which often raise problems for returnees.

b. Returnee women

During the monitoring process the UNHCR gives special attention to vulnerable groups, and to returnee women in particular. Efforts are concentrated on monitoring and providing for the needs of returnee women in terms of: women heads of household; physical safety; participation in decision-making processes; access to aid and other forms of assistance; and women victims of sexual and other violence. The UNHCR will usually have field staff specialized in providing assistance to women returnees.

c. The respect of national law

The UNHCR will often undertake activities intended to reinforce the respect of national law in the country of origin, including capacity-building of national legal institutions, training for the police and judiciary, etc. With specific regard to returnees UNHCR staff may provide legal advice and even intervene in the national legal process in favour of returnees.

d. Human rights

With regard to general human rights UNHCR staff will participate in human rights promotion and will often cooperate with other organizations that make up a human rights structure within the country of origin.

4. Cooperation with other organizations

As the number of refugees in the world has grown, the UNHCR has increasingly found it necessary to work with other organizations, including UN agencies and non-governmental organizations (NGOs). In some of the big refugee camps, for example, the UNHCR apportions particular, specialized, responsibilities to a number of different NGOs. Hence, for example, medical work may be performed by one NGO, construction of latrines by another, and water supply by a third. The UNHCR oversees their activities.

5. Funding

UNHCR activities are funded almost exclusively by voluntary contributions made by national governments, intergovernmental and non-governmental organizations, and by individuals. The budget of the UNHCR has exceeded US \$1 billion each year since 1992².

²In adapting this Manual for specific human rights field operations, this Appendix should be complemented with a paragraph containing information on *The UNHCR activities in the region*. The operation should gather brief information on the UNHCR activities in the region, and particularly on the location of the UNHCR field offices. This information should, where possible, include the names and telephone numbers of UNHCR staff members with whom human rights officers may make contact in their respective regions. These details should be circulated to all area offices of the UN human rights field operation.

Appendix 2 to Chapter X

Guiding Principles on Internal Displacement

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I — GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II — PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III — PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
 - (a) Genocide;
 - (b) Murder;
 - (c) Summary or arbitrary executions; and
 - (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
 - (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
 - (b) Starvation as a method of combat;
 - (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
 - (d) Attacks against their camps or settlements; and
 - (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and

compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV — PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V — PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

.....Chapter XI

MONITORING AND PROTECTING THE HUMAN RIGHTS OF RETURNEES AND INTERNALLY DISPLACED PERSONS.....

Key concepts

United Nations human rights operations have an essential role to fill in monitoring and protecting the human rights of returnees and internally displaced persons. People displaced within their own country can be particularly vulnerable to violations of their human rights and may need a specific form of human rights protection.

Human rights officers can address the human rights protection needs of returnees and IDPs at several levels: during the period of displacement itself; in preparation for a return home; during a return process; and after a return, during a period of re-integration. At all stages, it is essential that human rights officers be familiar with the specific threats with which returnees and IDPs may be confronted, and with the relevant international law which provide protection against those threats.

A. Introduction

1. This chapter focuses on the human rights situation of **returning refugees** (returnees) and **internally displaced persons** (IDPs) — it thus concerns the human rights of **persons who are displaced from their homes, but who are within their own country**. After highlighting the particular relevance of international human rights standards to the protection of these categories of people, the chapter also seeks to identify ways in which UN human rights field operations can respond to their needs.
2. People who are within their own country and experiencing displacement may spend this period in any number of different situations. Public attention is often drawn the most rapidly to displaced persons living in camps, usually because large

concentrations of people are more visible. In fact, displaced persons never actually settle in camps — they may live only in much smaller community or family groups, and may be constantly on the move. They may, for example, be forced to continue their displacement for many months to escape an evolving situation of armed conflict in their country. Refugees who re-enter their country as returnees may continue to live through a long period of “internal displacement” — lasting several years or more — before they are finally able to return to their homes and reintegrate into their communities.

3. Internally displaced persons sometimes make specific efforts to distance themselves from any formal camp situation, precisely because being identified as an “IDP” can, in some situations, itself place a person at risk. In some countries, IDPs may choose to hide in forests and marshland so as to avoid being forced to live in a camp situation. In addition, **the ultimate objective of returnees and IDPs is usually to return to their homes — assuming that it is safe to do so** — and the return process itself, while lasting many months, can also expose them to human rights violations.

4. This chapter thus addresses the **human rights protection needs** of returnees and other displaced persons within their own country and while **outside of any formal camp situation**. The chapter looks in particular at protection needs during displacement or settlement in a non-camp situation, and during the process of returning home. The protection of the human rights of persons living in camps — be they refugees, returnees or IDPs — raises a series of specific concerns which are addressed in **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**.

B. Overview of the human rights situation of returnees and IDPs

1. Definition of terms

a. Refugee

5. The definition of “refugee” is set forth in Article 1 of the Convention relating to the Status of Refugees (modified by Article 1 of the Protocol relating to the Status of Refugees) as any *person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”*.

6. The definition of refugee has been expanded — particularly by the Organisation of African Unity (OAU) Convention on Refugees and the Cartagena Declaration — to include persons fleeing generalized violence (international war, internal armed conflict, foreign aggression or occupation, severe disruption of public order, or massive violations of human rights) in the whole or part of the country of nationality.

b. Returnee

7. “Returnee” is the term used by the international community to identify a person who was a refugee, but who has recently returned to his/her country of origin. Defining a returnee is thus applicable on a person’s prior refugee status.

8. When a refugee decides to go home, it is usually because the *threat or danger that had caused him/her to leave his/her place of habitual abode has significantly diminished* or the danger in the place of refuge has become greater than the risk of returning home. Often return may be prompted by the end of a civil war or the replacement of a previous repressive government. The term “returnee” is a descriptive term that acknowledges the fact that returning refugees are in need of certain assistance, and sometimes protection, during an interim period until they have re-integrated their communities. Defining the period of time in which a person can continued to be identified as a returnee is difficult and will be different according to each specific situation.

c. Internally displaced persons

9. According to the **Guiding Principles on Internal Displacement**, internally displaced persons are:

“persons or groups of persons who have been **forced or obliged to flee or to leave their homes** or places of habitual residence, in particular **as a result of** or in order to avoid the effects of **armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters**, and **who have not crossed any internationally recognized State border.**”

10. This definition is a broad one, largely because, the term “internally displaced person”, like the term “returnee”, is a descriptive term and not a legal designation. The definition includes the major causes of displacement — armed conflict, generalized violence, violations of human rights, natural or human-made disasters — but uses the qualifying term “in particular” to emphasise that **it does not exclude other causes.**

11. The definition focuses on persons who, if they were to cross an international border, would qualify as refugees, both under the OAU Convention and the Cartagena Declaration and, arguably in many cases, under the narrower definition of the Convention relating to the Status of Refugees. The definition also **includes**, however, **some persons who would not qualify as refugees, for example, those displaced by natural or human-made disasters.** The argument for including these disasters is based essentially on cases where governments respond to such disasters by discriminating against or neglecting certain groups on political or ethnic grounds or by violating their human rights in other ways.

12. The definition does not encompass persons who migrate because of economic reasons. Persons forced from their homes because of economic injustice and marginalization tantamount to systematic violation of the economic rights would however come under the definition.

13. IDPs are distinguishable from other persons in movement, and are of concern to the international community, essentially because of the coercion that impels their movement, their subjection to human rights abuse emanating from and as a result of their displacement, and the lack of protection available within their own countries.

2. Problems facing returnees and IDPs

a. Returnees

14. Returnees — as explained in the above definition — are former refugees who have re-entered their country but who have not yet re-integrated their homes and communities. Normally, re-entering one's country after a period of time spent as a refugee should mark the end of personal suffering and displacement and a return to a normal life. In practice, however, refugees are increasingly returning to situations which are far from safe. Sometimes, they may choose to return because their situation in the country of refuge has become worse than the situation in the country of origin. In other instances, refugees are forced to return home — even though a forced return is a violation of a fundamental right accorded to all refugees, and a violation of international law.

15. A refugee's "return" might take many months or years. When re-entering a country, a returnee might find it impossible to travel immediately to his or her home region. While waiting for an opportunity to return home returnees need to have access to food, water, shelter, health and education facilities, among others. "Long-term" returnees, living in a community other than their own, can thus face many difficulties, and can find themselves in a situation identical to that of internally displaced persons.

b. Internally displaced persons

16. Internally displaced persons can be obliged to flee their homes for any number of reasons. They may choose to leave for their own safety, or they may be forced to leave, for example, by a military group. Often the only factor which distinguishes IDPs from refugees in the same region is the fact that the latter group has crossed an international border out of their country. In addition, IDPs, because they have not left the country, may still be suffering from the immediate factors which led to their flight. Sometimes IDPs may have been unable to leave their country, perhaps because the borders are too far, or because armed conflict and mines make the journey too dangerous. Like returnees, IDPs often have very limited access to adequate food, water and shelter, to health or education facilities, and to employment. They often suffer from violations of their human rights, which initially caused them to flee their homes; they may experience further threats to other rights during the period of displacement; and others during the process of return and re-integration to their home communities.

c. Factors affecting the human rights of returnees and IDPs

17. Returnees and IDPs are vulnerable to violations of both civil and political and economic, social and cultural rights (see below for a detailed analysis of the different violations and international law responses to which returnees and IDPs may be

exposed). There may be many different causes behind each violation or pattern of violations; however, a few fundamental factors can often be identified. Understanding the specific vulnerability of returnees and IDPs in comparison with other members of a population helps to clarify their situation — and therefore the response needed from HROs.

18. Three key areas can be identified:

i. Discrimination based upon membership of a group

Depending upon the background reasons which had originally forced people to flee their homes, returnees and IDPs from particular countries or regions are often the members of an identifiable group — they may all be the members of a religious, linguistic or ethnic minority group, for example. As such they may be the object of discriminatory practices on the part of the other groups of the population or authorities. They may, for example, find that their freedom of movement is restricted, or that their children are not offered places in local schools. They may also be the victims of attacks, killings and arbitrary arrests.

ii. Displacement from community of origin

The simple fact of being displaced from one's community — leaving behind property, status, employment, family members, etc — places returnees and IDPs in a vulnerable situation. For example, because of their displacement IDPs and returnees may have difficulty in proving their identities and so claiming the normal rights which accompany a national in his or her own country — such as access to free health care, employment, freedom of movement, etc. Returnees and IDPs may be discriminated against simply because they come from another region of the country and the local population does not wish, or is unable, to share local resources. In fact, the presence of a large displaced population in a region can place a very heavy burden on available food, housing, jobs and other essentials. Prices typically rise dramatically and the standard of living of local population may fall. Tensions can rapidly result.

iii. The return and re-integration process

Returnees and IDPs can face a series of difficulties during their return journey home, and in the months following the return. Problems related to travel through war zones, the recovery of occupied or stolen property, compensation and rehabilitation, tracing of lost family members, can all be fundamental to a returnee or IDPs success in re-establishing a normal life. Vulnerability during this stage of displacement can also require a specific human rights response which is different from that needed by other members of a population in the same region.

3. Legal protection of the human rights of returnees and IDPs

a. International human rights instruments

19. Like any other person, returnees and IDPs benefit from the protection of the human rights provided for in international human rights law instruments (see **Chapter III: “Applicable International Human Rights and Humanitarian Law: The**

Framework” and Chapter IV: “Overview of International Human Rights and Humanitarian Law Standards”). Where returnees or IDPs are in a situation of armed conflict, which is quite often the case, then they are also entitled to the protection of international humanitarian law.

20. The fact of being a returnee or IDP does not remove or limit any of the human rights to which these categories of a population are entitled. The only distinction which should be made is a positive one: precisely because returnees and IDPs are in a situation of displacement from their homes they are more vulnerable to abuses of their rights, and may therefore require a more specific form of human rights legal protection than other persons who have not been displaced.

21. International human rights law does allow, nevertheless for derogations from a State’s obligation to respect certain human rights according to conditions within a country or region. In times of armed conflict, for example, a State can sometimes derogate from its respect of the freedom of movement of a population. There are strict conditions governing the regimes for derogations from human rights responsibilities, and these are explained in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**.

b. Refugee law

22. Persons who leave their countries as refugees benefit from a body of international law (sometimes known as “refugee law”) which aims to compensate in part for the fact that these persons no longer benefit from the legal protection normally offered by their State. The United Nations High Commissioner for Refugees is the UN agency which carries principal responsibility for ensuring that refugees are adequately protected. This body of law is legally binding upon all those States who have ratified the relevant international instruments.

23. When refugees re-enter their country, as returnees they are no longer entitled to the full protection afforded by international law to refugees. However, elements of that law, and of the mandate of the UNHCR, focus on achieving “durable solutions” and a return in “safety and dignity”. On this basis one can infer that returnees continue to benefit from a form of protection related to their former status as refugees. In practice, for example, the UNHCR will continue to help returnees for a period of time following their return into their country of origin. The basic notion upon which this protection is based is that a refugee does not cease to be a refugee, in practical terms of vulnerability, the moment he or she re-enters the country of origin, but will require a period of time in which to “re-integrate”. As mentioned above, it is not possible to define precisely how long a person can continue to be defined as a returnee, and therefore for how long a returnee continues to benefit from this “former refugee status” protection.

c. The Guiding Principles on Internal Displacement

24. Because internally displaced persons, by definition, have not crossed an international border out of their country, they never benefit from the protections afforded by international law to refugees or, by extension, to returnees. Concern with the vulnerability of IDPs has led to the formulation of “Guiding Principles on Internal Displacement” (see **Chapter X: “Monitoring and Protecting the Human Rights of**

Refugees and/or Internally Displaced Persons Living in Camps”, Appendix II). The Guiding Principles, as an instrument, are not legally binding upon States; however, many of the rights to which they refer are already defined in other international human rights instruments which are of a legally binding character. In fact, the Guiding Principles were not intended to provide a strict legal framework for the protection of IDPs; rather, they were created so as to draw upon elements of existing international human rights law which are of particular relevance to the protection of IDPs, and to apply those elements to the specific situations and threats experienced by IDPs. The body of Principles are intended, as their name suggests, to provide “guidance” in the application of international human rights instruments to the protection of IDPs.

25. Can the Guiding Principles be applied to returnees? It is unlikely that “long-term” returnees can continue to claim some protection from refugee law indefinitely. In cases where the return process lasts, for example, for several years, with returnees settling in temporary camps while awaiting an opportunity to return, they may at some point lose their returnee status, in spite of the fact that the return has not been completed. At this point they should ideally be classified as IDPs, at which point the Guiding Principles will help to apply international human rights law to the specific situation of returnees, often identical to that of IDPs in the same country.

4. Objectives and role of a human rights field operation in protecting the human rights of returnees and IDPs

26. To be compelled for any reason to leave one’s home, country or locality is one of the most traumatic events any individual may endure. The return of refugees and internally displaced persons should ideally involve and reflect a restoration of their rights and their connection to their home and community. The *return of refugees and IDPs* is also an important step towards the *reconciliation of a society* and the return to normal life after the troubles which caused the initial displacement.

27. In defining the characteristics of efforts by UN human rights operations on behalf of returnees and IDPs, it is useful to refer to the objectives of the UNHCR. The organization’s Statute, referring to the return of refugees, uses a number of terms which help to express the overall objectives of its assistance: the return should be conducted in “**safety**” and in “**dignity**” and it should be conducted as a part of a “**durable solution**” so that the returnees will not be forced to flee their homes again in the future.

28. These terms also help to summarize the overall aims of work by a UN human rights field operation; each one implies certain rights which respond to the problems experienced by displaced populations. “*Safety*” indicates that returnees should be protected from threats to the rights to life and to personal security. A return in “*dignity*” suggests a need *to respect the religious, cultural, ethnic or other identity of returnees, and also rights related to security of the person*. The requirement of a “*durable solution*” emphasizes that the arrival of a returnee in his or her community does not in itself mean that the return has been successfully completed. It is often extremely important to undertake activities to ensure that the return itself is durable. These activities include efforts to make sure that the returnees will be accepted back into their communities, for example, through

preparatory work with local government officials, discussions with potential employers, agreements with groups which might oppose the return, and general informational activities in the area.

29. The work of a United Nations human rights operation should take place within this overall context. A human rights operation might, for example, focus on addressing the original causes of displacement, in protecting the human rights of persons who continue to live in a situation of displacement (whether as returnees or as IDPs), in monitoring and assisting in a return process, or in monitoring and assisting a period of re-integration following a return.

30. The types of efforts that HROs will carry out on behalf of returnees and IDPs will depend on a number of different factors. These factors include:

- ✓ the **mandate** of the human rights operation;
- ✓ the **current situation of returnees and IDPs in the country**;
- ✓ the numbers of people who are actually engaged in a **process of return and the reasons for the return**;
- ✓ the **conditions** under which any return is taking place;
- ✓ the **human rights situation in the region of return**; and
- ✓ the **work of other organizations** in the region.

31. This chapter is intended to provide assistance to HROs working to address a variety of different situations.

32. Working towards the respect of the human rights of returnees and IDPs can be a very difficult and complicated task. For example, situations in which one ethnic group has been forced to move by another ethnic group require an *understanding of the background of tension and conflict*. There may be *land disputes* dating back for hundreds of years — themselves based on different interpretations of poorly recorded history. These situations raise very strong feelings. For example, the perpetrators of human rights violations, who have forced people to flee their homes, may *feel that they are justified* in committing those violations *because of earlier abuses* they suffered at the hands of members of the displaced population. In addressing current human rights violations, a human rights operation may also need to respond to a need for truth and justice for acts committed in the past.

33. Providing assistance to returnees may require very specific field experience; for example, when returnees are detained in violation of their right to liberty, HROs will need to work with the detaining authorities. In addition, among the returnee community there will usually be people who are *particularly vulnerable* to human rights violations. *Women, children, the elderly and the disabled, for example, often suffer the most from shortages of food and from long journeys on foot.* Human rights operations need to be prepared for the human rights protection needs of vulnerable groups.

34. Trying to prevent further human rights violations and to assist the displaced population in returning home requires a very well planned approach, a very thorough understanding of the situation, and sensitivity to the different groups involved.

C. Particular threats to returnees and the international law response

35. The threats and human rights violations to which returnees and IDPs are at risk can be described in several categories. Many people who are not returnees or IDPs may also become victims of the same human rights violations. These two categories are, however, often *particularly vulnerable* to human rights violations because of their displacement from a community or because they are *clearly identified as belonging to a particular group* within the population. In situations of inter-State conflict, for example, many people may suffer from lack of food or water; however, returnees and IDPs will often have the *most restricted access to any supplies* that are still available within the region.

36. This section describes some of the principal threats to returnee and IDP populations. It also explains some of the *binding international legal provisions* that can provide protection from human rights violations. *Note that no references are made to the Guiding Principles on Internal Displacement — this instrument is included as an appendix to the chapter and should be referred to directly.* The Guiding Principles help especially in applying relevant human rights law to the situation of IDPs. The threats to returnees and IDPs are identified here to provide easy reference to HROs.¹

37. Defining the ongoing situation in the country or region of return is very important in terms of the international law which is applicable and which can be used as the basis for protecting the rights of returnees and IDPs. The United Nations Special Representative for Internally Displaced Persons has defined *three common contexts* in which the rights of displaced people may be at risk²: (1) situations of *tensions and disturbances* (or disasters); (2) *internal armed conflict*, and (3) *international armed conflict*. Different legal regimes apply to each of these situations and thus affect the rights of returnees and IDPs. These different contexts and the applicable legal principles are discussed in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**.

1. Discrimination

38. A very significant problem faced by returnee and IDP populations following their return to a home country or region is that of *discrimination from the national or local authorities*. Many international human rights instruments require States parties to respect and ensure the rights recognized by those conventions *without discrimination*. Article 26 of the Covenant on Civil and Political Rights, for example, provides for equality of treatment and governs the exercise of all rights, whether protected under the Covenant

¹Not all of the legal references are provided here and a more detailed and complete reference can be found in the report of the Special Representative for Internally Displaced Persons, UN Doc. E/CN/1996/52 (1995). This section also relies heavily upon United Nations High Commissioner for Refugees, *Handbook, Voluntary Repatriation: International Protection* (1996).

²Report of the Special Representative of the Secretary-General, Mr. Francis Deng, to the UN Commission on Human Rights, UN Doc. E/CN.4/1996/52 (1995).

or not, which the State party confers by law on individuals within its territory or under its jurisdiction.

39. Discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” is prohibited. “Other status” has been given a broad interpretation and can be argued to include internally displaced persons.

40. In situations of armed conflict, humanitarian law also prohibits discrimination. For example, Common Article 3 to the four Geneva Conventions provides that in non-international armed conflict, “Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”. Similar provisions forbid discrimination in a context of international armed conflict (*see, e.g.*, Fourth Geneva Convention, Article 27).

2. Life and personal security

41. Returnees and IDPs may be at *risk from acts of violence*. The violence may, for example, involve *killings, rapes, torture, beatings or forced disappearances*. These acts might be committed by the local authorities or by other members of the local population. In situations of armed conflict they may be committed by one or more of the forces involved in the conflict.

a. Threats to life

42. In *situations of tensions and disturbances or disasters*, as in all other situations, the right to life is a fundamental right of returnees and IDPs. This right is affirmed in Article 6(1) of the Covenant on Civil and Political Rights: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

43. Because of the non-derogable right to life, the use of force by law enforcement officials is restricted to that which is both *proportional and necessary*. Law enforcement officials are only allowed to take a person’s life when their own lives, or the life of a third person is threatened, and there is no other way to remove that imminent threat.

44. The *Convention on the Prevention and Punishment of the Crime of Genocide* also provides a certain protection for the right to life of returnees and IDPs; insofar as they, as members of a group (national, ethnic, racial or religious), are subjected to killings; serious bodily or mental harm; the intentional imposition of conditions of life calculated to bring about the physical destruction of the group, in whole or in part; measures which are intended to prevent births within the group; or the forced transfer of children from the group to another group.

45. In *situations of armed conflict* the life and personal security of returnees and IDPs are protected by Common Article 3 of the 1949 Geneva Conventions in so far as the returnees and IDPs are not participating in the conflict. Common Article 3 provides that:

Persons taking no active part in the hostilities, including those members of the armed forces that have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any distinction...

46. Common Article 3 goes on to specify a number of acts that are prohibited: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and summary executions.

47. Returnees and IDPs, insofar as they are civilians, are protected by the Geneva Conventions and Additional Protocols. Civilians, including returnees and IDPs, may not be the target of attack. Note, however, that returnees and IDPs might not benefit from this protection if they are present in or near significant military targets.

48. In situations of *international armed conflict* returnees and IDPs who are in regions controlled by an opposing armed force will often fall into the category of *protected persons* to whom Article 32 of the Fourth Geneva Convention is applicable and which prohibits the parties to the conflict:

...from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality applied by civilian or military agents.

49. In situations where returnees and IDPs are not defined as protected persons, they should nonetheless benefit from the *minimum protection* of Article 75 of Protocol I which prohibits violence to the life, health, or physical or mental well-being of persons, including in particular murder. Article 51 of Protocol I addresses this risk: “The civilian population . . . shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.”

50. This prohibition would include, for example, acts or threats by armed groups intended to prevent IDPs from leaving their camps to return home. Article 51 goes on to state that indiscriminate attacks are prohibited, and describes indiscriminate attacks as “those which are not directed at specific military objectives” and “those which employ a method or means of combat which cannot be directed at a specific military objective or . . . which employ a method or means of combat which cannot be limited . . . and are of a nature to strike military objectives and civilians . . . without discrimination”.

b. Forced disappearances

51. Returnees and IDPs can sometimes be at particular *risk from forced disappearances*. The presence of a person who is a returnee or IDP in a specific region may not be registered in any national or local official documents. Returnees and IDPs are often excluded from any established community that would help to ensure their protection

from a forced disappearance. For these reasons, and particularly in a situation where the forced disappearance of a returnee leads to the death of the victim, it can be very difficult to prove that a forced disappearance has occurred. *IDP children, for example, are particularly vulnerable to a forced disappearance imposed in order to recruit them into an armed force.*

52. The Declaration on the Protection of All Persons from Enforced Disappearance³ describes a forced disappearance, in the 3rd paragraph of its preamble, as a situation in which:

...persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials..., or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law.

53. Article 1 of the Disappearance Declaration describes the act of enforced disappearance as “...a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights...”. The Disappearance Declaration is based on accepted customary law and on case law of the Inter-American Court of Human Rights and the Human Rights Committee established under the Covenant on Civil and Political Rights. The Vienna Declaration⁴ and Programme of Action “reaffirms that it is the duty of all States, under any circumstances, to make investigations where there is reason to believe that a forced disappearance has taken place on a territory under their jurisdiction and... to prosecute its perpetrators”.

54. The prohibition of forced disappearance has been inferred by the Human Committee from the protections for the right to life in Article 6 of the Covenant on Civil and Political Rights and the protection against torture and ill-treatment in Article 7 of the Covenant.

55. In situations of *internal or inter-State armed conflict* a prohibition of forced disappearances needs to be inferred from other guarantees that are mentioned in humanitarian law. Specifically, these guarantees are the prohibitions of violence to life and person, outrages upon personal dignity, and the passing of sentences and carrying out of executions without judicial guarantees. Other provisions relating to humane treatment are also useful for this purpose. With regard to internal conflict the relevant provisions are contained in Articles 3, 4, 5 and 6 of Protocol II. For inter-State armed conflicts the relevant provisions are contained in Articles 27 and 32 of the Fourth Geneva Convention, and in Article 75 of Protocol I.

c. Missing and dead persons

56. During the return of large numbers of displaced people — particularly where the return is forced and/or where there is continuing military conflict — *returnees and IDPs may become separated from their families.* In such situations it is often impossible for a

³Adopted by UN General Assembly in resolution 47/133 of 18 December 1992.

⁴Adopted by the 1993 World Conference on Human Rights.

family to begin a search for the missing person and to cope with the trauma of not knowing what has happened.

57. International law places a certain *obligation on authorities to search for missing persons and to inform relatives of their fate*. When returnees and IDPs are killed, the authorities have an obligation to make the bodies available for an adequate autopsy and investigation and eventually to dispose of the remains of the dead in a dignified manner.

58. In situations of tension and disturbance, national domestic laws governing public health can be used to demand the proper disposal of persons who have been killed.

59. In situations of internal armed conflict, Article 8 of Protocol II requires that authorities search for the dead and dispose of their remains.

60. In situations of inter-State armed conflict, the Fourth Geneva Convention requires parties involved in the conflict to facilitate steps to search for the dead and to protect them from ill-treatment. Section III of Part II of Protocol I provides that families should be informed of the fate of their missing relatives.

61. The International Committee of the Red Cross maintains a Central Tracing Agency which assists with the reunification of families during periods of armed conflict and internal troubles.

d. The use of land mines and similar devices

62. Returnees and IDPs are often very vulnerable to the risk of injury or death from land mines. Mines may be used on roads or paths that they have to follow in order to return home. They may also be used in villages and cities, or *in cultivated fields* in order to render these places useless to the population. Land mines are indiscriminate and can remain active for many years, sometimes claiming victims long after the end of a conflict.

63. The principal international law governing the use of *land mines* is contained in the Land Mines Protocol, which is annexed to the United Nations Weapons Convention.⁵ The Land Mines Protocol seeks essentially to protect civilians from the dangers of land mines. The preamble to the Weapons Convention requires that parties to a conflict respect provisions in the Protocol which reinforce customary rules from other relevant humanitarian law instruments, such as the prohibition against *indiscriminate* attacks and attacks on civilians. There have been further efforts to ban land mines which *may soon result in a complete ban* on their manufacture, transfer or use. Even if these efforts are successful, there remain many previously placed mines which kill and injure civilians and military personnel.

e. Other acts of violence and ill-treatment, including torture

64. Returnees and IDPs, in addition to being particularly vulnerable to violations of the rights to life and to forced disappearances may be at risk from other forms of violence.

⁵United Nations Convention on Prohibitions or Restrictions of Use of Certain Conventional Weapons.

65. Regardless of the situation in which returnees and IDPs may find themselves, they should always benefit from the minimum protection afforded by Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

66. This prohibition is generally accepted as forming a part of international customary law and is reproduced in Article 7 of the Covenant on Civil and Political Rights. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶ indicates that an act of torture is a universal crime and establishes rules that define the competence and obligations of States parties in dealing with incidents of torture. *Cruel, inhuman or degrading treatment and punishment* are also prohibited as acts or omissions which cause suffering not reaching the level of severity necessary for torture or which lack the element of intentionality.

67. In situations where returnees and IDPs are arrested and placed in detention, Article 10 of the Covenant on Civil and Political Rights recognizes the right of people that have been deprived of their liberty to “be treated with humanity and respect for the inherent dignity of the human person”.

68. Prohibitions of torture and cruel or inhuman treatment or punishment are non-derogable and apply therefore in *situations of armed conflict*. Humanitarian law provides additional protection through Common Article 3 of the four Geneva Conventions which prohibits: “Violence to life and person, in particular... mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment”.

69. Article 4 of Protocol I, Article 75 of Protocol II, and Articles 27 and 32 of the Fourth Geneva Convention provide similar protection.

3. Personal liberty

70. Refugees and IDPs who return to their country or region of abode may be at risk from arbitrary detention by authorities on the basis of discrimination or some other factor. For reasons similar to those mentioned above (para. 47) in the section on forced disappearances, returnees and IDPs may not be registered in a particular community and are often particularly vulnerable to arbitrary detention. In addition, efforts may be made by national or local authorities, or by groups within the local population, to confine returnees and IDPs to certain regions or even to a specific camp.

71. Article 9(1) of the Covenant on Civil and Political Rights provides that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law”.

72. “Arbitrary arrest or detention” has been interpreted to prohibit arrest and detention which is not in accordance with domestic law or not in accordance with international standards of liberty and security of person. These standards concern, in particular, judicial guarantees defined in Article 9(2) to 9(5) of the Covenant on Civil and Political Rights. They include the right to be informed of the reason for an arrest

⁶Adopted by UN General Assembly in resolution 39/46 of 10 December 1984.

and of the charges; the right to be brought promptly before a judge; the right to a trial within a reasonable period; and the right to a review of the lawfulness of one's detention.

73. Where returnees and IDPs are held in camps, such as “transit camps”, prior to returning to their home community, such detention must be both *necessary* and *reasonable*. Defining what is necessary and reasonable will depend on the particular situation in each country. HROs should be aware that the detention of returnees and IDPs in, for example, transit camps within their own country may infringe upon the rights of individuals. Such detention should be kept to an absolute minimum and should be accompanied only by those restrictions which are strictly necessary under the situation.

74. With regard to humanitarian law, Article 5 of Protocol II provides guidelines for the treatment of persons deprived of their liberty for reasons related to internal armed conflict. With regard to situations of inter-State armed conflict the Fourth Geneva Convention allows for the internment of protected civilians if necessary for the security of the detaining authority. Such internment is subject to particular standards of treatment and to a regular review.

4. Social and economic rights

75. Returnees and IDPs, by virtue of the displacement that they have experienced, are very often dependent on assistance from governments or from international organizations for the provision of minimum subsistence needs, including *food, water, housing and health care*.

76. Without this assistance, it can become impossible for displaced people effectively to return and reintegrate in their communities. In some situations, governments and others may attempt to restrict the access of returnees and IDPs to subsistence needs precisely in order to prevent an intended return. Problems of distribution can lead to serious tensions and even conflict in a region of return. It is essential that all returnees and IDPs have safe access to minimum subsistence needs.

77. Returnees and IDPs will usually need assistance in the form of material aid when they first reach their home region. Returnees and IDPs will need employment, a *minimum standard of living*, access to education, a means of participating in the local community decision-making process, etc. As returnees and IDPs recover their self-reliance, they will achieve an essential element in the process of reintegration into a community.

a. Food, water and housing

78. It should be recalled that the Convention on the Prevention and Punishment of the Crime of Genocide, in its Article II(c), defines genocide to include “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. Hence, in extreme cases, the deprivation of food with such a genocidal intent could qualify as genocide.

79. Article 11(1) of the Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...”. The Committee on Economic, Social and Cultural Rights, interpreting States’ obligations under the Covenant, has declared that States parties have a “minimum core obligation to ensure the satisfaction of each of, at the very least, minimum essential levels of each of the rights”. A State party that is unable to fulfil this obligation must “demonstrate that every effort has been made to use all resources at its disposition in an effort to satisfy as a matter of priority those minimum obligations”.

80. A further interpretation by the Committee, and one that is of particular importance with regard to returnees and IDPs, is the requirement that a State demonstrate that it has made a *maximum effort to use all the resources at its disposal to satisfy these minimum obligations* (see **Chapter XVII: “Monitoring Economic, Social and Cultural Rights”**). This effort includes not only resources within the country but also resources made available by the international community. This provision can be interpreted as an obligation upon States to allow the international community to provide assistance in the form of subsistence needs to returnees and IDPs.

81. The Committee on Economic, Social and Cultural Rights has interpreted the right to housing as a “right to live somewhere in security, peace and dignity.” In assessing the adequate nature of housing one can consider the availability of services (water, electricity), materials and infrastructure (roads, hospitals, etc.), affordability, habitability, accessibility (particularly to the disabled, to children, or to the elderly), location and cultural adequacy.

82. In *situations of armed conflict*, Common Article 3 does not explicitly refer to food, water or adequate housing but provides for *humane* treatment of all persons who are not taking an active part in the conflict. Humanitarian law prohibits starvation of civilian populations as a means of combat. It also prohibits the destruction, removal, or rendering useless of objects which are “indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of food stuffs, crops, livestock, drinking water installations and supplies and irrigation works”. For internal armed conflicts, the essential provisions are contained in Article 14 of Protocol II. For inter-State conflicts, reference should be made to Article 54 of Protocol I.

83. In *internal conflicts*, Article 5(1) of Protocol II provides for the minimum standards of treatment of people detained during armed conflict, including notably the provision of drinking water, food and protection from the weather and conflict. These rights are not, however, repeated in Article 5(3) which provides for the treatment of people whose liberty is restricted in any manner other than by detention. Hence, unless returnees and IDPs are detained, Article 5 may not assure the provision of water, food, etc.

84. In *inter-State conflicts*, Article 55 of the Fourth Geneva Convention requires that the occupying power ensures that food supplies reach the population. The article also prohibits the occupier from requisitioning food without taking into account the needs of the civilian population.

b. Health services

85. Returnees and IDPs are often at risk from sickness and/or injury. Certain groups of returnees and IDPs — women, children, the elderly and the disabled — are particularly vulnerable.

86. Article 12 of the Covenant on Economic, Social and Cultural Rights sets as an objective “the right of everyone to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” The second paragraph of this article requires States to take measures to attain this objective and requires notably “(d) the creation of conditions which assure to all medical service and medical attention in case of sickness.”

87. Under both human rights and humanitarian law, returnees and IDPs should not suffer discrimination regarding their access to medical supplies and facilities. In *situations of internal armed conflict*, Common Article 3 requires the *humane* treatment of all persons not actively participating in the conflict. The same article also requires the parties to a conflict to collect and care for the wounded without conditions. This protection should be made available to returnees and IDPs. Article 7 of Protocol II states that in the provision of medical care no distinction is allowed on any grounds other than medical considerations. No distinction should therefore be made against returnees and IDPs. In situations where it becomes necessary to move members of the civilian population, Article 17(1) of Protocol II requires the taking of “all possible measures... in order that the civilian population may be received under satisfactory conditions of hygiene, health, safety and nutrition”.

88. In *situations of inter-State armed conflict*, Article 55 of the Fourth Geneva Convention requires that the occupying power ensure medical supplies to the population. Article 6 imposes a duty on the occupying power to ensure and maintain medical and hospital facilities and services. In Articles 16, 17, 18, 19, 21 and 22 of the Fourth Geneva Convention, provision is made for the sick and injured, for expectant mothers, for the protection of medical facilities, and for the evacuation of the sick and wounded.

c. Access to property

89. Returnees and IDPs may lose possession of their property during displacement. It is important for the successful reintegration of returnees and IDPs that they are able to *reclaim ownership and possession of belongings, cars, offices and land*. The restitution of houses occupied by other individuals is often a problem faced by displaced people who return home. It is also important that returnees and IDPs be allowed to maintain possession, or to reclaim, any money that they own.

90. Article 1 of the First Protocol of the European Convention on Human Rights provides that every person should have the right to “the peaceful enjoyment of his possessions”. Article 1 prohibits the deprivation of such possessions “except in the public interest and subject to the conditions provided for by law and by the general principles of international law”. Similar provisions exist in Article 14 of the African Charter on Human and People’s Rights, and in Article 21 of the American Convention.

91. In *situations of internal armed conflict*, Article 4 of Protocol II prohibits “pillage”, and thus provides a certain *protection for the personal property of returnees and IDPs* in displaced persons’ camps or in homes. Article 14 of Protocol II prohibits the “attack, destruction, removal, or rendering useless of those objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.

92. In *situations of inter-State armed conflict*, the Hague Regulations Respecting the Laws and Customs of War on Land of 1907 provide a certain *protection to property*. Article 25 prohibits the “attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended”. Articles 28 and 47 prohibit the pillage of a town or place during hostilities or occupation.

93. Article 53 of the Fourth Geneva Convention prohibits any destruction of *real or personal property* by an occupying power. Article 97 provides that sums of money and other items of value, can only be taken away from civilian internees in exchange for a receipt. Objects with a personal or sentimental value cannot be taken away.

d. Employment

94. Article 23 of the Universal Declaration of Human Rights provides that:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any distinction, has the right to equal pay for equal work.

e. Right to education

95. Returnees and IDPs may find themselves excluded from education opportunities when they return home. There may be insufficient places available, the fees may be too expensive, or there may be discrimination against the returnees and IDPs in the attribution of places in educational institutions. Education is extremely important to returnees and IDPs and fulfils a principal role in the process of reintegrating into a community. *Education is particularly important for returnee children* who will often have missed several years of formal and structured schooling.

96. Article 13 of the Covenant on Economic, Social and Cultural Rights recognizes the right to education for everyone — particularly compulsory and free primary education. The UNESCO Convention against Discrimination in Education also prohibits discrimination at all levels of education.

5. Restrictions on movement

97. *Freedom of movement* is an extremely important right for returnees and IDPs. It is also a right that is frequently denied them. For example, returnees and IDPs leaving a country or region in which they have been seeking refuge will often need to travel long distances in order to reach their home region. National or local *authorities may try to force the returnees and IDPs to use a particular route of return*. Sometimes these specified routes may

be *longer or more dangerous* than other alternatives, and the restriction of movement has the effect of preventing or discouraging displaced persons from making the return journey. Returnees and IDPs are sometimes *forced to settle in one particular area, for example, in a region where the soil is not suitable* for farming, where there are few water sources, or where mines have made the *area very dangerous*.

98. Returnees and IDPs have already suffered a violation of their right to freedom of movement when they were forced to flee as refugees or as IDPs. It is therefore all the more important that as displaced people return, this right should be respected. Accordingly, it is essential that returnees and IDPs be guaranteed the right to freedom of movement. Any restrictions imposed on movement by local authorities under Article 12 of the Covenant on Civil and Political Rights should be critically examined and, where possible, avoided.

a. Moving within one's own country

99. The principal contexts in which a returnee's right to *freedom of movement* might be violated are: when moving within his/her own country; when choosing a residence; and as a result of decisions to displace, relocate or transfer groups of returnees and IDPs.

100. The Universal Declaration of Human Rights recognizes, in Article 13(1), the freedom of residence and movement as a basic human right. Article 12(1) of the Covenant on Civil and Political Rights provides that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

101. In *situations of tensions and disturbances* the right to freedom of movement is derogable and subject to various possible limitations. Article 12(3) of the Covenant on Civil and Political Rights provides that the only restrictions permitted are those "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present covenant." The American Convention adds "public interest" to the possible justifications for restrictions of freedom of movement. In all cases any restrictions should be proportional to the necessity.

102. A *situation of internal armed conflict* may provide justification for a restriction of freedom of movement. Article 17 of Protocol II, however, prohibits the forced movement of civilians, except under special circumstances:

(1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

103. In *situations of inter-State armed conflict* Article 49 of the Fourth Geneva Convention provides for the freedom of movement of displaced persons: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of the motive."

104. Article 49 continues,

Nevertheless, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.

105. Article 85(4)(a) of Protocol I characterizes the intentional “transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory in violation of Article 49 of the Fourth Convention” as a grave breach of the protocol.

106. As referred to above, the term “protected persons” can be interpreted to cover returnees and IDPs. In some situations returnees and IDPs, as members of a civilian population, may be forced to leave their residences so as to shield military objectives from attack. This form of forced displacement is prohibited by Article 51(7) of Protocol I.

b. Leaving one’s own country and seeking asylum

107. Sometimes refugees and displaced people who return to their home country or region decide to leave again. The decision to leave may be made, for example, after a change in the security situation, or because there are no longer sufficient opportunities to find employment.

108. Returnees and IDPs, like other members of the population, are entitled to leave their country. Article 12(2) of the Covenant on Civil and Political Rights provides “everyone shall be free to leave any country, including his own.” Article 12(3) provides, however, that the right to leave a country is subject to restrictions imposed by law which “are necessary to protect national security, public order (*ordre public*), public health and morals, or the rights and freedoms of others...”.

109. Returnees and IDPs also have the right to seek asylum. The Vienna Declaration and Programme of Action provides “that everyone, without distinction of any kind, is entitled to seek and to enjoy in other countries asylum from persecution.” Article 14(1) of the Universal Declaration of Human Rights similarly provides that: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

110. Under *humanitarian law*, Article 73 of Protocol I considers the situation of people who flee their country before the beginning of a war, and are accepted into another country as refugees. If, subsequently, the country of refuge is occupied by the armed forces of the country of origin, the refugees, although nationals of the occupying country, must be treated as protected persons.

6. Requirement of identification documents

111. In many places, nationals of a country may be required to present identification documents. These *documents may be necessary, for example, to purchase bus or train tickets, to pass*

through checkpoints, to reclaim one's own place of residence, or to apply for a job. The documents required may include passports, birth certificates, insurance certificates or driver's licences. It is often impossible for displaced people to present all or any of these documents. After months or years of displacement, returnees and IDPs may have lost, or had stolen, many of their belongings. Displaced people may have been forced to flee without their documents. Where births or deaths occurred during the period of displacement, returnees and IDPs may have been unable to obtain the relevant certificates. In *some refugee or IDP camps registration facilities are provided*; however, displaced persons are sometimes unwilling to identify themselves as returnees and IDPs in their community of origin and prefer not to use these documents. Also, identity cards are sometimes only provided to male heads of households, a practice that may place women at risk in crossing borders or checkpoints.

112. The requirement of certain documents which displaced people are unable to obtain may prevent returnees and IDPs from travelling within their country, or from obtaining homes or jobs within a community.

113. *International law provides for the right to a legal personality for each person.* Article 16 of the Covenant on Civil and Political Rights declares “Everyone shall have the right to recognition everywhere as a person before the law”.

114. Refugee law requires that States respect the *personal status, such as marriage*, of a refugee prior to his or her displacement. It also requires that countries of asylum provide administrative services to refugees including the delivery to these persons of “such documents or certifications as would normally be delivered to aliens by or through their national authorities”.

115. In *situations of internal armed conflict*, no specific references are made to the documentation requirements of displaced people, except as provided in the Covenant on Civil and Political Rights. With regard to *situations of inter-State armed conflict*, Article 80 of the Fourth Geneva Convention provides that the legal personality of civilian internees should be protected. Article 97(6) provides that family or identity documents cannot be taken away from their owners without a receipt being given in exchange. In addition, Article 97 provides that at no moment should civilian internees be without identity papers. These provisions of the Fourth Convention could be used to provide relevant protection for returnees and IDPs.

7. Keeping a family together

116. During a return process, many families may become divided, and children, in particular, become lost. In some situations, displaced people returning home may find that local authorities order certain people to specified regions. These orders may lead to the division of families and communities. Some of these problems can be avoided through application of the international law with regard to freedom of movement. There exist, however, a significant number of provisions specific to *maintaining the unity of families*.

117. The Covenant on Civil and Political Rights provides in Article 23(1) that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”. There are similar provisions in the Universal Declaration of Human Rights; the Covenant on Economic, Social and Cultural Rights; the African

Charter; and the American Convention. The Convention on the Rights of the Child in particular makes detailed provisions on the importance of the family for children.

118. In *situations of internal armed conflict*, Article 4(3)(b) of Protocol II provides that all appropriate steps shall be taken to facilitate the reunion of families temporarily separated.

119. With regard to *inter-State armed conflict*, Article 74 of Protocol I requires each party to the conflict to “facilitate in every possible way the reunion of families dispersed as a result of armed conflicts.” This article applies to the whole population, including the nationals of the party to the conflict. Article 49 of the Fourth Geneva Convention requires that, where an Occupying Power evacuates members of the population, the Occupying Power should ensure to the greatest possible extent that members of the same family are not separated.

8. Language and culture

120. Returnees and IDPs, living in a region other than their own, or following their return home, may be *prevented from using their own language and pressured to use the language of the local or national authorities* and/or of a larger linguistic group in the region.

121. *Linguistic rights* are explicitly protected by a number of treaties. The right to speak one’s own language is also inferred from a number of other rights, such as the right to freedom of expression.

122. Article 27 of the Covenant on Civil and Political Rights provides, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied their right, in community with the other members of their group, to... use their own language.”

123. In *situations of internal armed conflict*, Common Article 3 requires the humane treatment of all persons who do not or who no longer participate in hostilities. Such treatment must be accorded “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”. Language is arguably covered by “similar criteria”. An analogous provision is found in Article 75 of Protocol I with regard to *situations of inter-State armed conflict*.

9. Freedom of assembly

124. In many places, returnees and IDPs will not be well represented in local or national associations and administrative structures. They may *need to form associations and to represent themselves*. In some countries, restrictions are placed on the right of certain groups to gather.

125. Article 21 of the Covenant on Civil and Political Rights provides, “the right of peaceful assembly shall be recognized.” In addition, Article 22 states, “everyone shall have the right to freedom of association with others...”. These rights are, however, subject to restrictions provided by law and which are necessary in the interests of national security, public safety, or the rights of others.

10. Participation in governmental and public affairs

126. *Returnees and IDPs may find themselves excluded from any opportunity to participate in governmental or public affairs.* Such exclusion may, in turn, lead to other violations of their human rights.

127. Article 25 of the Covenant on Civil and Political Rights provides that every citizen shall have the right and the opportunity to participate in the conduct of public affairs and to vote and be elected at genuine periodic elections. *Returning citizens should be assured their rights of political participation.*

128. A 1991 United Nations General Assembly resolution declares “the right of everyone to participate in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and freedoms...”.

129. Restrictions on the right to participate in public affairs are permitted but they must not be unreasonable and they must be proportional (Article 25 of the Covenant on Civil and Political Rights). Although international law assures only citizens the right to vote and be elected, Governments have and should consider extending participatory rights to others residing in the community.

D. Vulnerable groups

130. Returnees and IDPs are often a vulnerable group deserving particular attention from the human rights operation. There are, however, particularly vulnerable categories of people within returnee populations. There may, for example, be particular groups of returnees and IDPs that will be the targets of human rights violations because of their opinions, religious beliefs, ethnic identity, or other reason.

131. Specific attention should be drawn to *women, children, the elderly and disabled persons*. These categories of returnees and IDPs are often at the most risk of violations of their human rights or other suffering during the return process. For example, returnees and IDPs are often obliged to walk for many days in order to return to their home country or region, carrying all of their belongings with them. These journeys may take place under harsh weather conditions, with extreme heat or cold, and with little food or water. These conditions create the most difficulties for children, the elderly and disabled, as well as for the women returnees and IDPs who care for them.

132. This part gives an indication of some of the problems that vulnerable groups of returnees and IDPs may face, and provides brief information on some of the international legal norms that can be used to protect each category. The information provided here is by no means exhaustive. In particular, attention is drawn to the fact that only those rights which correspond to violations frequently suffered by vulnerable group as returnees and IDPs are mentioned. HROs should be aware of the vulnerable categories within the returnee populations in their region. The human rights field operation’s returnee unit should provide clear guidance to staff members as to what assistance they may offer to particularly vulnerable returnees and IDPs. (See **section H below** for more information.)

1. Women

133. Women usually form the largest single category of displaced people. Returnee women are often left to look after their children entirely on their own and will sometimes take on the additional responsibility of caring for unaccompanied children. In spite of this heavy burden *women are often left out of any decision-making process* within the returnee community. The decision to return, for example, may have been made by men, and without consideration for the sometimes different priorities of women and children. During the period of displacement *women may be particularly vulnerable to physical violence, and rape in particular*. The victims of such violence are sometimes stigmatized by their families and other returnees and IDPs and may be unable to return to their community.

134. The problem of *exclusion from decision-making structures*, and other forms of discrimination, often continues following the return. In many countries, for example, women heads of households may be prevented by local tradition, or even national law, from owning land or property. Women may be excluded from control over the distribution of food or other aid that is essential to their reintegration into the community.

135. There is increasing awareness within international humanitarian organizations of returnee women's needs and of the importance of *involving returnee women in the development and local management of aid programmes*.

136. *Discrimination* based on gender is the cause of many human rights violations that are suffered by women returnees and IDPs. The UN Charter and human rights treaties forbid sexual discrimination and provide for the right to gender equality, for example, in Article 2 of the Universal Declaration of Human Rights and Articles 2(1), 3 and 26 of the Covenant on Civil and Political Rights.

137. Returnee women may be the victims of “*gender specific violence*” such as rape. These violent acts are committed sometimes by members of armed groups in the territory through which returnees and IDPs must travel to reach their home region. In some cases the violent acts may be committed by men within the returnee population. While many women are vulnerable to gender specific violence, however, returnee women — who are often separated from their families and other members of the community — are particularly vulnerable.

138. The human rights violations inherent in gender specific violence are prohibited by many principles of international law on other acts of violence and ill-treatment, including torture. Specifically, the United Nations Declaration on the Elimination of Violence Against Women affirms that States have an *obligation to prevent and redress such violence*. States should understand their obligations under these international instruments as imposing an affirmative duty to respect and ensure protection from violence as well as to prevent and punish acts committed by private individuals.

139. Returnee women may be *coerced into prostitution* in exchange, for example, for food, safety, or the right to enter or leave a country or region. The victims of these violations may suffer physical and/or mental pain and, in addition, may risk catching the HIV/AIDS virus. In situations of internal armed conflict, Article 4(2)(e) of Protocol II prohibits “rape, enforced prostitution and any form of indecent assault”.

Similar provisions exist in Article 76(1) of Protocol I with regard to situations of inter-State armed conflict.

140. In many situations returnee women do not have equal access, with men, to *personal identification documents* and to *registration procedures*. The absence of personal documentation may make it impossible, for example, for women to travel or have access to food or property without the agreement of a husband or other male relative. The UNHCR in particular concentrates on ensuring that women are able to acquire an independent legal status.

141. Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women guarantees women equal rights with men in *employment*. These equal rights include the same employment opportunities, equal remuneration, and equal treatment in respect of work of equal value.

142. Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women provides that women are equal with men before the law, and that they, in particular, shall be accorded “equal rights to conclude contracts and to administer property...”. Article 16(1)(h) of the Convention emphasizes the equal rights of husband and wife in owning, acquiring, managing, administering, enjoying and disposing of *property*. Returnee and IDP women often face problems with regard to the inheritance of property. During displacement, especially in an environment of armed conflict, many people may die. Where a woman loses her husband, she may later, upon her return home, be unable to inherit the family property which was registered in his name.

2. Children⁷

143. Within returnee populations there are often large numbers of *unaccompanied minors*. These children may have become separated from their parents when they first left their homes, or during the return. In many cases their parents may have been killed. During the return unaccompanied minors often have very limited access to food aid. *Exhaustion* and *malnutrition*, combined with their young age, can make children (unaccompanied or otherwise) particularly vulnerable to *illnesses* such as cholera and malaria. In many countries young boys are the victims of *conscription* by armed groups and obliged to take part in hostilities; unaccompanied children are particularly vulnerable to this violation of their rights.

144. Those children who succeed in returning to their home regions may have no homes to locate; they have often missed several years of education, drastically reducing their employment opportunities for the future.

145. Returnee children may be *confined* to camps, or other places, by local authorities. Article 37(c) of the Convention on the Rights of the Child provides that: “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”.

⁷For further information on the rights specific to children, please refer to **Chapter XII: “Children’s Rights”**.

146. Children are guaranteed a particular right to *family unity* which is especially relevant to returnee children. Article 7 of the Convention on the Rights of the Child provides that a child, as far as possible, has the right to know and be cared for by his or her parents. Article 5 provides that the States parties to the Convention are required to respect

the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

147. Article 9 of the Convention refers to situations where a *child is separated from his or her parents*. The article provides that

where such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death of one or both of the parents, or of the child, the State party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well being of the child.

148. The Convention refers to conditions of *family reunification*. Article 10 provides that children and parents have the right to leave any country, including their own, and to enter their own country for purposes of maintaining contact with each other. With regard to refugee children (or children seeking refugee status), Article 22 stipulates that States parties

shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

149. Article 27 of the Convention on the Rights of the Child provides that every child has the right “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. States parties “in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”. (See also **Chapter XII: “Children’s Rights”**.)

3. The elderly and disabled

150. In many societies the elderly and disabled receive care from their families. In situations where populations are displaced, however, *families become easily separated; the elderly and disabled may find themselves left on their own*. As with unaccompanied children, this category of returnees and IDPs often has limited access to food and other aid. The travelling involved in the return process may be very exhausting for them. *Physically*

disabled people, in particular, may be unable to walk long distances, if any distance at all. The elderly are especially vulnerable to illness, and disabled people may be particularly at risk from discrimination and/or degrading treatment based on their disability.

151. HROs should be aware of the vulnerability of the elderly because of their old age and isolation from the normal protection mechanisms within the community. The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities⁸ provide that persons with disabilities are entitled to enjoy to the maximum extent feasible the same rights and freedoms as those who are not affected by disabilities. The Standard Rules provide that “the term ‘disability’ summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature”.

152. Article 2 of the Covenant on Economic, Social and Cultural Rights prohibits disability-based discrimination. The Committee on Economic, Social and Cultural Rights has defined such discrimination as including “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.⁹

E. Human rights field operation: preparing for the return

153. The principal objective of returnees and IDPs is to end their situation of displacement and to return to a normal life. As far as possible, most people will wish to return to their home regions, to recover their land, homes and other property. Aside from the general monitoring and protection of the rights of returnees and IDPs during displacement — referred to above — UN human rights field officers can also play an important role in preparing for the return of these displaced persons. Elements of such “preparation” involve working within the human rights operation, and with key partners to ensure that there is a thorough understanding of the human rights situation confronting returning displaced persons. Other aspects of the “preparation” may involve working to address some of the problems that returnees and IDPs may face during the return process. Such activities might involve, for example, helping the authorities to develop a system of property restitution and compensation in conformity with national and international law, or training local police to mediate in disputes between returnees/IDPs and others.

154. There are thus any number of activities in which a human rights operation may engage in preparation for a return. Several of these are addressed in other chapters of this Manual — such as protecting the human rights of detained persons, the

⁸Adopted by G. A. res. 48/96 of 20 December 1993.

⁹Committee on Economic, Social and Cultural Rights, General Comment No. 5, UN Doc. E/1995/22-E/C.12/1994/20, at 99 (1994).

administration of justice, etc — while others are addressed in separate UN human rights training texts covering, for example, human rights promotion, human rights and law enforcement, and human rights for lawyers and judges.

155. Attention is drawn here to a limited list of activities which should, themselves, help a human rights operation to better develop its strategy and approach to providing more substantive assistance to returnees and IDPs. The human rights field operation can prepare for the return of refugees or IDPs in four ways: (1) *information gathering*, (2) work in the context of *special agreements*, (3) *consultation*, and (4) *training/information activities*.

1. Information gathering

156. The first preparatory stage is *understanding the situation*. Information should be gathered on the returnees and IDPs, on the region where they will return, and on the overall return situation. This information should be used to build a profile of the return situation.

a. Information on the returnees and IDPs

157. Area offices and the field operation's central office returnee unit — where it exists — should collect detailed information on the returnees and IDPs who are expected to arrive. *Who* are they? Are the displaced people identified with one or more groups (political, ethnic, religious, etc.)? Do they form one professional or social group (e.g., farmers)? Are there any vulnerable groups within the returnee population? Are there *tensions* between the displaced group and any other group, for example, in the home region? What is the history of the relationship between the groups? *When* did the returnees and IDPs leave their homes and why? In which countries or places did they seek refuge? What were the *conditions of life* in the place of refuge? What pressures have those conditions placed upon the returnees and IDPs? In particular, to what extent is the return voluntary? *When* is the return expected to take place? Over what period of time? *How many* people are expected and to *what areas* will they return?

158. This information should be gathered either through contact with returnees and IDPs that have already arrived, or through contact with displaced people in refugee or IDP camps (see **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**). They should be asked for their opinions on the return. What are their hopes for the return? What are their fears? Attention should be drawn to *issues such as personal security, relations with the local authorities, housing and employment*. It is essential that any such survey be conducted among women returnees and IDPs as well as men. Women may have very different priorities and, as a vulnerable group, their rights may be at greater risk.

b. Information on the region of return

159. Area offices in the region where the returnees and IDPs are going should inquire as to the housing and employment situation that is likely to face returnees and IDPs. HROs can make *contact with members of the local population* in order to discover how they feel about the arrival of the returnees and IDPs. What do they hope and fear from

the return? How will those people who are living in the community receive the returnees and IDPs? Are there groups who will oppose the return or who may seek to violate the human rights of the returnees and IDPs? What are the principal problems that could arise if the displaced people were to return now? What would be the conditions, from a human rights perspective, with which they would be met? For example, would there be a shortage of housing, which in turn may lead to disputes over home ownership and subsequent human rights abuses? Would there be *arrests of the returnees and IDPs for their alleged conduct prior to departure*? By predicting these sorts of problems HROs can do much to prepare for them, for example, by raising such issues with local authorities.

c. **Building a profile**

160. With the above information the human rights field operation can *build a profile* of the returnees and IDPs and the situation of return. The profile will help to facilitate planning and to emphasize potential problems so that they can be addressed as soon as possible. Profiles should be updated regularly and, where necessary, can be specific to particular regions of return covered by the operation.

2. Working within special agreements

161. The field operation should ensure that it is informed of the content of any special agreements that may have been signed by the national or local authorities with regard to the returnees and IDPs. Such *agreements can help to reinforce the protection of returnee rights by providing specific guarantees on the part of the national or local authorities* of the way in which they will treat returnees and IDPs. The UNHCR in particular maintains the practice of signing “Branch Office Agreements” between the UNHCR and the national authorities. On occasion, the UNHCR will also participate in “Tri-partite Agreements” with the host country and the country of origin. It may be important for the human rights field operation to ensure that its work respects and enters within the context of such agreements.

3. Consultation with the Government, UNHCR and others

162. It is extremely important that, at both the *national and local levels*, the human rights field operation discuss potential problems with the Government, the UNHCR, other international organizations, non-governmental organizations and other groups that will be involved in an eventual return of displaced people. Indeed, the *UN human rights field operation should consider developing an agreement between the various interested institutions in which responsibilities are shared*. Several such agreements on various aspects of the return problem were developed by the UN Human Rights Field Operation in Rwanda and the UNHCR. The basic agreement is found in **Appendix 1** and might serve as a model in this regard.

163. Area offices should *inform* the *local authorities* and *other organizations* of the field operation's mandate with regard to displaced people. They should also *consult* the local authorities and other groups as to plans for the return. It is essential that the authorities be involved in making decisions about the return of the displaced people.

164. Area offices may also wish to raise potential problems — such as housing, the availability of gainful employment, and the impartiality of the judicial system — with the relevant authorities. It is far better to raise sensitive issues before they need to be handled. Such consultations should involve an *exchange of information*. The focus of the human rights field operation's efforts should be on *assisting* the authorities in their task as well as monitoring the way in which they accomplish it.

4. Other preparation activities for the return

165. As part of the preparation for the arrival of returnees and IDPs, the human rights field operation may carry out a number of different activities according to the mandate of the particular operation.

166. These activities can address specific issues, such as human rights training for local security forces, or they can address broader issues such as tensions between the returnee group and the local population. For example, area officers may notice that local police tend to beat crowds of returnees and IDPs during food distribution, or there may be hostility on the part of the local population towards the returnees and IDPs as they arrive home. Human rights training and information activities can be organized to address these problems. Police officers might be trained in human rights principles and techniques for controlling civilian crowds. *Meetings and discussions can be held with the local population to alert them to the needs of the returnees and IDPs; other efforts can be used to inform the local population of the rights of groups* (such as ethnic, religious or political minorities).

167. It is important that members of the target groups be involved closely in the development of any training or other information programme.

F. Human rights field operation: activities during the return of displaced persons

168. This section looks at the possible role of a UN human rights field operation during the actual return voyage of returnees and IDPs to their home regions and communities. A process of “return” can take place in many different ways and under varying conditions, both of which will be determinant in defining the respect of human rights. The role of HROs will have to be defined in accordance with these ways and conditions and, as mentioned in the introduction to this chapter, in accordance with the mandate and resources of the operation and the role of other organizations.

1. The right to return, “non-refoulement” and voluntary return

169. Refugees have the legal right to return to their country when they wish to do so. They also benefit from legal protection preventing States from forcing them to return. Aside from the respect or violation of these legal provisions, whether or not a return is voluntary can have an important impact on the way the returnees and IDPs are received. *People who are forced to go back to their countries may have to do so when the security situation is unstable, or when there is insufficient food for them in their home region.* These factors increase the risk of loss of life, of injury, or of sickness among the returnees and IDPs. The nature of the particular risks faced by returnees and IDPs will inevitably affect the focus of efforts made by the human rights operation to provide assistance.

a. The “right to return” in international human rights law

170. Article 13(2) of the Universal Declaration of Human Rights, Article 12(4) of the International Covenant on Civil and Political Rights, the Fourth Protocol to the European Convention on Human Rights, Article 22(5) of the American Convention on Human Rights, and Article 12(2) of the African Charter on Human and Peoples’ Rights recognize the *right of an individual to return to her/his home country*. For example, Article 12(4) of the International Covenant on Civil and Political Rights provides that, “No one shall be arbitrarily deprived of the right to enter his own country.”

171. Similarly, Article 13(1) of the Universal Declaration of Human Rights, Article 12(1) of the International Covenant on Civil and Political Rights, the Fourth Protocol to the European Convention on Human Rights (Article 2(1)), Article 22(1) of the American Convention on Human Rights, and Article 12(1) of the African Charter on Human and Peoples’ Rights *guarantee freedom of movement within a state*, which would include the right of internally displaced persons to return to their home. For example, Article 12(1) of the International Covenant on Civil and Political Rights provides that, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

b. “Non-refoulement” and “voluntary return”

172. A fundamental precept of international refugee law is that of *non-refoulement*. Article 33 (1) of the 1951 Convention Relating to the Status of Refugees¹⁰ provides that:

No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

¹⁰See also the 1966 Protocol relating to the Status of Refugees which extends the validity of the Convention.

173. This provision establishes the principle of *voluntary repatriation*. As a direct consequence of this provision, refugees will normally only return to their countries when they wish to do so. In order for a refugee to make an entirely voluntary decision about return, s/he must be provided with accurate and up-to-date information on the situation in their country and home region. This information allows the refugees to make an *informed decision*. Other factors, such as assistance with transport and resettling, are also important in the decision-making process and the UNHCR, in particular, will often facilitate voluntary repatriation by offering various forms of assistance.

174. The Convention and Protocol relating to the Status of Refugees do not apply to IDPs. The right to freedom of movement, however, applies to every person within his or her own country and means that IDPs should have the same choice voluntarily to return home (see paras. 20-21 and Article 12 of the Covenant on Civil and Political Rights).

175. In most situations displaced persons and refugees who have accurate information are they themselves the persons best placed to decide whether it would be safe and appropriate to return home. Knowing whether a return is voluntary will provide HROs with important information on the threats that may confront returnees and IDPs.

2. Types of return

176. In spite of the international legal guarantees of voluntary return and freedom of movement within a country, the principle of voluntary repatriation is not always fully respected. On some occasions, despite the efforts of the UNHCR, countries of asylum may violate the norm of “*non-refoulement*”, compelling refugees on their territory to return home. Sometimes groups of refugees may return home because their *place of refuge becomes more dangerous than the risks they face at home*.

177. There are a number of different types of return, often related to whether or not a return is voluntary. The extent to which the return is voluntary will usually affect the manner in which the return takes place and, consequently, the activities of a human rights field operation.

178. A *voluntary return* process should be characterized by the *planned* and relatively *organized* nature of the return. There is usually time to prepare adequate transport and other necessary facilities. The numbers and often the names of returnees and IDPs are well documented, making it easier to keep track of individuals and families.

179. Where the principle of voluntary return is not respected, displaced people may be *forced to return*. Also, there may be situations in which refugees or displaced persons participate in a *spontaneous return*. Such returns are often very *disorderly*; they may involve the movement of very *large numbers* of people. There may be insufficient transport, food supplies and medical care available. Massive forced returns, in particular, can lead to enormous *suffering* and even death for many returnees and IDPs, and especially for any vulnerable groups within the returnee community (see **section D: “Vulnerable groups”**). The type of return that takes place will influence the role the human rights operation will fulfil during the return. For example, there are less likely to be human rights abuses during an orderly and voluntary return.

3. Situation in the home country/region within which the return occurs

180. The political situation in the country or region to which people return will also have a very marked effect on the conditions and success of the return. People who return to a region in which an *armed conflict* is being waged are far less likely to be able to settle durably, and in safety and dignity, than people who return to a peaceful situation and as part of a political settlement, for example.

4. Activities during the return

181. During the return area offices will generally need to monitor the human rights conditions accompanying the movement of the displaced persons.

182. Monitoring activities should include:

a. Presence at the border and other control points

- ✓ To make sure that all of the displaced people are allowed through and that any searches of personal belongings are conducted with respect.
- ✓ Returnees and IDPs should be permitted to bring their personal belongings back home without the imposition of customs or other limitations. No fees should be charged to returnees and IDPs for the privilege of crossing borders or other checkpoints.
- ✓ Area offices should make sure that border authorities do not impose unreasonable or discriminatory health strictures on returnees and IDPs, their belongings or vehicles.
- ✓ Patrols along roads used by returnees and IDPs who are on foot to ensure that there is no threat to the returnees and IDPs from the local population or the security forces.
- ✓ Presence at any transit centres on the route.
- ✓ Patrols in the towns and villages of origin to monitor how the new arrivals are received.

b. Maintaining constant contacts with authorities

- ✓ HROs should, by their presence, by contacts with authorities, and by other means, seek to discourage such problems as harassment, physical or verbal threats, bodily harm to the returnees and IDPs, or discriminatory arrests.
- ✓ They should also monitor problems of dehydration, cold, lack of food, exhaustion, illness, etc., and alert relevant aid agencies and services to help address these problems.

c. Coordinating with the potential human rights work of partner organizations

- ✓ An essential element of monitoring the return of displaced people will be coordinating the work of the human rights field operation with that of other international organizations participating in the return process.

- ✓ In addition, where there are very large numbers of people returning it may be necessary to redeploy HROs within the operation or to recruit additional officers. These issues are addressed below in **section H: “Human rights field operation: structure of work with returnees and IDPs”**.

G. Human rights field operation: activities after the return

183. Following the return of returnees and IDPs to their communities, HROs can continue to play an important role by *monitoring* a returnee’s *reintegration*. Returnees and IDPs should in many situations be considered as a *vulnerable group* that should be monitored more closely than other categories of the population. In addition, returnees and IDPs are often outside the scope of the normal *protection mechanisms* that help to protect a person’s rights in the community.

184. An HRO’s objective in monitoring returnees and IDPs following their arrival in their region of abode is to ensure that the returnee’s and IDPs human rights are not violated during this *period of transition* from returnee/IDP to member of the community. Any problems that are identified through the monitoring can be communicated to the local authorities, to other organizations, or can be otherwise addressed by the human rights area office. Once a returnee or IDP has “reintegrated” in a community, he/she is no longer considered to be a part of a high risk group and so is no longer in need of particular monitoring.

185. Monitoring reintegration is, however, difficult to define. What exactly does *reintegration* mean in this context? How can one determine when a returnee or IDP has “reintegrated” in a community? How does the HRO *monitor* reintegration? When does a returnee/IDP stop being a “returnee or IDP”?

1. Monitoring the mechanisms that contribute to the returnee/IDP’s protection

186. Within a community there are a number of “*protection mechanisms*”. Protection mechanisms are elements within a person’s environment which make him/her *feel safe*, and which contribute to his/her protection. Returnees and IDPs very often do not have access to the protection mechanisms that exist in a community. One important element of monitoring returnees and IDPs is to look at the protection mechanisms that exist and the extent to which returnees and IDPs benefit from them. In a way, this information is another form of indicator of returnee/IDP reintegration. Some examples of protection mechanisms are provided below:

- ✓ **The family** is often the most immediate protection mechanism. People can usually rely on the members of their family for assistance. Many returnees and IDPs do not have their family with them. Many returnee/IDP women are either widowed or have returned alone with their children.

- ✓ **The community** can include the immediate neighbourhood or a whole town. People usually depend upon the support of their immediate community for protection. Returnees and IDPs sometimes find themselves the object of suspicion within the community which can even act as a threat rather than a protection mechanism. HROs should always try to develop a sense for the general situation within a community. (See **Chapter VII: “Information Gathering”**.)
- ✓ **Work and participation in economic activities** can provide money and serve as a protection mechanism. People who earn money within the community can maintain a certain status and standard of living. They are less dependent on others. Returnees and IDPs may be obliged to spend a period of time without any form of employment or income.
- ✓ **The administrative structure**, including local officials, can offer a certain amount of protection to returnees and IDPs. They can assist in the recovery of homes and land; they mediate in any disputes within the community. These same officials can also, should they wish, create problems for returnees and IDPs and make their lives difficult. The disposition of these local officials towards returnees and IDPs is thus very important. HROs should, through their efforts to become familiar with the community, know how the local administration will behave towards returnees and IDPs.
- ✓ **The judicial system**, if it is functioning, can serve as a formal protection mechanism. If the judicial system worked effectively in every community, there would probably be no need to monitor returnees and IDPs. Unfortunately, the reality is that the judicial system often fails to protect the rights of many under its jurisdiction. Also, even if it is generally functioning, the judicial system may be slow or unresponsive to certain kinds of claims (*e.g.*, minor claims). Hence, monitoring may still be useful.

187. Not only should HROs monitor the effectiveness of the various protection mechanisms, but they should also be attentive to ways of improving the functioning of these mechanisms through training of officials, assistance to the judicial system, etc.

2. Monitoring reintegration

188. “Reintegration” is not an easy notion to quantify. To make the task easier HROs may find it useful to identify certain *“indicators” of reintegration*:

- ✓ **House:** Has the returnee or IDP recovered his/her house? Property recovery is often a major problem and can sometimes be linked to violations of human rights.
- ✓ **Land:** Has the returnee or IDP recovered land? Is the returnee/IDP farming the land? Farmed land represents food and an income, both of which are essential to a returning farmer’s reintegration in the community.
- ✓ **Work:** In the absence of land does the returnee/IDP have paid or otherwise compensated work?
- ✓ **Arrest/detention:** Has the returnee/IDP been arrested?
- ✓ **School:** Are the returnee’s children able to attend school?
- ✓ **Meetings/associations:** Does the returnee/IDP participate in local meetings? Is he/she a member of any local associations?

- ✓ **Responsibility:** Does the returnee/IDP occupy any position of responsibility in the community?
- ✓ **Discrimination:** Does the returnee/IDP feel that he/she is the subject of discrimination by members of the community? How has the local population reacted to the returnees and IDPs?
- ✓ **Material assistance:** Does the returnee/IDP receive any material assistance because of his/her status as a returnee? This last point can be both positive and negative. Returnees and IDPs that receive material assistance may then be in a better position to re-establish themselves in the community. The fact of receiving such assistance, however, indicates that they are still distinguished from the community. In addition, members of the community may be angry or jealous of the material assistance and may then reject the returnee.
- ✓ **Sense of security:** Does the returnee/IDP feel safe? If not, why?

3. Effective monitoring involves regular contacts with sources in the community

189. In the same way that HROs developed contacts at the beginning of the returnee/IDP process, these contacts with the authorities, with journalists, teachers, etc. should be maintained. They can provide useful information on the reintegration of returnees and IDPs into the community.

4. Taking action

190. Depending on the mandate of the field operation, it may be possible for HROs to take action to address problems identified by monitoring. HROs can refer to the information on the human rights of returnees and IDPs provided in this chapter, and may bring problems to the attention of local authorities.

191. For example, monitoring may reveal that a group of returnees and IDPs have been refused access to their houses and land. HROs can make contact with the relevant authorities and explain both the importance and the right of returnees and IDPs to recover their own property. Similarly, in situations where returnees and IDPs are the victims of arbitrary arrests, HROs may be able to visit them in detention and subsequently negotiate their release. (See **Chapter IX: “Visits to Persons in Detention”**.)

192. HROs may be able to mediate between the returnees and IDPs and the local authorities to address particular problems. It is essential, however, that HROs remain neutral as to potentially conflicting claims or rights. It will be important for the operation to develop clear policy guidelines on the principal problems likely to be encountered during monitoring. With reference to the above examples, HROs should know exactly what type of mediating role they may fulfil, if any, and the basis of this role should be established with the national and local authorities. (See **Chapter XXI: “Conciliation and Mediation in the Field”**.)

5. When does a returnee/IDP stop being the subject of particular monitoring?

193. As has been shown earlier in this section, HROs monitor new returnees and IDPs because they are seen as a “high risk” category. Monitoring of returnees and IDPs cannot continue indefinitely. When are returnees and IDPs no longer a “high risk category”? When does a returnee/IDP stop being a “returnee” and become a member of the local population? This question is important because it indicates that there is a point at which HROs *stop monitoring* each group of returnees and IDPs.

194. Providing a clear and precise response to the question “when does a former returnee/IDP stop being a ‘returnee’” is not easy. Two guidelines can be proposed — that of the *situation* of the returnee, and that of *time*. These indicators should be used together.

a. Situation

195. A returnee/IDP is no longer a “returnee” when he/she forms a part of the community and is not distinguished from that community for any reason related to the person’s former status as a refugee or displaced person. *One indicator can be whether aid organizations still distribute aid to the individual* — although distributions may end simply because a budget has been exhausted. Another indicator is whether the returnee/IDP is the victim of any discrimination based upon his/her former status as a refugee. The most common *areas of discrimination* are identified above, including *home, land, employment*, etc.

b. Time

196. In parallel with the situation of the returnee/IDP, the HRO should also use *time* as a guideline. After a *certain lapse of time, for example six months*, HROs need to focus their attention on new returnees and IDPs. The time after arrival should be fixed, according to the experience of the human rights field operation, to cover the period when rights violations that are motivated by the fact that the victim is a returnee/IDP would be expected to occur. Setting a specific time indicator can be very difficult. In some countries returnees and IDPs can continue to suffer from violations of their human rights two or more years after returning to their homes. Care must be taken in setting any time limits.

H. Human rights field operation: structure of work with returnees and IDPs

197. If protection of returnees and/or IDPs is a significant issue in the country of operation, it is important that adequate attention be given to creating a structure within the human rights operation for dealing with such issues. The structure chosen will

ultimately depend on the returnee/IDP situation in the region and on the mandate of the operation. Some guidelines are provided here.

1. Returnee/IDP unit or focal point

198. The operation may wish to establish a specialized *returnee/IDP unit* as a part of the central office, or to appoint an individual as a returnee/IDP focal point within the office. The unit or focal point can be given responsibility, under the direction of the chief of the operation, for developing the operation's *policy* towards returnee/IDP issues and for developing and implementing a *plan of action*.

199. The unit or focal point would also be responsible for developing *contacts* with other relevant international organizations and with representatives of the national authorities. It should develop "*national profiles*" on the returnee/IDP situation and should *coordinate* the work of the area offices in this regard.

200. It is essential that any returnee/IDP structure within the human rights operation *identify the principal problems* that HROs are likely to encounter during monitoring of the situation, return and reintegration of displaced persons. For example, the information available to the unit may indicate that returnees and IDPs will be particularly at risk from: violations of the right to freedom of movement during the return; violations of the right to reclaim homes and other property; violations of the right to freedom of assembly; and violations of the right to liberty.

201. The returnee/IDP unit should *develop the field operation's policy* with regard to each of these human rights violations. HROs should be informed of how to identify each violation, and of what they may do, under the mandate and any agreement with the national authorities, to address the problem. In this way it will also be possible for HROs to raise such problems with the local and national authorities before they occur, and for problems to be dealt with as effectively as possible.

202. The returnee/IDP unit should give particular attention to the needs of *vulnerable groups*, such as women and children, within the returnee/IDP population. HROs should be informed of what rights vulnerable groups have and how those rights may be protected. In many returnee/IDP situations there will be other international organizations working specifically with these vulnerable groups. The returnee/IDP unit should coordinate the work of the human rights operation towards vulnerable groups with these organizations.

203. As mentioned above, much of the monitoring of returnees and IDPs will involve registering and addressing cases of human rights violations. In this respect the work of the returnee/IDP unit will *overlap* with that of any monitoring or similar unit that exists within the operation. It is important that the work of each unit be clearly defined, and that lines of communication between the units, and between the area offices and each unit, be efficient.

2. Area offices and staff

204. As information arrives on an evolving returnee/IDP situation, it may be useful for the human rights operation to *open area offices* in regions to which displaced people are expected to return (if this step has not already been taken).

205. Within each area office at least one staff member should be appointed as the *returnee/IDP officer*. This person will maintain contact with the central office returnee/IDP unit and will be responsible for contacts with the principal authorities and relevant international organizations in the region as to returnee/IDP issues. The returnee/IDP officer will also be responsible for ensuring that other staff members in the office are informed of policy decisions taken by the returnee/IDP unit.

206. Each area office should produce a “*regional profile*” of the returnee/IDP situation in the region and should write regular *report updates* on the evolution of that situation (perhaps as a part of the office’s periodic reports). These reports on the changing situation should be disseminated throughout the operation, because major changes in one region may have a significant impact on the work of other area offices.

3. Logistical preparations

207. There are a number of logistical and resource issues which require preparation. Depending on the size of the human rights field operation, and on the particular role that it will play with regard to returnees and IDPs, the director of the human rights operation may wish to *increase the numbers of HROs* within the operation to cover the return period. Returnee/IDP monitoring is very labour intensive and the more officers that are present in the field the more effective the monitoring will be.

208. In some situations it may be appropriate to “re-deploy” staff already with the operation to areas where they will be most needed. Any movement of staff members from one area office to another should be planned as far in advance as possible to avoid disrupting ongoing work.

209. Re-deployment and the arrival of new staff members will only be effective if a sufficient number of *vehicles and radios* (where relevant) are provided to them. In some places these items may not be readily available, and their purchase will have to be planned well in advance.

4. Coordinating and collaborating with other organizations

210. Every effort should be made to *coordinate* the work of human rights area offices with other organizations that are also working with returnees and IDPs to ensure that there is no duplication or contradiction. This principle is especially important with regard to monitoring the actual return, a period during which displaced populations may be the most at risk.

211. Where major problems arise in the return process it is very important that the principal international organizations coordinate and collaborate in their response. For example, in the event of a serious violation of human rights committed by local authorities against the returnees and IDPs the international organizations should seek a common position. This consultation process between organizations should take place at the central office level and also at the *area office level*. Guidance on organizations with which area offices should develop contacts may be found in **Chapter VII: “Information Gathering”**.

212. This section provides brief guidelines on what information should be shared and how different responsibilities may be attributed.

a. Sharing information

213. The main information of interest will be objective details concerning the returnee/IDP population — such as the *reasons for return, the voluntary nature of the return, the numbers of people expected, when and where they will arrive, the routes and means by which they will travel, the presence of vulnerable groups (women, children, etc.), and the numbers and types of violations reported*. Some organizations, such as the ICRC, may be unable to provide certain information because of confidentiality rules in their mandate.

214. It may be useful to develop *common reporting forms* that can be used by all of the principal organizations involved in monitoring a large return. This common approach will facilitate the exchange of information. Where radio communications are used, a *common radio channel* should be designated and staff members selected to maintain contact with partner organizations.

b. Choosing who does what

215. There may be an overlap between the respective mandates of the human rights field operation and those of other organizations. It is important that certain tasks be attributed to certain organizations.

216. When choosing the *tasks that each organization will carry out*, it is useful to consider such factors as resources (in terms of staff members, transport and communications facilities), access throughout the relevant region — returnee/IDP monitoring may require crossing international boundaries, going into military restricted areas, entering detention centres, etc. — and expertise (legal, medical, logistical, etc.).

c. Setting up joint structures

217. To facilitate communication it may be useful for the human rights field operation to set up or participate in structures that gather all of the principal international organizations working with returnees and IDPs. This structure could bring together one *representative from each organization* at the national level and, where possible, at the area office level. Meetings should be fixed at regular intervals.

I. Conclusions

218. In conclusion, it is useful to point out that all of the *different stages* at which HROs may work towards the protection of the rights of returnees and IDPs — monitoring and protection during a period of displacement, preparation for the return, monitoring during the return, and monitoring following the return and during a period of reintegration — *will probably take place concurrently*. There may, simultaneously, be people at every one of these stages.

219. In the past the objective of the international community, when working with **refugees** — and by extension **returnees** — was to seek one of *three durable solutions: permanent integration in the country of refuge, permanent resettlement in a third country, or voluntary repatriation*. Where there are very large numbers of refugees, however, the only realistic option is the eventual return of displaced people to their own country and community.

220. The recent emphasis of international efforts on behalf of refugees has thus focused increasingly on re-integration in the country of origin. Positively, this focus has led the international community to concentrate further on the original causes of displacement, and specifically to ensure that respect for human rights within a country of origin is suitable for refugees to return. Moreover, the increasing focus on repatriation and on human rights within countries of origins has drawn attention to the human rights situation of IDPs, often identical to that of refugee from the same country. United Nations human rights operations, in collaboration with the work of humanitarian agencies, have an essential role to play in addressing the human rights situation of returnees and IDPs.

Appendix 1 to Chapter XI

Memorandum of Understanding (MOU) No.5 between HRFOR and UNHCR Rwanda on Returnee Monitoring

Guiding Principles

- 1.0 Human Rights Field Operation in Rwanda (HRFOR) and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Rwanda.
- 1.1 Recalling the Note of Cooperation (the Note) between UNHCR and HRFOR signed in Kigali on September 29, 1995, formalizing already existing field cooperation between the two agencies in Rwanda in accordance with their respective mandates;
- 1.2 Recalling in particular Articles 8 through 18 of the Note providing, *inter alia*, the outlines of returnee monitoring, priorities of the two agencies and scope of cooperation relevant thereto;
- 1.3 Recalling also the MOU on Exchange of Information and the MOU on Human Rights Education Projects between HRFOR and UNHCR signed in Kigali on 2 and 3 May, 1996 respectively, in partial implementation of commitments undertaken in the Note;
- 1.4 Decide, in the spirit of efficiency and optimum use of resources in areas of mutual concern, to further cooperate and coordinate their returnee monitoring activities through a division of tasks and responsibilities at field level.
- 1.5 This MOU does not in any way limit the scope of relevant Articles agreed upon in the Note and the two MOUs referred to above. Nor does it prevent the two agencies from practically, or through additional agreement, go beyond the present MOU and further coordinate their returnee monitoring activities.
- 1.6 In the event of change or modification of mandate of HRFOR, or developments affecting the level of its personnel in Rwanda or the focus of its activities, each agency may request a modification or arrangements agreed in this MOU.

Mandates of each Agency

- 2.0 It is mutually accepted that UNHCR is the leading agency for repatriation of refugees and has a legitimate concern for the consequences of return. The monitoring of returnees is part of its mandate. It is equally recognized that HRFOR had a lead role in the promotion and protection of human rights and in the investigation of the human rights situation in Rwanda.
- 2.1 As both agencies have common concerns in returnees, division of monitoring tasks is undertaken in the interest of avoiding duplication and creating a climate for respect of the work undertaken by the two agencies. Monitoring tasks will be divided and shared on the basis of the mandates of each agency.

- 2.1.1 UNHCR monitors the fulfilment of assurances given by the Rwandese Government as to the safety, treatment in accordance with human rights, and humanitarian standards of Rwandese refugees during their repatriation and upon return to their home areas (“refugee returnee monitoring”).
- 2.1.2 HRFOR monitors the ongoing human rights situation, and through their presence, helps redress existing problems and prevent possible human rights violations from occurring. In defining mutual concerns HRFOR remains particularly focused on vulnerable groups, of which returnees is one among other groups, including genocide survivors, and witnesses to crimes against humanity.

Specific Areas of Returnee Monitoring of Mutual Concern

- 3.0 UNHCR will monitor returnees at entry points, transit centres and way-stations as well as convoys, registrations and issues arising out of registration. HRFOR will also monitor these places upon request from UNHCR, or in the event that there are widespread human rights violations. HRFOR will appoint a Human Rights Officer with the duty to liaise with UNHCR in the implementation of this item.
- 3.1 UNHCR will monitor returnees in their communes in partnership with HRFOR. The monitoring will be conducted according to mutually agreed procedures.
- 3.2 UNHCR and HRFOR have both the right and responsibility to obtain information on the situation of returnees arrested and detained, including through independent visits to cachots and detention centres. However, with the exception of occasional joint or independent visits, UNHCR will rely on HRFOR’s monitoring of cachots and detention centres to be systematically informed about conditions of returnees so held. HRFOR will assume primary responsibility for the collection of information on the total detainee population, including returnees, and sharing it with UNHCR. UNHCR will logistically assist HRFOR for that purpose. These arrangements will be implemented at each prefecture and at the national level.
- 3.3 At the prefectural, UNHCR and HRFOR, coordinated through their respective heads of office and team leaders, will divide the task of monitoring returnees as follows: UNHCR agrees to share returnee registration information with HRFOR, and in regular meetings between the agencies the geographical division of monitoring will be decided. In this way duplication of effort can be avoided and the specific mandates of each agency can be best addressed.
- 3.4 The results of such monitoring will be shared through appropriate means regularly with the other agency, i.e. completed monitoring forms will be made available for review, analysis, reporting and intervention at the field level, if necessary.
- 3.5 A series of workshops will be arranged for UNHCR Protection Officers and HRFOR Field Officers together to discuss monitoring methodologies.
- 3.6 Reintegration of returnees in the community of origin/return is very much influenced by the situation and attitude of the local population, including old caseload and survivors of the genocide, the above arrangements should allow for coordinated monitoring and information-sharing with respect to these groups.

Land and Property Issues

- 4.0 Issues related to land and property occupancy and procedures of reclaiming them by returnee owners are of priority concern to UNHCR and relevant to HRFOR. Monitoring and follow-up of information sharing should pay special attention to trends in each commune regarding the pattern of restitution of land, time frame, implications for those returnees pursuing their claims, availability or absence of alternative solutions, including developments on land allocation for old caseload and survivors of the genocide. UNHCR will continue to help authorities solve the problem of property occupation through the shelter programme and HRFOR will rely on UNHCR to follow-up on individual cases with problems of property. HRFOR will continue to monitor property issues with regard to identifying and investigating human rights violations.

Serious Violations of Human Rights

- 5.0 UNHCR and HRFOR will share, without undue delay, results of monitoring on serious violations of human rights involving returnees.
- 5.1 UNHCR will on a regular basis draw upon the investigative capacity and experience of HRFOR to follow-up on violations of returnee human rights, particularly incidents involving arrest, detention, serious violence, killings, torture and the disappearance of returnees. Mechanisms of coordinated monitoring and information sharing will be discussed in regular meetings of the two agencies at field level.

Intervention on Behalf of Returnees

- 6.0 HRFOR and UNHCR each may decide to make independent representations on behalf of returnees in pursuit of their responsibilities. However, in the interest of better results, and in order to sensitize the authorities to the overlapping mandates of the two agencies, UNHCR and HRFOR agree to make joint representation at various levels as frequently as deemed feasible and appropriate.

Conflict Resolution

Any dispute arising from the interpretation or implementation of this MOU will be resolved by the parties through negotiations in the spirit of United Nations inter-agency coordination and cooperation.

Done at Kigali, 6 December 1996

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.....Chapter XII

CHILDREN'S RIGHTS.....

Key concepts

This chapter of the manual focuses on children's rights and the contribution that can be made by a human rights field operation, and individual human rights officers, to their respect, fulfilment, promotion and protection. Special attention is given here to children because:

- | *of the particular vulnerability of children;*
- | *some children's rights are different from those accorded to adults;*
- | *some children's rights may need to be respected, fulfilled or protected in different ways from more general human rights; and*
- | *in many situations in which human rights officers may operate, such as internally displaced persons camps, children often make up over 50% of the population.*

A. Why do children have a set of human rights specific to them?

1. The general thrust behind national and international action on behalf of children is the moral and legal recognition of their emotional, physical and psychological vulnerability, their need for special care, and recognition of the obligation to respect and ensure respect for their rights, including having their views respected. These concerns reflect the value that society places on childhood for its own sake, not as a training ground for adulthood. Simultaneously we must recognize that events in childhood will affect the individual as an adult, and consequently society as a whole. The international community has recognized the need for standards beyond those defined by the international bill of human rights to address specific classes of injustice and the status of entire groups of persons, and it has acknowledged the need for programmatic tools to address the special needs of vulnerable communities. In the case of children, the Convention on the Rights of the Child(CRC) is the main legal instrument of an increasing body of international law specific to them.

1. Children are the subjects of rights

2. A key concept of the CRC is that children — as individuals — have rights, and these must be enumerated, legally binding, and made specific to the evolving development of the child.

2. Children can be affected differently from adults by the same violations

3. Children benefit from almost all of the same human rights that are accorded to adults. Interruptions to children's development have the potential to affect them far more seriously than adults. An adult who lives through a situation of armed conflict, who is displaced from his home, who is unable to gain steady employment, and who suffers from malnutrition and ill-treatment over a period of 4 years, may be expected to continue his life in a normal manner at the end of the displacement and its causes. A child living through the same situation: may suffer permanently from stunted growth and mental development as a result of malnutrition and ill-treatment, and without access to a school during the displacement may never again be able to recover the lost opportunity for education and thus be deprived of many opportunities in the future. It is clear that the same threats to the same human rights of adults can affect children differently. It follows that children require different types of human rights protection and promotion.

3. The rights of children as individuals are closely linked to the rights of other persons

4. The majority of human rights accorded to adults are assessed on the basis of the rights and obligations of the individual. While recognizing and indeed emphasizing that children as individuals are the subjects of rights, one should note also that children's rights are closely linked to the rights of other persons of significance to them. In broad terms, this happens in two ways:

✓ **The link between children and adults:** Many human rights protections for adults are based around the concept of ensuring that an adult has the opportunity to take decisions that will affect him/her or has the opportunity to represent his/her views. Refugee law, for example, provides that every person has the right to return to his or her country; however, the capacity to exercise that right depends on the refugee having all the relevant information and understanding required to make a good decision. A baby clearly cannot make such decisions and is dependent on older persons. Older children have varying capacities to make decisions according to their individual personalities and according to their age, and are also dependent upon adults for the protection of their rights, albeit to varying extents. Thus, the protection of the human rights of children often gives a major role to an adult — usually a child's parents or other legal guardian. By extension, the effective protection and promotion of a child's rights can often be closely linked to the effective protection and promotion of the rights of those adults upon whom a child

is dependent. For example, when an adult refugee who has responsibility for 3 children is arbitrarily detained, the rights of the 3 children may well be violated as a direct consequence of the violation of the adult's rights.

- ✓ **The rights of parents or other legal guardians:** While children benefit from numerous rights, these are accompanied by the rights of parents, or a child's other legal guardians, which can include a significant role for these persons in deciding what is in the child's best interests. One should be able to respect a child's rights and advance his/her best interests without infringing on the rights of adults. In strict legal terms, the rights of parents and other guardians over children are limited to the best interests of the child.

4. Children's vulnerability

5. According to their age, children may be less able to protect themselves from violations of their rights, or even to take advantage of forms of protection that may be available. In addition, particular situations or circumstances can be more dangerous for children than for adults; indeed, some violations are faced only by children. Paedophilia and the use of children in pornography, for example, are acts specific to children. Female genital mutilation is typically performed on girls whose young age prevents their opinions from being taken into consideration in decisions as to whether or not such procedures should be performed. Children in certain situations may find themselves criminalized, even though they have committed no crime. This is sometimes the case, for example, for children living on city streets or in railway stations.

6. There are a number of factors which can be said to greatly increase the vulnerability of most children to additional abuses of their rights. These include poor access to education; poor access to health care; situations of armed conflict in the region in which a child lives; population displacement; family break-up; and severe poverty. In particular, one should note that it is often a combination or sequence of different factors which create the most vulnerability; for example, a combination of poor education and population displacement can be factors which aggravate the spread of HIV/AIDS, which in turn contributes to family break-up (where parents fall ill and die) and severe child poverty.

7. Some threats to children's rights might be more likely to affect girls rather than boys, or vice versa. For example, boys are more likely to be recruited as child soldiers, while girls are more likely to be the victims of sexual exploitation by soldiers or armed opposition groups. Girls are more likely to be the victims of forced early marriages. However, it is important to be cautious when categorizing risks by gender — girls can also be forcibly recruited as soldiers and boys can also be the victims of sexual exploitation, for example.

B. The protection of children under international human rights and humanitarian law

8. As described above, children benefit from a wide range of human rights instruments and provisions. Many of these are the same as the human rights protections available to adults. Others, however, are specific to children. The Convention on the Rights of the Child provides the single, most comprehensive human rights protection instruments for children. Other international legal instruments provide complementary protection, some of which are specific to issues — such as juvenile justice, adoption and exploitation — or to situations — such as the use of children in armed conflicts. International instruments are sometimes supported by the existence of regional instruments; and regional instruments sometimes set higher standards than international treaties.

9. Many of the relevant legal instruments are described in detail in Part Two, Chapter III of this manual, “Applicable International Human Rights and Humanitarian Law: The Framework”, and readers should also extensively draw information from Chapter III when working on children’s rights. The present section focuses only on legal instruments of specific relevance to children and notably on the Convention on the Rights of the Child.

1. The Convention on the Rights of the Child

10. The human rights of children are most concisely and fully articulated in one international human rights treaty: the Convention on the Rights of the Child.

- ✓ The Convention is the most widely ratified human rights instrument in history.¹
- ✓ The Convention is the first legally binding international instrument to incorporate such a broad range of human rights — civil and political rights as well as economic, social and cultural rights.
- ✓ The Convention is the only human rights treaty to incorporate aspects of international humanitarian law.²

11. The entry into force of the UN Convention on the Rights of the Child on 2 September 1990 marked the culmination of nearly 70 years of efforts designed to ensure that the international community give proper recognition to the special needs and vulnerability of children as human beings.

¹As of October 2000 the Convention had been ratified by every State in the world with the exception of two.

²The following comments within Part C.1 on the Convention are excerpts from an introduction prepared for Defence for Children International (DCI) as Part 1 of the DCI Kit of international standards concerning the rights of the child.

a. The Convention in general

12. Rather than a catalogue of children's rights, the Convention in fact constitutes a comprehensive listing of the obligations that States are prepared to recognize towards the child. These obligations may be of a direct nature — providing education facilities and ensuring proper administration of juvenile justice, for example — or indirect, enabling parents, the wider family or guardians to carry out their primary roles and responsibilities as caretakers and protectors.

13. The Convention covers the whole range of human rights. Traditionally, these have been classified as civil and political on the one hand, and economic, social and cultural on the other. Although reference is made to this classification in article 4 of the treaty, the substantive articles themselves are not explicitly divided in this way. Indeed, the whole thrust of the Convention is to emphasize the inter-connected and mutually reinforcing nature of all rights. In this respect, it can be more useful to describe the range of rights covered by the Convention as the three "Ps": provision, protection and participation. Thus, essentially, children have the right to be provided with certain things and services, ranging from a name and nationality to health care and education. They have the right to be protected from certain acts such as torture, exploitation, arbitrary detention and unwarranted removal from parental care. They also have the right to do things and to have their say, in other words to participate both in decisions affecting their lives and in society as a whole.

14. In bringing together all these rights in a single cohesive text, the Convention sets out to do three basic things:

1. To reaffirm, with regard to children, rights already afforded to human beings in general through other treaties. Some of these rights, such as protection from torture, are non-controversial in terms of their applicability to children. Others, such as freedom of expression, freedom of assembly, freedom of religion and the right to social security, gave rise to heated debate during the drafting process as to whether or not, and under what conditions, children could and should be the explicit beneficiaries. Consequently, reaffirmation was by no means a superfluous exercise, but a very necessary means of underlining the fact that children are human beings too.
2. To upgrade certain basic human rights in order to take account of the special needs and vulnerability of children. An obvious example here is that of acceptable conditions of employment, where standards must be tighter for children and young people than for adults. Another is the conditions under which children may be deprived of their liberty.
3. To establish standards in areas that are pertinent only, or more specifically, to children. Safeguarding the child's interests in adoption proceedings, access to primary education, prevention of and protection from intra-familial abuse and neglect, as well as the recovery of maintenance payments, are among the child-specific issues addressed by the Convention.

b. The Convention's provisions

15. The Committee on the Rights of the Child has identified the following articles as “*general principles*” that are basic to implementation of all rights contained in the Convention:

- ✓ Article 2 on non-discrimination;
- ✓ Article 3 on the best interests of the child;
- ✓ Article 6 on the right to life, survival and development;
- ✓ Article 12 on respect for the views of the child.

16. The Convention contains *three major substantive innovations*:

- ✓ Firstly, it introduces “participation” rights for children, which were notably absent from previous declarations. Linked with this is the explicit recognition of the need to ensure that children themselves are informed about their rights.
- ✓ Secondly, the Convention takes up questions never previously dealt with in an international instrument: the right to rehabilitation of children who have suffered various forms of cruelty and exploitation, for example, and the obligation of governments to take measures to abolish traditional practices harmful to children’s health.
- ✓ Thirdly, it includes principles and standards that have so far figured only in non-binding texts, notably those relating to adoption and juvenile justice.

17. The Convention also introduces *two significant conceptual elements* with important substantive ramifications:

- ✓ The “best interests of the child” (article 3) becomes the compulsory criterion “for all actions concerning children” — necessarily in conjunction with all pertinent rights set out elsewhere in the Convention.
- ✓ The principle that parents (or others responsible for the child) should provide guidance to their child in exercising his or her rights, in accordance with the child’s “evolving capacities” (article 5).

18. A significant number of the CRC’s provisions have *innovative characteristics*:

1. **Preservation of identity (art. 8):** This is a totally new obligation. Here, the Convention underscores the child’s right to a name and a nationality by the careful protection of the child’s identity. The drafters of the Convention included this provision at the suggestion of Argentina in the light of that country’s experience during the Seventies of mass “disappearances” of children whose identity papers had been deliberately falsified and family ties arbitrary severed.
2. **The child’s opinion (art. 12):** The right of the child not only to express an opinion but also to have the opinion taken into account in matters that affect him or her is a highly significant recognition of the need to give children a greater say in their own lives.
3. **Child abuse and neglect (art. 19):** The feature of special interest in this article is the emphasis placed on the prevention of intra-familial abuse and neglect, which has never previously figured in a binding instrument.

4. **Adoption (art. 21):** This article is of special importance because of the emphasis it places on the need for strong safeguards surrounding the adoption process — especially with regard to inter country adoption — and the fact that it brings into this instrument principles that were adopted only three years previously by the United Nations in the framework of a non-binding declaration.
5. **Health (art. 24):** In addition to its explicit references to primary health care, and to education regarding the advantages of breast-feeding as means of promotion access to the highest attainable standard of health, this article stands out because it mentions for the first time in a binding international instrument a State obligation to work towards the abolition of traditional practices, such as female circumcision and preferential treatment of male children, that have harmful consequences on children's health.
6. **Periodic review of placement (art. 26):** The obligation to review periodically all institutional placements designed to ensure the care, protection or treatment of children, in order to determine whether or not they are still appropriate, responds to a recently-voiced concern and, again, has never previously figured in human rights instrument.
7. **Education (art. 28):** The novelty here is that, whilst corporal punishment is not explicitly outlawed, there is reference to the fact that school discipline must be administered “in a manner consistent with a child's human dignity”.
8. **Drug abuse (art. 33):** This is the first time that explicit mention is made of the need to protect children from drug abuse and from being used in the production and distribution process of illicit substances.
9. **Deprivation of liberty (art. 37):** The aspect of special note in this article is the inclusion of the principle that deprivation of liberty must be looked upon as a last resort and, if it is nonetheless ordered, must be limited to the shortest possible period of time.
10. **Social rehabilitation and rehabilitative care (art. 39):** An important addition to the body of children's rights is this article which places an obligation on States to promote adequate treatment for children harmed physically or psychologically as a result of violations of their right to protection, in particular from exploitation and cruelty.
11. **Administration of juvenile justice (art. 40):** Many of the essential principles of the 1985 UN Standard Minimum Rules of Administration of juvenile justice — a non-binding instrument — have been incorporated into this article — the longest and the most detailed of the whole Convention — with the result that international norms in this sphere have been significantly upgraded.
12. **Making the Convention known (art. 42):** Strictly speaking, this article comes under the implementation provisions of the Convention. It is well worth highlighting here, however, because it is the first time that specific and explicit recognition has been given to the need for children themselves to receive information on their rights. This is a further indication of the gradually changing attitude towards children that, overall, this Convention both reflects and helps to fosters.

19. This is not an exhaustive list of the improvements that the Convention brings to children's rights. Many others improvements — including those dealing with minority children or indigenous children, the special needs of handicapped children, protection from all forms of exploitation, freedom of expression and association, to name but a few — could also validly be mentioned.

c. The Committee on the Rights of the Child

20. The CRC creates a *monitoring mechanism* along the same general pattern as earlier international treaties such as the Convention Against Torture. Under the implementation mechanism provisions in the Convention itself, a Committee on the Rights of the Child, composed of ten “independent experts”, is elected for renewable terms by States Parties to the Convention (i.e. those States that have ratified the CRC) and monitors States' compliance with their obligations. The Committee conducts its monitoring work based on reports provided by States every 5 years, as well as other information made available by reliable sources. The number of experts on the Committee is likely to be raised to 18 to cope with a growing workload.

d. Applicability

21. The Convention is legally binding within the jurisdiction of every State in which it has been ratified — although different States have differing methods of introducing international law into their domestic legal systems, which will in turn have an impact on the manner in which the Convention can be used, for example, by domestic courts.

22. The rights provided for in the Convention are applicable to all children within the jurisdiction of a State, irrespective of a child's nationality or other status. Thus, any child who has entered a foreign country (which has ratified the Convention) will be entitled to all of the Convention's rights in the same way as children who are nationals of that country.

2. Optional Protocols to the Convention on the Rights of the Child

23. Two Optional Protocols to the Convention on the Rights of the Child were adopted by the United Nations General Assembly on 25 May 2000:

- ✓ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- ✓ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

24. In order for the Optional Protocols to enter into force, States must ratify each of the Protocols following the same procedure required when ratifying the Convention. In the case of the Optional Protocol on the involvement of children in armed conflict, upon ratification States are also required to make a binding declaration regarding the age at which they will permit voluntary recruitment into national forces.

a. ***Optional Protocol on the involvement of children in armed conflict***

25. In article 38, the Convention on the Rights of the Child urges States Parties to take all feasible measures to ensure that persons who have not attained the age of fifteen take no direct part in hostilities. On 25 May 2000, the General Assembly adopted by consensus the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

26. The Optional Protocol's main provisions include:

- ✓ **Participation in hostilities:** States Parties must take all feasible measures to ensure that members of their armed forces who are under the age of eighteen do not take direct part in hostilities.
- ✓ **Conscription:** States Parties must not conscript (compulsorily recruit) any persons under the age of eighteen.
- ✓ **Non-governmental armed groups:** Rebel or other non-governmental armed groups are prohibited from recruiting under-18 year-olds or using them in hostilities. States Parties are required to criminalize such practices and take other measures to prevent the recruitment and use of children by such groups.
- ✓ **Voluntary recruitment:** States Parties must raise their minimum age for a voluntary recruitment beyond the current minimum of fifteen, and must deposit a binding declaration stating the minimum age they will respect. (In practice, this means the minimum age for voluntary recruitment is sixteen.) States Parties recruiting under-18 year-olds must maintain a series of safeguards, ensuring that such recruitment is genuinely voluntary; is done with the informed consent of the person's parents or legal guardians; that recruits are fully informed of the duties involved in military service; and that proof of age is established.
- ✓ **Implementation:** States Parties must demobilize children recruited or used in violation of the Protocol, and provide appropriate rehabilitation and reintegration assistance.
- ✓ **Ratification:** All States can sign and ratify the Protocol, regardless of whether or not they have ratified the underlying Convention on the Rights of the Child.

27. Relevant UN bodies and NGOs are currently urging States to ratify the Optional Protocol and to endorse 18 as the minimum age at which voluntary recruitment will be permitted. The United Nations has indicated that countries contributing to UN peace-keeping operations should not send civilian police or military observers under age 25, and troops should, ideally, be over 21, but never younger than 18.

b. ***Optional Protocol on the sale of children, child prostitution and child pornography***

28. The Optional Protocol supplements the provisions of the Convention on the Rights of the Child by providing detailed requirements for the criminalization of violations of the rights of children in the context of the sale of children, child prostitution and child pornography.

29. Key provisions include:

- ✓ Definitions for the offences of “sale of children”, “child prostitution” and “child pornography”.
- ✓ Setting standards for the treatment of violations under domestic law, including with regard to offenders.
- ✓ Protection of victims and prevention efforts.
- ✓ Providing a framework for increased international cooperation in these areas, in particular for the prosecution of offenders.

30. The Optional Protocol gives special emphasis to the criminalization of serious violations of children's rights — namely sale of children, illegal adoption, child prostitution and pornography. Similarly, the text stresses the value of international cooperation as a means of combating these transnational activities, and of public awareness, information and education campaigns to enhance the protection of children from these serious violations of their rights.

31. It is important to recall that interpretation of both Optional Protocols to the CRC must be undertaken in light of the Convention as a whole and be guided by the principles of non-discrimination, best interests and child participation.

3. The protection of children under the Geneva Conventions and their Additional Protocols

32. International humanitarian law (IHL) is applicable in all situations of armed conflict. Detailed information on the overall content of IHL is provided in earlier chapters of this Manual, and clearly the general provisions in international humanitarian law on the protection of civilians in armed conflict apply equally to children. In addition, however, the 1949 Geneva Conventions and the two Additional Protocols of 1977 contain some 25 articles which specifically refer to children. Human rights officers are encouraged to draw upon standards of international humanitarian law in their work, including those provisions specific to children. The following is an overview of some of these provisions.

33. The Fourth Geneva Convention, which deals with the protection of civilians in armed conflict, contains several provisions for the protection of children. For example:

- ✓ Article 14 indicates that safety zones may be used to provide protection to children under fifteen, in particular.
- ✓ Children are also mentioned in Article 17, which provides for the evacuation of civilians from besieged areas.
- ✓ Article 23, which deals with the free passage of relief consignments intended for particularly vulnerable groups among the civilian population, explicitly refers to children under fifteen.
- ✓ Article 24 is devoted to the protection of children under fifteen who are orphaned or who are separated from their families as a result of the war, and provides for the identification of children under twelve.

- ✓ In Article 38, which applies to protected persons in the national territory of belligerents, children under fifteen are included amongst those persons who should enjoy preferential treatment to the same extent as nationals of the State concerned.
- ✓ Article 50 deals with children in occupied territories and the institutions devoted to their care, while Article 51 prohibits the occupying State from compelling children under eighteen years of age to work.
- ✓ Article 68 prohibits the sentencing of the death penalty to a protected person who was under eighteen years of age at the time of the offence.

34. In addition to these provisions, the principle of the special protection of children as victims in international armed conflict is explicitly stated in Additional Protocol I to the Geneva Conventions. Article 77 (1) of the Protocol states that “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”

35. Additional Protocol II to the Geneva Conventions contains similar provisions with regard to the protection of children in non-international armed conflict. Article 4 of Additional Protocol II on ‘fundamental guarantees’, for example, contains provisions devoted specifically to the protection of children and reiterates some of the principles contained in the Fourth Geneva Convention, including Articles 17, 24 and 26 in particular.

36. It is important to note that responsibility for the implementation of international humanitarian law, including the special protection it affords to children, is a collective responsibility. It is the duty of the State Party to the Geneva Conventions to respect and ensure respect for these standards. The Convention on the Rights of the Child reiterates this duty in Article 38, which provides that “States Parties undertake to respect and ensure respect for rules of International Humanitarian Law applicable to them in armed conflicts which are relevant to the child”. According to this article, States Parties to the Convention on the Rights of the Child “shall take all feasible measures to ensure protection and care of children who are affected by armed conflict” in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict.

4. Other human rights instruments specific to children

37. Some of these instruments provide guidance and are not considered binding in and of themselves; while others are legally binding upon ratification.

a. *Juvenile justice instruments*

38. The following instruments provide guidance as to the application of juvenile justice, and are not legally binding in themselves, although a significant number of their provisions can be argued to be legally binding in the context of other legal instruments.

- ✓ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN Doc. A/45/113 (1990)).

- ✓ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (UN Doc. A/45/112 (1990)).
- ✓ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) (U.N.Doc. A/40/33 (1985)).

b. *ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*

39. In June 1999, the International Labour Conference adopted a new Convention (No. 182) concerning the prohibition and immediate elimination of the worst forms of child labour. The Convention entered into force on 19 November 2000. Its main provisions include:

- ✓ **Article 1:** Each State Party to this Convention shall take immediate and effective measures to secure the prohibition and immediate elimination of the worst forms of child labour as a matter of urgency.
- ✓ **Article 2:** For the purpose of this Convention, the term ‘child’ shall apply to all persons under the age of 18.
- ✓ **Article 3:** For the purpose of this Convention, the term ‘the worst forms of child labour’ comprises:
 - (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”;
 - (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
 - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
 - (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

c. *African Charter on the Rights and Welfare of the Child (1990)*

40. The African Member States of the Organization of African Unity have developed a regional child rights instrument, the African Charter on the Rights and Welfare of the Child (1990), that entered into force in November 1999. The Charter establishes an African Committee of Experts on the Rights and Welfare of the Child empowered to receive State reports as well as communications from individuals, groups or non-governmental organizations recognized by the OAU, a Member State or from the United Nations. A particularly important aspect of the Charter is that — unlike the CRC — the African Charter defines a child as anyone under 18 — with no exceptions. Further, the African Charter also defines duties of the child.

d. *Security Council resolutions*

41. Numerous recent UN resolutions and other developments have contributed to the protection and promotion of children’s rights. While these initiatives do not have the status of international legal instruments, they can often contribute to the legal

protection available to children in specific situations or regions. Many commentators see these sorts of resolutions as a part of “soft law”.

42. In August 1999 the United Nations Security Council adopted Resolution 1261 strongly denouncing the targeting of children in situations of armed conflict. With this Resolution the Security Council has signalled that it will no longer tolerate the killing and maiming of children, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict. The Resolution also condemns attacks on places that usually have a significant presence of children, such as schools and hospitals.

43. In August 2000 the United Nations Security Council adopted Resolution 1314, the second resolution on children and armed conflict, which put in place key building blocks for the protection of war-affected children as a follow-up to Resolution 1261 (1999).

e. *Statute of the International Criminal Court (ICC)*

44. The Statute, adopted in Rome on 17 July 1998, includes in its list of war crimes within the Court’s jurisdiction the active involvement in hostilities of children under 15 or their recruitment into national armed forces during an international armed conflict (Art.8, para.2b(xxvi)) or into the national armed forces or other armed groups during a non-international armed conflict (Art.8, para.2e(vii)).

45. According to the principle of complementarity, the Court has jurisdiction in situations where a State is unable or unwilling to prosecute. In order to take advantage of this principle and to ensure repression at the national level, States should adopt legislation enabling them to prosecute the perpetrators of such crimes.

f. *The Guiding Principles on Internal Displacement*

46. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) were developed by the Representative of the Secretary-General on Internally Displaced Persons (see below). The Principles, which set out the relevant standards providing protection against arbitrary displacement, protection and assistance during displacement and during return or resettlement and reintegration, pay special attention to the needs of internally displaced children. The General Assembly and the Commission on Human Rights have requested the Representative to use the Principles in his dialogue with Governments. The Guiding Principles are being disseminated widely, and their application promoted by UN agencies, regional organizations and NGOs.

5. Some useful UN mechanisms

47. The UN system includes many different mechanisms and structures, almost all of which can be linked in some way to the protection of children’s rights. This section draws attention to a small number of mechanisms which may be particularly relevant to the protection and promotion of children’s rights by human rights officers working in the field. Ideally, human rights officers will familiarize themselves with the full range of UN human rights mechanisms.

48. The capacity of UN mechanisms to protect and promote children's rights depends in large part upon the child rights information made available to those mechanisms. It is important that information concerning violations of children's rights is fed into **all** mechanisms. The Commission on Human Rights (CHR) special procedures, conventional human rights mechanisms and other UN human rights mandates — such as activities conducted by OHCHR (e.g. technical cooperation projects, field presences) — depend for their information on sources in the field. States, national and international NGOs and others can provide very valuable information from a country or region. UN human rights field operations can provide an essential channel for such information, complementing this with child rights data collected from their own monitoring.

a. Conventional mechanisms: treaty monitoring bodies

49. “Conventional mechanisms” refer to committees of independent experts established to monitor the implementation of international human rights treaties by States Parties. By ratifying a treaty, States Parties willingly submit their domestic legal system, administrative procedures and other national practices to periodic review by the committees. These committees are often referred to as treaty-monitoring bodies (or “treaty bodies”).

- ✓ Committee on Economic, Social and Cultural Rights (monitors the implementation of the International Covenant on Economic, Social and Cultural Rights)
- ✓ Human Rights Committee (monitors the implementation of the International Covenant on Civil and Political Rights)
- ✓ Committee on the Elimination of Racial Discrimination (monitors the implementation of the International Convention for the Elimination of all Forms Racial Discrimination)
- ✓ Committee against Torture (monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)
- ✓ Committee on the Elimination of Discrimination against Women (monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women)
- ✓ Committee on the Rights of the Child (monitors the implementation of the Convention on the Rights of the Child)

50. Human rights officers can contribute to the work of these Committees by providing them with information prior to their consideration of a State Party's report. Following publication of a Committee's concluding observations, human rights officers can support State and NGO efforts to implement the recommendations they contain.

b. Extra-conventional mechanisms: special procedures

51. “Extra-conventional mechanisms” refer to those mechanisms established by mandates emanating not from treaties, but from resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights or the General Assembly. Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the

Sub-Commission on Prevention of Discrimination and Protection of Minorities). They normally take the form of an independent expert or a working group and are often referred to as “special procedures”.

52. Special procedures of the Commission on Human Rights (CHR) and the Sub-Commission on the Protection and Promotion of Human Rights include a number of child-specific procedures and many broader procedures which increasingly include references to children's rights in the context of their particular mandates. Special procedures include:

- ✓ Special rapporteurs, special representatives, special envoys and independent experts, working groups – thematic or country (Urgent Actions)
- ✓ Complaints procedure 1503.

53. The following provides a brief description of activities undertaken by some special rapporteurs and/or representatives in the context of children's rights within their various human rights mandates. Some of these mandates are child specific, but most focus on general human rights issues that are nevertheless important in overall efforts to protect and promote children's rights. It is essential to recognize the potential of almost all UN human rights mechanisms and procedures for contributing to the protection and promotion of children's rights, and the following list does not include all mechanisms (the full list is included as an annex to this Manual).

- ✓ **Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography:** The mandate of the Special Rapporteur (SR) was created in 1990 to investigate and receive information about the situation of children facing these concerns throughout the world. The Special Rapporteur can receive information about individual situations and bring these to the attention of the Governments concerned. The Special Rapporteur also makes recommendations to Governments, NGOs, UN agencies, and other members of civil society. During her tenure as mandate holder, she studied and made recommendations as to the role of the justice system, the media, education and the family with regard to the concerns of her mandate.
- ✓ **Special Rapporteur on the Right to Education :** The Special Rapporteur on the Right to Education focuses on the availability, accessibility, acceptability and adaptability of education services, working closely with relevant UN partners.
- ✓ **Special Rapporteur on Torture:** In his 1996 report (E/CN/4/1996/35) to the Commission on Human Rights, the Special Rapporteur on Torture raised the issue of conditions of detention of children and made recommendations according to the provisions of relevant UN standards. In his 2000 report to the UN General Assembly, the Special Rapporteur continued to report upon conditions of detention for children and also placed particular emphasis on the situation and treatment of children cared for in non-penal institutions; the report also referred to the situation of children in regions of armed conflict.
- ✓ **Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:** In reports and contacts with Governments, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has on numerous occasions expressed deep concern over the continuing use in some countries of the death penalty against juvenile offenders and persons accused of crimes committed when they were under the age of 18. The Special Rapporteur has also expressed grave concern at the use of

children as soldiers and support staff in the world's conflicts, and has called on Governments to unilaterally raise the age of enlistment to 18, and concluded that the use of children in armed conflict constitutes a serious and direct threat to the protection and enjoyment of the right to life.

- ✓ **Special Rapporteur on Violence against Women:** The Special Rapporteur on Violence against Women has taken a life-cycle approach to her mandate, and in so doing has addressed the rights of girls particularly with regard to violence in the family, but also to girls in armed conflict situations. The Special Rapporteur reports that gender-specific violence does not begin at a certain age, but throughout a woman's life-cycle there exists various forms of gender-based violence that manifest themselves at different stages. The Special Rapporteur has expressed concern that even before birth, females in cultures where preference for sons is prevalent are targeted by the violent discriminatory practices of sex-selective abortion and infanticide, and has reported on different forms of violence inflicted on girls including inter alia enforced malnutrition, unequal access to medical care, as well as physical and emotional abuse, incest, female genital mutilation, early childhood marriage and other harmful traditional practices, and the sale of children by their parents for prostitution or for bonded labour.
- ✓ **Country-specific Special Rapporteurs:** The CHR has named a number of Country-specific Special Rapporteurs with mandates to focus on the human rights situations in particular countries and regions. Increasingly, Country-specific Special Rapporteurs have included a child rights dimension in their reports and work.
- ✓ **Representative of the Secretary-General on Internally Displaced Persons:** The Representative systematically focuses on the plight of children, who typically constitute at least 50 per cent of internally displaced populations.
- ✓ **Special Representative of the Secretary-General on the Impact of Armed Conflict on Children:** The Special Representative was appointed in September 1997 for a three-year term, which was recently renewed by the General Assembly for another three years. Throughout his mandate the SRSG/CAC has sought to ensure that the protection of the rights of war-affected children are comprehensively addressed by key actors at international, regional and national levels. His role has centred on, inter alia: proposing initiatives and engaging key actors to protect war-affected children; proposing concrete initiatives to protect children in the midst of war and engaging parties to conflict to undertake specific commitments in that context; making the protection of children a priority concern in peace processes and peace operations and in all efforts to consolidate peace, heal and rebuild in the aftermath of conflict; and notably, the Special Representative has placed the children and armed conflict agenda squarely on the peace and security agenda of the UN as well as a number of regional organizations.

54. Some other relevant mechanisms include working groups on enforced or involuntary disappearances and on arbitrary detention; Special Rapporteurs on the independence of judges and lawyers; religious intolerance; freedom of opinion and expression; racism, racial discrimination and xenophobia; effects of foreign debt; human rights and extreme poverty; right to development; right to housing.

C. Integrating children's rights into human rights field operations and developing a strategy

55. There are several general points which need to be emphasized and which provide guidance to HROs in developing their child rights field work.

- ✓ A particular strength of UN HR Ops is that they allow the promotion and protection of children's rights to take place within a wider human rights framework.
- ✓ HR Ops should provide a link between the child rights situation in a country or region and UN international human rights mechanisms (e.g. UN treaty bodies, Special Rapporteurs).
- ✓ HR Ops should strengthen and complement the work of other actors (including the State, the UN and NGOs), while avoiding duplication.
- ✓ HR Ops can have a specific specialist role in some areas of concern, such as juvenile justice.
- ✓ In other areas UN HR Ops can ensure a link with, and provide access to information on, specific child rights issues — thereby supporting the work of other actors.

1. Some management decisions concerning an operation's child rights work

56. This chapter focuses on providing guidance to HROs. However, including a focus on children's rights within the work of an operation will also require several policy and managerial decisions. As with other sections of this Manual, it is useful for some brief references to these issues to be made.

57. The inclusion of a child rights focus among an operation's activities will have certain structural, training, recruitment and budgetary consequences — all of which should ideally be taken into consideration at the planning stage of an operation.

a. *Interpreting the mandate of the operation*

58. The mandate of the human rights operation may or may not make specific reference to children and their rights. Even where specific references are made there will usually be a need for the human rights staff to interpret the mandate according to an evolving situation and to their available resources. Ideally, every human rights operation, no matter how small, will focus to some extent on the promotion and protection of children's rights.

b. (Methodological) structure

59. There are different approaches to conducting child rights work through a human rights operation:

- ✓ All HROs with the operation can include children's rights within their range of activities. It is useful, nevertheless, to have at least one staff member as a "focal point" for children's rights, as this person can provide coordination and a contact person for cooperation with partners.
- ✓ Where a human rights operation has staff posted outside the capital city and at different provincial locations, ideally every team should ensure that a child rights approach is adopted in its provincial work. If possible, each team could have one staff member with specific responsibility for children's rights — a "Provincial child rights focal point".

60. The type of structure or methodology selected will have implications for the budget requirements of the operation and for the qualifications of staff recruited as human rights officers — with additional funding required for staff with a specific child rights background to serve as child rights focal points.

2. Basic terms of reference

61. Basic terms of reference for the child rights work of a human rights operation and of individual HROs could include some of the following:

1. **Development of a child rights strategy** (including priorities, objectives and practical actions). The human rights operation child rights strategy should be developed in awareness of the overall child rights situation in the country/region and the efforts being made by other actors (including the State, the UN and NGO actors). Strategies should ensure complementarity, avoid duplication and emphasize the particular contribution that should be made by a UN human rights presence.
2. **Ensuring that all the operation's activities are sensitive to children's rights.**
3. **Ensuring human rights training with a child rights perspective** for other human rights officers within the operation and for government, UN and NGO partners. Children's rights training should include not only the dissemination of information on the CRC, but also guidance on the Convention's implementation. The human rights operation may provide training itself, but may also encourage and support training activities of partners. In particular, HROs should emphasize links between children's rights and the broader international human rights framework.
4. **Conducting regular monitoring and analyses** of the evolving child rights situation
5. **Reporting** on the evolving child rights situation.

3. Child rights checklist for human rights officers — developing a strategy

62. The following checklist provides a helpful tool to HROs in defining a child rights strategy. It can be used as a complement to the above basic terms of reference. Keeping the following questions in mind should provide a basis for the development of the human rights operation's overall child rights objectives and strategies.

The child rights situation

1. What are the main child rights concerns in the country/region?
2. In what ways are these child rights concerns related to other main human rights concerns?
3. How is the child rights situation evolving?

Structure and activities with a potential to improve the child rights situation

4. What national structures (State, NGO, other) exist that have a capacity to improve the child rights situation? How can the UN's human rights effort contribute to supporting and strengthening their impact on the child rights situation?
5. What are the main actions currently being taken by State, UN and NGO partners in favour of children's rights?
6. Does the Common Country Assessment (CCA) include a child rights perspective and accurately reflect the child rights situation? Have child rights concerns been addressed in the UN Development Assistance Framework (UNDAF)?
7. What regional and international human rights mechanisms can be used to address the situation and how can they be linked to country child rights situation and to national structures addressing the situation?

The child rights potential of the UN human rights operation

8. How do the main activities (e.g. technical cooperation projects, national human rights institution building, monitoring, etc) of the human rights operation have a positive impact on children's rights? How can the positive impact be strengthened?
9. Given the child rights situation and activities of other actors, what role should the human rights operation fulfil? What should the operation's strategy include? How can the operation's strategy complement the ongoing work of partners?
10. What role is the operation playing in the CCA and UNDAF processes with regard to children's rights?
11. How can the operation link the international and regional human rights mechanisms with the child rights situation? Which of these mechanisms are the most relevant to the child rights situation?

12. Where is the country in the CRC reporting process? How can the operation contribute to strengthening this process? In what way can the reporting process be supported so as to help in addressing the current most urgent child rights concerns?
13. Which UN treaty bodies have published concluding observations on the country's implementation of its treaty obligations? How many of the specific concluding observations are of direct relevance to the current child rights situation? Can the human rights operation support the State in the follow-up to the concluding observations?
14. Which UN Special Rapporteurs, Representatives and other relevant experts have reported on the country and included concerns and recommendations of relevance to the child rights situation? Can the operation support follow-up to these reports?
15. Does the operation's monthly report include a child rights perspective? Can this be strengthened?
16. How can the operation contribute to strengthening juvenile justice? What are the key concerns?
17. How is the operation sharing information on the child rights situation, and efforts to address it, with headquarters and with relevant partners outside of the country?
18. Are there any upcoming or ongoing international child rights activities (e.g. international conferences on children affected by war, regional workshops on the trafficking of children, etc.)? Could any of these activities be used to create momentum for improving the child rights situation in the operation's country?
19. Have there been any recent national, regional or international initiatives (e.g.. the adoption of legislative instruments, the passing of resolutions, the publication of reports by the Secretary-General) of relevance to children's rights in the country? Can the operation make use of, and provide information on, these initiatives?
20. What international human rights instruments have not yet been ratified by the country in which the human rights operation is working? What can the operation do to support further ratifications?

D. Some examples of broad child rights strategies

63. The following paragraphs focus on 3 broad child rights strategy areas. This short list is not in any way exhaustive, but provides an indication of the manner in which a child rights strategy and its component activities can be developed.

1. Strengthening the child rights impact of the operation's current activities

64. It should be possible to find a potential positive impact on respect for children's rights from almost any activity undertaken by a human rights operation — e.g. detention work, investigations, training for soldiers, promotion of the human rights of women, capacity building for local human rights NGOs, etc. However, the impact of these activities on children's rights may remain merely potential or incidental, unless there is a concerted effort to ensure that child rights are taken into consideration at the planning stage of activities in the operation's strategies.

65. For example, human rights training for police officers, judicial and prison officials may focus on:

- ✓ rights to freedom of movement and speech,
- ✓ the rights of defendants in criminal trials,
- ✓ minimum standards of conditions of detention, and
- ✓ the rights of detainees not to suffer ill-treatment or torture.

66. From a child rights perspective, the same training programme could be strengthened to include a focus on:

- ✓ juvenile justice principles,
- ✓ the principle of the best interests of the child,
- ✓ the obligation for the detention of minors to be used only as a measure of last resort,
- ✓ alternatives to imprisonment sentences,
- ✓ the obligation for minors to be detained or imprisoned separately from minors, etc.

67. One aspect of the human rights operation's strategy could be to ensure that all the operation's main activities include a child rights perspective and that the operation's overall analysis of the human rights situation includes child rights concerns.

2. Supporting the work of partners

68. Supporting and strengthening the efforts of others to protect and promote children's rights should be a major aspect of any strategy to promote and protect children's rights. "Partners" is a term that can be used very broadly to include parts of the State (e.g. the ministries of education or justice), other UN bodies, and national or international NGOs. Two examples are given below.

1. **Partners with a general mandate to assist children:** The work of many organizations in favour of children focuses on the more material aspects of rights protection. The expertise and mandates of these organizations are best suited to this task; human rights operations can, however, often contribute to helping these missions achieve their objectives by complementing and strengthening their work using the operations' particular mandate and expertise.

For example:

- ✓ While access to education in a certain region may be a fundamental child rights problem, its cause may be a combination of a lack of school buildings, equipment and teachers on the one hand, and the practice of discrimination through which local officials prevent children from a particular religious or ethnic group from attending school on the other.
- ✓ Many humanitarian organizations are uncomfortable with directly addressing human rights violations in a manner which goes beyond the provision of assistance as described in their mandates. Human rights operations can usefully fill this sort of gap by ensuring, as in the above example, that the provision of material aid genuinely addresses existing rights violations.

2. **“General measures of CRC implementation” — supporting national structures:** The CRC devotes several articles to “general measures of implementation” (also known as the 1st cluster in the CRC reporting guidelines). Respect for children’s rights cannot be truly effective unless a State successfully implements various “general measures of implementation”. These include:

- ✓ the strengthening of domestic legislation;
- ✓ establishment of national structures to develop and coordinate child rights policy;
- ✓ development of a human rights (including child rights) national plan of action;
- ✓ development of mechanisms for the accurate collection of data relevant to the child rights situation;
- ✓ involvement of civil society in implementation of the CRC;
- ✓ implementation of child rights training programmes for relevant persons, including Ministry officials, the police, teachers, social workers, parents, etc.

These factors, among others, are considered to form a major base upon which children’s rights can be securely established. Many of these factors are as relevant to the implementation of broader human rights standards as they are to child rights standards, and there are relatively few organizations with the relevant mandate and expertise to provide assistance in these areas. By way of example, human rights operations in an appropriate situation could very valuably contribute to the strengthening of some aspects of a State’s general measures of implementation.

3. Building upon the CRC reporting process

69. A further example of a broad strategic area through which a human rights operation can contribute to the protection and promotion of children’s rights is through support to treaty body reporting processes (and to that of the CRC in particular) and the follow-up to treaty body concluding observations. The regular presentation to the Committee on the Rights of the Child of a State’s report (in principle every 5 years) is only one stage in a process which creates multiple

opportunities for the improved protection of children's rights. UNICEF provides valuable support to States throughout the CRC reporting process and follow-up to concluding observations. There are also some areas in which UN human rights operations have a specific expertise to contribute. For example:

- ✓ The preparation of a State's report requires the gathering of specific information on the Convention's implementation. Some of this information should be drawn from areas that fall within the competence of the human rights operation — HROs can support the State in ensuring accurate data collection and help to establish permanent data collection mechanisms for particular human rights criteria.
- ✓ The reporting guidelines implicitly require States to consult with NGOs in the preparing their report; human rights operations can support the contribution of national human rights NGOs to this process and in so doing help to strengthen independent national human rights organizations.

70. Human rights operations can usefully contribute to the CRC, other treaty body and special procedures reporting processes as part of strategy to improve respect and promotion for children's rights.

E. Monitoring and reporting on respect for children's rights

71. Human rights operations often monitor and report upon the human rights situation in a country. Children's rights should be taken into consideration in this process and should, ideally, have a specific section in the operation's reports.

72. Other chapters of this manual provide detailed guidance on human rights monitoring and reporting. This section emphasizes, however, that monitoring and reporting upon respect for children's rights can require a slightly different approach than that taken towards reporting on general human rights monitoring.

1. Monitoring — identifying priorities in a child rights situation

a. *What child rights criteria?*

73. **Types of rights:** many human rights operations focus their monitoring, investigative and reporting activities on violations of civil and political rights, often because of the immediate urgency of responses that are required to violations of many of these rights. Efforts to protect and promote children's rights should focus their analyses on a broader range of rights — including economic, social and cultural rights as well as civil and political rights.

74. **Referring to the human rights of parents/family:** Monitoring and reporting on children's rights should take into consideration relevant violations of the human rights of their parents and immediate families, as these are often linked to respect for

children's rights. One should re-emphasize, nevertheless, that children are the subjects of rights in their own individual capacity.

75. **Focus on structures:** Analyses of children's rights should include reference to the role of "structures" which contribute to the protection and promotion of children's rights, including: access to schools and health care; the strength of immediate and extended family structures; the effectiveness of those government ministries with responsibility for issues affecting children; etc. Analyses should be aware of both modern and traditional structures, where relevant.

b. Recognizing the importance of "time" and "vulnerability"

76. It is essential when seeking to protect and promote children's rights to note the importance of "time" as a factor affecting the impact of a situation on a child.

77. Children, at different stages of their development, are more vulnerable to an enormous array of influences that will have lasting consequences on their moral, physical, emotional and psychological development, and their ability to function as fully participatory citizens when they reach adulthood. They will be detrimentally affected (and differently affected than adults) by virtually any violation of their rights to varying degrees, whether it is a denial of education, denial of access to health, denial of the freedom of association or expression, forced participation in armed conflict, etc.

78. "Time" should be taken into consideration in addressing children's rights issues in 2 ways:

- ✓ Children may be affected far more seriously than adults by violations of their rights which continue over a certain duration of, for example, weeks or months — this argument is applicable to almost any rights violation, e.g. torture, food deprivation, poor conditions of detention, etc. The duration of a particular situation can have a more serious impact on children than on adults, leading to more severe violations of their rights.
- ✓ In light of the increased risk of lasting negative consequences for children and society posed by child rights violations, the assessment, monitoring, reporting and intervention to address these violations is particularly urgent.

c. Using the CRC reporting guidelines as a support for monitoring and analysis

79. The CRC reporting guidelines were defined by the Committee on the Rights of the Child for the purpose of assisting States Parties to the CRC in reporting accurately on the Convention's implementation. The reporting guidelines divide the Convention into 8 broad "clusters" of rights. Under each of the 8 headings the guidelines provide in significant detail the sort of information that should be provided in State Party reports. These headings and further details provide a very useful list of possible criteria for child rights monitoring; Human rights officers could focus on 5 to 20 key issues of particular relevance to the country of operations. Reference should be made to UNICEF's "Implementation Handbook for the Convention on the Rights of the Child". The following list includes the main 8 headings from the reporting guidelines, with some subheadings (the articles refer to provisions of the CRC):

I. GENERAL MEASURES OF IMPLEMENTATION**(arts. 4; 42 and 44, paragraph 6 of the Convention)**

- A. Status of the Convention in domestic law, new legislation and law enforcement
- B. Coordination, monitoring, existing and new institutions
- C. Implementation of article 4 of the Convention
- D. Involvement of civil society
- E. Measures taken to make the principles and provisions of the Convention widely known

II. DEFINITION OF THE CHILD (art. 1)**III. GENERAL PRINCIPLES (arts. 2; 3; 6 and 12)**

- A. Non-discrimination (art. 2)
- B. Best interests of the child (art. 3)
- C. The right to life, survival and development (art. 6)
- D. Respect for the views of the child (art. 12)

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7; 8; 13-17 and 37 (a))

- A. Name and nationality (art. 7)
- B. Preservation of identity (art. 8)
- C. Freedom of expression (art. 13)
- D. Freedom of thought, conscience and religion (art. 14)
- E. Freedom of association and peaceful assembly (art. 15)
- F. Protection of privacy (art. 16)
- G. Access to appropriate information (art. 17)
- H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts. 5; 18, paras. 1 and 2; 9-11; 19-21; 25; 27, para. 4; and 39)

- A. Parental guidance (art. 5)
- B. Parental responsibilities (art. 18 paras. 1 and 2)
- C. Separation from parents (art. 9)
- D. Family reunification (art. 10)
- E. Illicit transfer and non-return (art. 11)
- F. Recovery of maintenance for the child (art. 27, para. 4)
- G. Children deprived of their family environment (art. 20)
- H. Adoption (art. 21)
- I. Periodic review of placement (art. 25)
- J. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

VI. BASIC HEALTH AND WELFARE**(arts. 6; 18, para. 3; 23; 24; 26; 27, paras 1-3)**

- A. Disabled children (art. 23)
- B. Health and health services (art. 24)
- C. Social security and child care services and facilities (arts. 26 and 18, para. 3)
- D. Standard of living (art. 27, paras. 1-3)

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES
(arts. 28; 29 and 31)

- A. Education, including vocational training and guidance (art. 28)
- B. Aims of education (art. 29)
- C. Leisure, recreation and cultural activities (art. 31)

VIII. SPECIAL PROTECTION MEASURES
(arts. 22; 38; 39; 40; 37 (b)-(d); 32-36)

- A. Children in situations of emergency
 - 1. Refugee children (art. 22)
 - 2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)
- B. Children involved with the system of administration of juvenile justice
 - 1. The administration of juvenile justice (art. 40)
 - 2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))
 - 3. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37 (a))
 - 4. Physical and psychological recovery and social reintegration of the child (art. 39)
- C. Children in situations of exploitation, including physical and psychological recovery and social reintegration
 - 1. Economic exploitation of children, including child labour (art. 32)
 - 2. Drug abuse (art. 33)
 - 3. Sexual exploitation and sexual abuse (art. 34)
 - 4. Sale, trafficking and abduction (art. 35)
 - 5. Other forms of exploitation (art. 36)
- D. Children belonging to a minority or an indigenous group (art. 30)

2. Reporting on respect for children's rights

80. Ideally, a human rights operation's monthly report will have a specific section on children's rights. The child rights section would include:

- ✓ information on key civil, cultural, economic, political and social rights criteria;
- ✓ some information on the situation of families and of parents, essential to providing a complete understanding of respect for children's rights.
- ✓ It should be emphasized that other sections of the report — for example, on the killing of civilians, on IDPs and refugees — may also include information on children. There may be some overlapping within the report with cross-referencing where needed.

F. Working with children³

81. In the course of their human rights work, including — but not exclusive to — child rights work, human rights officers will work directly with children. Some of this human rights work may involve interviewing a child to gather information on possible human rights violations. Other aspects may involve trying to provide a child with assistance. The guidelines provided in this section are intended as a brief introduction to some important points to be taken into consideration. Perhaps above all, human rights officers should be aware of the “Do no harm” principle of human rights work. Human rights officers should also understand and endeavour to respect the principles contained in the Convention on the Rights of the Child regarding “respect for the views of the child” and the “best interests of the child”:

- ✓ taking into account the age and capacities of the child, human rights officers should ensure that children have the opportunity to express their views in any decisions being made on their behalf by the officer or the human rights operation, and that those views are given due consideration;
- ✓ human rights officers should ensure that in all actions they take with regard to a child, the child’s “best interests” are a primary consideration.

1. How is communicating with children different from communicating with adults?

82. Children have needs and abilities which are significantly different from those of adults. Communicating with children has some particular requirements which include the following:

- ✓ the ability to feel comfortable with children and to engage with them in whatever style of communication suits the individual — e.g. by sitting on the ground, through play, etc., and to be able to tolerate expressions of distress, aggression etc.;
- ✓ the ability to use language and concepts appropriate to the child’s age and stage of development and culture;
- ✓ an acceptance that children who have had distressing experiences may find it extremely difficult to trust an unfamiliar adult. It may take a great deal of time and patience before the child can feel sufficient trust to communicate openly;
- ✓ an ability to appreciate that children may view their situation in ways distinctively different from that of adults: children may fantasize, invent explanations for unfamiliar or frightening events, express themselves in symbolic ways, emphasize issues which may seem unimportant to adults, and so on.

³Text drawn primarily from ARC and Save the children material.

2. Cultural issues in communicating with children

83. Different cultures have different norms about inter-personal communication. In many societies there are rules about what topics can be discussed with particular adults — for example, girls in some cultures may only discuss sexual topics with aunts or grandmothers and may be even be forbidden from having contact with anyone outside of the family. Professionals who need to communicate with children need to understand the cultural norms for expressing feelings and emotions: in some societies, for example, it would be a source of great shame for children — especially boys — to cry. It is important that those trying to help children do not make matters worse by encouraging them to talk and express feelings in a way which contravenes such norms. There are also cultural norms about what forms of expression are appropriate — the use of physical touch, or eye contact, for example, will vary between cultures, while the degree of formality and social distance between adults and children may, in some societies, limit the exchange of personal information and feelings.

3. Language and the use of interpreters

84. There are obvious advantages in communicating in the child's mother tongue: where the adult is not from the same culture as the child, it may be more difficult to interpret the child's gestures and body language which are very important as another way to get information from the child, and to grasp the nuances of words and expressions. The interviewer's language must be appropriate to the age of the child. Where possible, staff should also be familiar with local terminology, including slang.

85. Where the use of an interpreter is unavoidable, it is vital for the interpreter to be fluent in both languages, to understand any specialist terminology and to be able to use words which the child can understand. He or she needs to be acceptable within the community and be seen as impartial. It is vital to ensure that the interpreter has good skills in communicating with children, can cope with any emotions being expressed and does not influence the conversation by wrongly translating, summarizing or omitting selected sections of what is said.

4. Communication in the context of displacement

86. Very often effective communication is impeded in situations of population displacement by an atmosphere of mistrust and suspicion. There may be real fears regarding the way in which information might be used, especially when the interviewer is perceived as a public or authority figure. Moreover, some children will have had experiences (such as some form of exploitation) which will have demonstrated that adults are not always reliable or trustworthy: hiding information, or revealing incomplete or inaccurate information may have been used as a survival strategy. Opening an effective and transparent line of communication with a child may take a great deal of time and trust-building.

5. Providing an appropriate location and environment

87. Selecting an appropriate location for interviewing children, or having an informal conversation, can have an important bearing on the effectiveness of the communication. For most young people, a quiet space with comfortable and culturally appropriate seating may be the ideal choice, though for others going for a walk, or playing or working together may provide the best opportunity for communication.

- ✓ **Privacy** can be important, especially when the interview relates to personal or potentially painful information. Equally, some children may prefer to be accompanied by a trusted adult or friend.
- ✓ **A non-distracting environment** can also be important — especially if the child has been exposed to an environment of uncertainty, change and anxiety.
- ✓ **A comfortable environment** chosen with the child will help the child to feel relaxed.

6. Attitude and approach

88. Communicating effectively with children requires a particular approach, and although some techniques will vary from culture to culture, a vital objective is to facilitate children's self-expression. In general, the following guidelines should be followed:

- ✓ **Introductions** are important so that the child knows who the interviewer is, what role he or she has, and what is the purpose of the meeting with the child. When planning to interview children, it sometimes helps to get to know them among a group before talking to them individually.
- ✓ **Confidentiality** should be respected, but it is also important to explain carefully why information is being collected, who will know about it and how it will be used.
- ✓ **Simple language** should be used, which the child can readily understand. If there is a suspicion that the child has not understood something you have said, it can be helpful to ask the child to **repeat or paraphrase** the concept.
- ✓ Keep **direct questions to a minimum** and bring in some general conversation so that the child does not feel that he or she is being cross-examined.
- ✓ A **friendly, informal and relaxed approach** will help the child to feel at ease.
- ✓ **Adequate time needs to be given** to help the child to feel relaxed, to develop mutual trust and to enable the child to feel that he/she is being taken seriously. Time for playing together may be helpful in developing a rapport, and conversation about neutral issues (school, games etc.) may be appropriate before more personal or painful topics are discussed.
- ✓ It is important to **allow for children's limited concentration span**: a series of shorter meetings may be more effective than a few longer ones.
- ✓ A **non-judgemental attitude** which conveys acceptance of the child, whatever he or she has or has not done, is essential. It is important to convey respect for his or her beliefs, feelings, etc. and not to judge his or her behaviour — for example in the case of former child soldiers.

- ✓ **Taking notes** during the interview may be distracting for the child and raise questions and uncertainties about confidentiality. If it is necessary to take notes, it is important to explain the reason and seek the child's permission first.
- ✓ **Ending the interview or conversation** appropriately is also important: providing the child with an opportunity to ask questions, say anything else which he or she would like to say, etc and summarizing what has been said or agreed upon may help the child feel that he or she has been taken seriously. It is also advisable to finish the interview on a positive note particularly where the child has been recounting traumatic events.
- ✓ After the interview, it is important to **make sure that there is follow-up support available to the child**, especially if painful and difficult issues have been discussed.

7. Helping children to express themselves

89. Sometimes children may be willing to talk but find it difficult to do so. Making the conversation less personal can help. One child was reluctant to give his name to an HRO interviewing him. The HRO made up a story about a bird and gave the bird a name. In the story, the bird asked the name of the child and the child gave it. He was able to talk much more freely within the context of the story. Other ways of helping children to express themselves include drawing, playing games and singing. Children with a physical disability may need extra help: for instance, a child who is unable to speak and too young to write may be able to convey information through play or drawings.

90. There are various techniques which may help the child to express himself or herself:

- ✓ A **quiet tone of voice** can help the child to feel safe, and shows that the adult is being sympathetic.
- ✓ **Gestures** such as nods of the head (or whatever is appropriate within the particular culture) can encourage the child to continue to talk.
- ✓ An **appropriate degree of eye contact** also helps the child: again this will vary with culture.
- ✓ **Listening attentively and demonstrating that you have heard the child** — e.g. by summarizing what has been said, seeking clarification, etc. confirms to the child that you are actively listening.
- ✓ **Showing respect for the child's feelings** is also important — e.g. by reflecting the feelings ("that must have made you feel very sad/angry", etc.). This helps to convey empathy — the capacity to identify with the child's situation and feelings.
- ✓ **Avoid interrupting the child.**
- ✓ **Asking open questions** will generally encourage the child to explain something in his/her own way: for example, an open question such as "tell me about life in your village" may elicit a more free response than a closed question such as "where did you live?". It is usually best to avoid leading questions, i.e. those which suggest an answer to the child, such as "You like school, don't you?"

8. When children become distressed

91. Look out for signs of distress in children and do not pressurize them if they are upset. Their distress should not be ignored, and they must be supported and comforted in a way that is appropriate. What is appropriate will depend on the child and the circumstances, and again you should take a lead from the child.

92. Other children can be enlisted to comfort a child in distress. If you know that your interviewee has a friend, ask him or her to talk to the child so that the interview can be finished. Above all, children should be given time, even when there is a lot to do. Give them a break, time to play games or have a drink. Work should be prioritized so that staff are able to give time to the children who need it. Children may become upset after an interview, so if possible the person caring for them should be available.

Appendix 1 to Chapter XII

Sources of further information

- ✓ ARC (Action for the Rights of Children), A Rights Based Capacity Building and Training Initiative (joint training initiative by UNHCR, Save the Children Alliance, UNICEF and OHCHR) (available on UNHCR's web site, and will be made available on CD Rom and/or paper).
- ✓ Children's rights: turning principles into practice, Save the Children, Sweden, UNICEF, 2000.
- ✓ Hodgkin, Rachel and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, Geneva.1997.

A small selection of useful web sites

- ✓ <http://untreaty.un.org/>
A new branch of the UN's web site, focusing on treaties and related information. A second database, the United Nations Treaty Series (UNTS) is a collection of treaties and international agreements in their original language(s), along with translations into English and French.
- ✓ <http://www.unsystem.org/>
A web site through which a search can be conducted across all UN web sites and which provides links to individual sites and to the sites of States with UN missions.
- ✓ www.unicef.org
- ✓ www.unicef-icdi.it
- ✓ www.unhcr.ch
Including access to the Action for the Rights of Children (ARC).
- ✓ www.ilo.org or
<http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>
- ✓ <http://www.hri.ca/>
Human Rights Internet.
- ✓ www.crin.org
Includes links to a wide range of international organizations working on children's rights.
- ✓ www.unhchr.ch
- ✓ www.child-soldiers.org
Includes links to a wide range of international organizations working on children's rights
- ✓ www.un.org/special-rep/children-armed-conflict
- ✓ www.icrc.org

.....Chapter XIII

TRIAL OBSERVATION AND MONITORING THE ADMINISTRATION OF JUSTICE

Key concepts

The principal fair trial standards are found in Article 14 of the Covenant on Civil and Political Rights, which require, inter alia, the right to:

- | *be informed promptly of any charges upon arrest;*
- | *be brought promptly before a judge or similar judicial officer;*
- | *a fair and usually public hearing by a competent, independent and impartial tribunal established by law;*
- | *have adequate time and facilities for the preparation of a defence;*
- | *communicate with counsel of one's own choosing;*
- | *be tried without undue delay; and*
- | *not to be compelled to testify against one's self or to confess guilt.*

Human rights officers who serve as trial observers should:

- | *conduct preliminary research on the facts and law of the trial;*
- | *interview the judge, prosecutor, defence counsel, and others;*
- | *obtain the key documents and review the trial dossier;*
- | *be seated in the courtroom so as to preserve impartiality;*
- | *take copious notes;*
- | *promptly produce a full report applying international standards of fairness.*

Trial observation may serve as a tool for a broader analysis of the administration of justice, including an assessment of the actual functioning, qualifications, and training of the judges, court clerks, prosecutors, lawyers, other court personnel, police, prison officials and other law enforcement personnel.

A. Introduction

1. This chapter covers international human rights standards on fair trial and techniques related to another possible function of HROs of a UN field operation — that of observing trials to assess their consistency with such standards. It also underlines how trial observation may serve as a tool to appraise the functioning of the system for the administration of justice of the country of operation and identify needs for reform to be discussed with the host Government and possibly become the object of United Nations or other assistance to this effect.

B. International standards for fair trials

2. The right to a fair and open trial has been *established in several international human rights instruments*. Article 10 of the Universal Declaration of Human Rights provides that “[e]veryone is entitled in full equality to a fair and public hearing... of any criminal charge against him.” Article 11 adds that “[e]veryone charged with a personal offence has the right to be presumed innocent until proven guilty according to law in a public trial...”. Moreover, Article 14 of the International Covenant on Civil and Political Rights provides that:

[I]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

3. In addition, *regional treaties guarantee the right to a fair and open trial*. Article 8(5) of the American Convention on Human Rights provides that criminal proceedings shall be public, while article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to public hearing for everyone in the “determination of his civil rights and obligations or of any criminal charge against him...”. Furthermore, Article 7 of the African (Banjul) Charter on Human and Peoples’ Rights guarantees that every individual has the right to have his or her cause heard.

4. Pursuant to Article 14(3) of the International Covenant on Civil and Political Rights, in the determination of any criminal charge, every person shall be equally entitled to the following **minimum guarantees necessary for defence**:

- (a) To be **informed** promptly and in detail in a language the person understands of **the nature and cause of the charge** against him/her;
- (b) To have adequate time and facilities for the **preparation of a defence**, and to communicate with counsel of his/her own choosing;
- (c) To be **tried without undue delay**;

- (d) To be tried **in his/her presence**, and to defend him/herself in person or through **legal assistance** of his/her own choosing; to be informed, if s/he does not have legal assistance, of this right; and to have legal assistance assigned to him/her in any case where the interests of justice so require, and without payment by him/her in any such case where the interests of justice so require, and without payment by him/her in any such case if s/he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the **witnesses** against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;
 - (f) To have the free assistance of an **interpreter** if s/he cannot understand or speak the language used in court;
 - (g) **Not to be compelled to testify against him/herself** or to confess guilt.¹
5. The *right to a fair trial* should be seen as *only an aspect of the rights which will permit the effective functioning of the administration of justice*. Rights relevant to the administration of justice are discussed more fully in **Chapter IV–E: “Rights in the administration of justice”**.

C. Objectives of trial observation and monitoring the administration of justice

6. There are **six primary objectives of trial observation**. The first objective is first-hand monitoring in order to **prepare an independent and impartial report** on the proceedings. Second, an HRO’s presence **makes the participants** — particularly the judge and prosecutor — **aware that they are under scrutiny**; this awareness may then *influence them to be fair*. Third, the HRO represents the UN, and therefore **expresses international concern about the fairness** of the proceedings. Fourth, the HRO’s presence **gives the defendant, the defence attorney, and the defendant’s supporters a sense of** international assistance and **renewed confidence**. Fifth, the HRO’s presence should help to **make sure that justice is both done and seen to be done**.

7. These objectives may *substantially affect the choice of trial*, the selection of the HRO, and other steps in the process of trial observation. Furthermore, these objectives *may conflict*. For example, if the HRO overtly attempts to influence the conduct of the trial or openly comforts the defendant, his or her impartiality and independence become suspect.

¹For a more detailed discussion of international fair trial standards, see the report submitted by Sub-Commission members Stanislav Chernichenko and William Treat, UN Doc. E/CN.4/Sub.2/1994/24 (1994).

8. If the HRO consciously attempts to fulfil all five of these objectives, s/he must carefully consider each step in the trial observation process so as to minimize the potential for conflict. Because of the *inherently contradictory functions of HROs*, and because it is impossible to predict the precise situation in which they may be placed, past experience teaches that they *should use their own judgement in the situations which they encounter*.

9. The fifth objective requires further explanation. Historically, trial observers have largely been sent to assure fairness — principally out of concern for the rights of the defence. More recently there has been an *increasing need for trial observers to make sure that justice is done and that impunity is not afforded human rights abuses*. Perpetrators of human rights abuses are, of course, entitled to a fair trial. But equally, the society needs to be assured that human rights violators are brought to justice. (See **Chapter IV-Q: “Impunity principles”**.) Hence, trial observers have a new function: to make sure that justice is done and perpetrators of human rights abuses are not given impunity.

10. Trials, however, are only a very small, albeit usually more visible, part of the functioning of the system of justice. Accordingly, a *sixth, more general objective* would be for HROs to view trial observation as **part of a much more complete review and description of all the functions and structures in the administration of justice**. For example, trial observations may be a means for *assessing the needs of the legal system*. A broader assessment would require a knowledge and description of all the various courts at each governmental or regional level, the prosecutor’s office, the police, prison officials, etc. and their role in each step of court procedure from arrest or filing of a complaint, through investigation, court decision and appeal. What sorts of academic and professional training have the various personnel in the legal system received? What are their working conditions? What are their material resources? To what extent is the system actually functioning? How do the various actors in the legal system perceive their roles and what assistance/training do they believe would be useful?

D. Selection of trials

11. It is obviously **impossible to observe all trials**. In general, UN HROs will be sent to **observe those trials which raise the greatest human rights concerns**. They will also observe trials in which it would be appropriate to express UN concern in a visible way. In developing a regular monitoring of the administration of justice in the country, the human rights field operation *may need to establish a pattern of regularly attending court proceedings* and maintaining contacts with judges, prosecutors, lawyers, etc.

12. The *UN presence lends credibility to a proceeding*, hence, if the UN is considering the possibility of observing a proceeding, the UN must determine independently whether human rights overall would be benefited. In any event, these decisions are usually made by the field operation or other sending organization and not by the individual HRO.

E. Selection of HROs to serve as trial observers and qualifications

13. The factors to be considered in the selection of an HRO to serve as an observer include **expertise** or professional experience, for example, *as judges, prosecutors, lawyers*, and others with experience in the administration of justice. The HRO should also have **knowledge of the legal system** in which the trial will occur, as well as **knowledge of international fair trial standards**. HROs generally come from a different country than from the location of the trial, which comports with the general practice for preserving the **independence** and **impartiality** of the observer. In regard to particularly important trials in which an observer might be specially requested to attend the proceedings and even come from abroad, the observer's qualifications should also include prestige, **credibility**, **language abilities**, visibility, **reputation for fairness** and impartiality.

14. The HRO should conduct him/herself with impartiality and seriousness. The HRO should keep in mind the sensitive nature of trials in general, and the UN's objectives regarding this particular trial.

F. Informing the authorities about the observation

15. In the case of field operations, the HROs will ordinarily be present in the country before they observe a trial, but it may be **useful to notify the Government** of the operation's intent to send an observer to the proceeding. In the case of observers coming from abroad, rather than asking permission to send an observer, a general practice has developed of notifying the authorities in the country which is holding the trial that an observer will attend. The observer does not need to wait for permission to enter since the trial would generally be public and since the Government's silence is taken as an assent. Often the Government is informed about the observation just before the observer departs.

G. Briefing and research prior to observation

16. The HRO who serves as a trial observer should be as informed as possible of the **history, politics, economics, law, and human rights conditions of the locality of the trial**. The observer should also obtain background information about the specific events which led to the trial. If possible, the observer should review **past**

observer reports, the *criminal procedure code*, criminal code, relevant constitutional provisions, legal documents and press reports. In addition, the observer should receive the names of people who can serve as contacts and informants in the location where the trial will occur.

H. Translators/interpreters

17. Ideally the HRO should speak the local *language* used at trial. As this language ability is not always possible, observers often need translators or interpreters to aid in observation, interviews, etc. It is generally best to find a translator/interpreter before arrival in the locality of the trial.

18. The considerations made in Chapter VIII: “Interviewing” on the use of interpreters are generally applicable here too. Because the **choice of a translator/interpreter** will substantially **affect the independence**, impartiality and impact of the observer, the translator/interpreter should be selected with great care. The translator/interpreter should be **knowledgeable, trustworthy and familiar with legal terminology**. He or she should also be **impartial and perceived as such**. When a translator/interpreter comes from an organization, political party, or group to which the defendant belongs, the observer (1) may appear biased and (2) may be unable to verify the translations. In addition, the selection of a translator sympathetic to the defendant may place the translator (and possibly the observer) at considerable risk. Conversely, the observer should not rely on the services of a Government translator.

I. Public statements before, during and after the observation

19. In general, **no public statements** should be made regarding the observer’s findings **before the end of the trial**. In some situations, however, a public statement may be needed at the beginning of a visit to explain the purpose of the trial observation. The human rights field operation may decide that a public statement may also be necessary at the end of an observation to report on the findings and announce the next steps to be taken. A public statement made during the appeal process may have the effect of keeping international attention on the case. In each case, the expected usefulness of a public statement must be weighed against the potential consequences.

20. Most public statements are made by the field human rights operation based on information provided by observers, but they are not identified with the observers themselves.

J. Travel and living arrangements

21. If the HRO must travel to the locality of the trial, the officer must be circumspect when making travel and living arrangements. As far as possible, for example, the **HRO should avoid visibly identifying with either side**, for example, by staying at the same hotel.

K. Contacts and interviews after arrival at the place of trial

22. Before the trial observation starts, the HRO should make contact with and interview a number of people who can provide information and details necessary for his/her understanding of the case and the surrounding situation. Before arrival to the site of the trial the HRO should have an idea of whom to interview. The observing HRO should try to **maintain a balance** by making contact with the prosecutor, judge, Government officials and others who can provide useful information, as well as the accused and defence counsel. As always, the observer must remain **impartial, independent and a bit aloof**.

23. The observing HRO should take the opportunity to **interview Government officials**, since such discussions may help inform the observer of all the circumstances surrounding the trial. Contacts with Government officials may also increase the observer's impact on the trial process. The observer, however, should not overstep his or her mandate.

24. When **interviewing the defendant**, the HRO should attempt to do so in a location that would permit maximum confidentiality while allowing the officer to ascertain the defendant's mental and physical state and the conditions of confinement. The HRO should decide whether to conduct the defendant's interview alone or, if necessary, with defence counsel present.

L. Access to the trial file (dossier)

25. The HRO should **obtain the key documents** that will be used in the courtroom and that will be essential to a full understanding of the trial. It is critical, especially in civil law countries, that the observer obtain **access to the defendant's trial file**. Also, the defence counsel should have access to the file and should be able to make available the necessary documents. The court clerks should also make sure the trial file is available to the observing HRO. Even if the dossier is not publicly accessible, trial observers have sought and received the right to review the file because their quasi-judicial task is to verify that the proceedings are being fairly pursued. Similarly, trial observers have been admitted to closed military or security proceedings from which the public is ordinarily excluded.

M. Seating in the courtroom, introduction in court and taking notes

26. The HRO has the **right to enter the courtroom because the trial is public**. Also, the agreement between the field operation and the Government will *ordinarily* contain a provision for HROs to enter any building or facility to assure or monitor human rights protection. If the HRO must extraordinarily obtain permission to enter and get a seat in the courtroom, the observer *may need to present his or her Order of Trial Observation* to the Ministry of Foreign Affairs, the Ministry of Justice, or to the presiding judge. Having entered the courtroom, the HRO must **decide where to sit**. Because every courtroom has its own architecture and configuration, the HRO must be very sensitive to the **importance of seating** and should, if necessary, seek some accommodation **to preserve an appearance of impartiality** and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral location in the courtroom.

27. Trial observers sometimes ask to be introduced in open court so that their presence is officially recognized by the participants and the public. This tactic may increase the observer's impact. The HRO must take care to preserve the appearance of impartiality by arranging to be introduced by a neutral party, such as the president of the local bar association. If the HRO only intends to remain for part of the trial, an introduction would underscore the later absence and might be unwise.

28. One of the best ways for an HRO to make an impact is to **take copious notes** during the trial. The HRO should be aware, however, that a few countries forbid anyone from taking notes except for participating lawyers and the press. Another difficulty with taking notes, particularly after talking with informants, is that notes may be subject to seizure or surreptitious review by the police or other authorities. Hence, HROs in less secure settings should take very sketchy notes and begin preparing their reports only after reaching a secure location.

N. Timing, preparation and substance of the observer's report

29. After observation, the principal responsibility of the HRO is to **produce a report promptly**. If the HRO's observation is to be effective, a report must be received while the prosecuting Government is still sensitive to authoritative, independent criticism and to public opinion. While promptness is vital, the observer should for security reasons generally not begin writing the report until the HRO is in a secure location. The report should be written in a language which can be used by the field operation.

30. To the extent that time permits, HROs should **include the following information** in their reports:
- (1) the HRO's **instructions or terms of reference**;
 - (2) **background of the case**;
 - (3) **facts of the case** as revealed at trial and by independent monitoring with particular emphasis on the prosecution and defence evidence, charges, applicable laws, pre-trial procedures, trial process, judgement (if any), and subsequent proceedings;
 - (4) the **mental and physical condition of the accused** and the conditions of confinement;
 - (5) an **evaluation of the fairness** of the proceedings, applicable laws and treatment of the accused under national and international standards; and
 - (6) a **conclusion** (with recommendations).
31. The **report might append**:
- (1) a copy of the Order of Trial Observation or similar instructions showing the terms of reference for the HRO undertaking the observation;
 - (2) copies of relevant procedural rules, court decisions and laws;
 - (3) copies of charges, transcripts and the court's judgement;
 - (4) a description of the HRO's methodology of observation, including materials studied and persons interviewed (to the extent consistent with security concerns);
 - (5) sensitive material such as the names, addresses and telephone numbers of contacts who might be endangered by public disclosure (this material should be omitted from any published report);
 - (6) copies of newspaper articles referring to the trial and to the HRO's presence, with the names of the newspapers and the dates of publication;
 - (7) additional information not strictly within the HRO's terms of reference (such as information about other prisoners, forthcoming trials, changes in the law, etc.); and
 - (8) practical observations for the guidance of future HROs who will serve as observers.

O. Trial observation combined with other monitoring

32. Besides reporting what they see at trial, HROs who serve as trial observers often need to make factual determinations as to events which occurred out of their presence. Frequently, observers function as fact-finders who assess the evidence presented at

trial, add outside information, and *reach an overall decision as to the fairness of the proceedings*, which may necessarily require a judgement on the guilt or innocence of the accused.

33. While the trial is a source of formally presented evidence, the *HRO cannot personally question the witnesses in open court, nor assure the fairness of the fact-finding procedure*. Hence, whenever possible, the HRO should observe the proceedings while conducting a parallel, informal monitoring inquiry. For example, the *HRO should gather relevant information* if s/he suspects that the judge is prejudiced, the defence lawyers are under governmental pressure not to pursue a vigorous defence, or the prosecution is giving impunity to perpetrators of human rights abuses by not adequately seeking justice for past abuses. Observer inquiries outside the trial should resemble interviews rather than adjudicative hearings. (See **Chapter VIII: “Interviewing”**).

34. International monitoring is not restricted by jury-oriented evidentiary rules. Instead of using the exclusionary approach of a common-law court, the *HRO should consider all available evidence and weigh that evidence carefully*. The observing HRO should assure the reliability of the fact-finding process by using techniques such as cross-checking information from different sources and carefully questioning individuals who provide information.

35. As mentioned above, *assessments of the fairness of trials, as well as visits to places of detention, constitute only two ways of checking to see whether the system of justice is functioning adequately*. Human rights field operations are often given a mandate to monitor the administration of justice and to provide technical assistance. An understanding of the strengths and weaknesses of the justice system as it is actually functioning can assist the human rights field operation not only in identifying those responsible for violations, but more importantly in working with the host Government to identify technical assistance projects which will have a chance of improving the administration of justice — even after the field operation has departed the country.

36. A **broad analysis of the administration of justice requires** a review not only of trial observation, but also an **assessment of the actual functioning, qualifications, and training** of the judges, court clerks, prosecutors, lawyers, other court personnel, police, prison officials, and other law enforcement personnel, etc. **in each locality of the country**. It also requires a **review of the court rules, penal code, code of penal procedure**, and other dispute resolution mechanisms to analyse whether reforms might be useful in light of international standards. In addition, regular meetings with officials from the Ministry of Justice may be useful in helping them to develop programmes for improvement of the administration of justice, such as training of judges, police, etc.² The human rights field operation may further be able to help seek or identify external resources for supporting such efforts.

37. If such is the mandate of the human rights field operation, the operation should not only report on specific trials in which concerns arise and prepare a broad analysis of the functioning of the administration of justice with recommendations for improvement, but should also prepare **periodic updates on the functioning of the legal system**, which can then be the subject of **regular meetings** with the Ministry of Justice as well as relevant local officials and judges. (See **Chapter XIX:**

²These observations are based principally upon William G. O'Neill, “Monitoring the Administration of Justice in Human Rights Field Operations” in Hege Araldsen and Øyvind W. Thiiis eds., *Manual on Human Rights Monitoring* (Norwegian Institute of Human Rights 1997).

“Following-Up and Seeking Corrective Action”.) Some of the issues which might be discussed in the broad analysis and then might be updated in periodic reports from area offices include:³

- (a) *Numbers of judges, prosecutors, etc.; needs for training of judicial officials, training received, improvements and difficulties.*
- (b) *Presence or lack of materials necessary for functioning of judges, clerks, etc.* (Without basic equipment of a prosecutor’s or judge’s office — typewriters, paper, pens, tables, chairs, a vehicle, etc. — they cannot operate and thus cannot protect the rights of others.)
- (c) *Lack of the will to pursue tasks*, appear for work, conduct investigations, create dossiers, etc.
- (d) *Interference or threats by administrative officials, military, police and others.*
- (e) Instances of *corruption*, bribes, etc.
- (f) Frequency of or *statistics on arrests*, filing of charges, hearings, trials, etc.
- (g) Assessments of *whether arrests are legally authorized*.
- (h) Assessments of *whether police or judicial inquiries are actually occurring*.
- (i) Assessment of the *fairness of trials* which are held.
- (j) What *efforts at management and improvement* are being undertaken by the leadership of the courts, the Ministry of Justice, etc.
- (k) What *efforts at reform* have been undertaken and with what effect?

³*Id.*

Appendix 1 to Chapter XIII

Checklist: The Elements of a Fair Trial¹

1. All persons shall be equal before the courts².
2. In the determination of any criminal charge, or rights and obligations in a suit at law, everyone shall be entitled to a fair hearing³.
3. Trials shall be public⁴.
4. Trials shall be conducted by a competent, independent and impartial tribunal⁵.
5. Trials shall be conducted only by tribunals established by law⁶.
6. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law⁷.
7. In the determination of any criminal charges against him or her, everyone shall be entitled to the following minimum guarantees, in full equality⁸:
 - (a) to be informed promptly and in detail of the nature and cause of any charges in a language which he or she understands⁹;
 - (b) to have adequate time and facilities for the preparation of a defence¹⁰;
 - (c) to communicate directly with counsel of his or her own choosing¹¹;
 - (d) to be tried without undue delay¹²;
 - (e) to be tried in his or her own presence, and to defend him or herself in person or through legal assistance of his or her own choosing¹³;
 - (f) to be informed, if he or she does not have legal assistance, of the right to legal assistance¹⁴;

¹ OHCHR Internal document (1995). See also the sections on arrest and detention in **Chapter IX: “Visits to Persons in Detention”**, for additional information relevant to rights before trial.

² ICCPR, Art. 14(1).

³ Id.

⁴ The press and public may be excluded from part or all of the trial only for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly required in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. The judgement, however, shall always be made public, except where the interests of juvenile persons otherwise requires or where the proceedings concern matrimonial disputes or the guardianship of children. ICCPR, Art. 14(1).

⁵ ICCPR, Art. 14(1).

⁶ Id.

⁷ ICCPR, Art. 14(2).

⁸ ICCPR, Art. 14(3).

⁹ ICCPR, Art. 14(3)(a).

¹⁰ ICCPR, Art. 14(3)(b).

¹¹ Id.

¹² ICCPR, Art. 14(3)(c).

¹³ ICCPR, Art. 14(3)(d).

- (g) to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her if he or she does not have sufficient means to pay¹⁵;
 - (h) to examine the witnesses against him or her, and to examine the witnesses on his or her behalf under the same conditions¹⁶;
 - (i) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court¹⁷;
 - (j) not to be compelled to testify against him or herself or to confess guilt¹⁸.
- 8. Everyone convicted of a crime shall have the right to have the conviction decision and sentence reviewed by a higher tribunal according to law¹⁹.
 - 9. If someone is convicted by a final decision, but the conviction is subsequently reversed, or a pardon granted on the ground that a new or newly discovered fact shows conclusively that their has been a miscarriage of justice, the person who has suffered punishment as a result of the conviction is to be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partially attributable to the person convicted²⁰.
 - 10. No one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of the country²¹.
 - 11. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed²².
 - 12. A penalty heavier than the one that was applicable at the time when the criminal offence was committed shall not be imposed²³.
 - 13. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby²⁴.
 - 14. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation²⁵.

¹⁴Id.

¹⁵Id.

¹⁶ICCPR, Art. 14(3)(e).

¹⁷ICCPR, Art. 14(3)(f).

¹⁸ICCPR, Art. 14(3)(g).

¹⁹ICCPR, Art. 14(5).

²⁰ICCPR, Art. 14(6).

²¹ICCPR, Art. 14(/). This is known as the principle of *ne bis in idem*, or “double jeopardy”.

²²ICCPR, Art. 15(1). This does not prejudice the trial or punishment of a person for acts committed which were criminal under general international law, including violations of customary international law such as war crimes, torture, slavery, genocide, etc. (see ICCPR Art. 15(2)).

²³ICCPR, Art. 15(1). This does not prejudice the trial or punishment of a person for acts committed which were criminal under general international law, including violations of customary international law such as war crimes, torture, slavery, genocide, etc. (see ICCPR Art. 15(2)).

²⁴ICCPR, Art. 15(1). This does not prejudice the trial or punishment of a person for acts committed which were criminal under general international law, including violations of customary international law such as war crimes, torture, slavery, genocide, etc. (see ICCPR Art. 15(2)).

²⁵ICCPR, Art. 11.

.....Chapter XIV ELECTION OBSERVATION

Key concepts

The right of everyone to participate in his or her Government through free and fair elections is a fundamental human right to be enjoyed without discrimination.

Free and fair elections require respect for the right to freedom of expression and opinion, peaceful assembly, freedom of association, freedom of movement and other rights.

Human rights officers serving as election observers should:

- | *be sufficiently numerous to ensure presence at enough polling places and events;*
- | *have a reputation for independence, impartiality, objectivity, language skills and experience in electoral administration;*
- | *be present from the beginning of the electoral process;*
- | *arrange meetings (prior and subsequent to the election) with Government officials, party leaders, candidates, NGOs, and others to know whether their rights have been respected and whether they have concerns about the election process;*
- | *examine the laws and infrastructure;*
- | *be afforded free movement and access;*
- | *monitor the pre-election preparations and campaign period, any registration process, any civic education, the media, the vote, the count, the results and follow-up.*

A. Introduction¹

1. There are at least *four ways the UN has been involved in elections*. First, the UN has organized and *conducted elections* in such countries as Namibia. In this situation, the UN organizes virtually every aspect of the electoral process. Second, the UN has *supervised elections* by selecting a *Special Representative of the Secretary-General* to *certify the validity* of certain

¹The material in this part is based principally on United Nations Centre for Human Rights, *Human Rights and Elections — A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, Professional Training Series No. 2, UN Doc. HR/P/PT/2 (1994).

crucial aspects of the electoral process. Third, the *electoral process is organized and administered by a national organ and the UN is asked to observe the election and verify whether the election process is free and fair.*

2. For the above-mentioned categories of UN involvement, all of the following *five elements must be present:*

- (1) *A formal request* has been received from the State concerned;
- (2) *Broad public support* exists for UN involvement;
- (3) *Sufficient advance time* remains for comprehensive UN involvement;
- (4) There exists a *clear international dimension* to the situation;
- (5) *A favourable decision has been rendered by an authoritative body of the UN (i.e., the General Assembly or the Security Council).*

3. *Before becoming involved* in an election, the UN Headquarters (or the UN human rights field operation) will have carefully considered the following:

- (1) Does a *situation of gross violations of human rights* exist?
- (2) Is the *scope of assistance requested* appropriate?
- (3) *Will UN involvement encourage unwarranted confidence* in a flawed or disingenuous process?
- (4) *Will UN advice be implemented by the Government* and major political actors?

4. *A fourth type of UN involvement is improving the national capacity* with regard to the material, infrastructural, legal and human rights aspects of elections. Requests for technical assistance can be granted quickly, without the need for consideration by a political decision-making body of the UN.

5. *Strategic choices must be made about which form UN involvement should take.* Obviously, the role of the UN field operation changes with the nature of its mandate. Frequently, the UN and other election observers are asked to play several roles during an election, including, for example, both assistance in preparing for the election and then observing it. Having assisted with the preparation of election process, it is difficult for the same individuals to be entirely impartial when observing the results of their own efforts. *In general, however, the field operation and its officers should — particularly with regard to election observation — be and be seen to be neutral as to the result of the voting.*

6. No matter what the UN election observer's specific role is, his/her presence can assist in ensuring the integrity of the election process. *HROs who serve as election observers are in a position to report on a country's respect for political rights.* In addition, HROs can assess the degree to which the Government respects the rights to freedom of expression, freedom of association, hold opinions without interference, peaceful assembly, etc. Moreover, officers may take advantage of the relative openness of an election period to make inquiries into specific reports of human rights violations.

7. *This chapter of the Manual focuses primarily on the third type of UN involvement — election observation and verification, in which a human rights field operation is more likely to participate than in the other kinds of UN involvement.* While running an election, as in the case of Namibia, demands tremendous resources and great expertise, election observation and

verification also requires both resources and considerable expertise. In addition, observing an election may place the human rights field operation in a very sensitive position, which may interfere with its other monitoring functions and might risk its maintenance of the requisite neutrality. Hence, the decision to assist in election monitoring must be the subject of careful reflection. Nonetheless, several human rights field operations have been given a mandate to pursue election observation and verification.

8. This chapter includes an overview of international human rights standards related to free and fair elections and an analysis of the issues and techniques related to election observation. The chapter is mainly based on the publication “*Human Rights and Elections — A Handbook on the Legal, Technical and Human Rights Aspects of Elections*” of the (then) United Nations Centre for Human Rights². **Appendix I** reproduces *OHCHR Guidelines for Electoral Assistance, Monitoring and Observation — A Human Rights Checklist for Examination of Electoral Arrangements*.

B. International standards for free and fair elections

1. Participation in Government and non-discrimination

9. The **right of everyone to participate in the Government of his or her country** is a fundamental human right.³ *Elections play an important role in ensuring adherence to the right of political participation.* Article 21(3) of the Universal Declaration of Human Rights states, “The will of the people shall be the basis of the authority of Government; this will shall be expressed in **periodic and genuine elections** which shall be **by universal and equal suffrage** and shall be **held by secret vote** or by equivalent free voting procedures.”

10. In addition, the Covenant on Civil and Political Rights guarantees in Article 25(b) that every citizen shall have the **right** and opportunity, “[t]o **vote and to be elected** at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...”.

11. Regional organizations have also affirmed the right to participate in free and fair elections. Pursuant to Article 3 of Protocol I of the European Convention on Human Rights, States Parties undertake to *hold free elections at reasonable intervals by secret ballot*. The final document issued by the Conference on Security and Co-operation in Europe

²See Note 1. See also Larry Gerber, *Guidelines for International Election Observing* (1984); Guy D. Goodwin-Gill, *Free and Fair Elections: International Law and Practice* (1994); OSCE/ODIHR Election Observation Handbook (1996); Hege Araldsen and Oyvind W. Thiis, “Election Observation”, *Manual on Human Rights Monitoring* (Norwegian Institute of Human Rights 1997).

³Universal Declaration of Human Rights, Art. 21(1).

Meeting on the Human Dimension in Copenhagen states that *free elections held at reasonable intervals by secret ballot are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings*. Furthermore, in 1994 the Council of the Inter-Parliamentary Union in Europe unanimously adopted the Declaration on Criteria for Free and Fair Elections.

12. Article 20 of the American Declaration of the Rights and Duties of Man and Article 23(b) of the American Convention on Human Rights guarantee the right of citizens to vote and be elected in genuine periodic elections. In addition, Article 13(1) of the African (Banjul) Charter on Human and Peoples' Rights provides that every citizen shall have the right to participate freely in Government.

13. Moreover, the **right to participate in free and fair elections** is to be applied universally and without discrimination. Article 1 of the Convention on the Political Rights of Women and Article 7(a) of the Convention on the Elimination of All Forms of Discrimination against Women state that **women are entitled to vote in all elections on equal terms with men**. Pursuant to Article 5 (c) of the Convention on the Elimination of All Forms of Racial Discrimination, "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... [p]olitical rights, in particular the rights to participate in elections — **to vote and to stand for election** — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service...". (See also, Universal Declaration of Human Rights, Article 2; and Covenant on Civil and Political Rights, Article 2.)

2. Pre-requisite rights⁴

14. International human rights instruments also protect a number of basic rights, the enjoyment of which is crucial to a meaningful electoral process. The **right to participate in free and fair elections implicates** these rights, including:

- ✓ **the right to freedom of expression** — The electoral process is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during electoral periods⁵.
- ✓ **the right to freedom of opinion** — The unconditional freedom to hold a political opinion is imperative in the context of elections, since the *authentic* assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way⁶.
- ✓ **the right to peaceful assembly** — The right of assembly must be respected, since public demonstrations and political rallies are an integral part of the election process and provide an effective mechanism for the public dissemination of political information⁷.

⁴Human Rights and Elections, UN Centre for Human Rights, Chapter III, pp. 6-8.

⁵Idem. p- 7.

⁶Idem. p. 7.

⁷Idem, p.8.

- ✓ **the right to freedom of association** — This right clearly includes the right to form and participate in political organizations. Respect for this right is vital during the electoral process, as the ability to form and join political parties is one of the most important means by which people can participate in the democratic process⁸.

15. See **Chapter IV: “Overview of International Human Rights and Humanitarian Law Standards”** for more details on international standards related to these rights. Other rights relevant to the electoral process include the rights to freedom of movement, to organize trade unions, to participate in one’s Government, to be free from discrimination on political grounds, and — in particularly difficult circumstances — the right to be free from arbitrary killing.

C. Objectives of election observation

16. Election monitoring can serve at least seven important purposes:

- ✓ The *first*, and indeed primary purpose is **ensure** to that an **independent, impartial and objective evaluation** of the electoral process is conducted.
- ✓ *Second*, monitoring can be done to **encourage acceptance of election results**.
- ✓ *Third*, election observation can be done to **encourage participation and build voter confidence** in the electoral process.
- ✓ The *fourth* objective is to **ensure the integrity of the electoral process**, including deterring and detecting violence, intimidation and fraud.
- ✓ *Fifth*, there is a need to **monitor the protection of all human rights** during the election period.
- ✓ *Sixth*, election monitoring **facilitates dispute resolution** — particularly as to issues related to the election process.
- ✓ *Seventh*, election monitoring can **provide indirect support for civic education** and the building of a civil society.

D. Selecting HROs to serve as election observers

17. An election observer delegation should consist of a minimum of two members. Ideally, however, there will be far more than two HROs. It is important to allow for a **sufficient number of observers to ensure their presence at an adequate number of polling places and election events**. When determining the size of the observation

⁸Idem, p.8.

delegation, factors such as the size of the country, population and number of polling stations should be considered.

18. Several factors should be considered when selecting observers. The fewer the number of observers, the more important it is for the individuals to have a **reputation for independence, impartiality and objectivity** beyond the normal qualifications for HROs. Language skills are also important. Another factor is experience in electoral administration or politics.

19. Election observers should understand the mandate and methods of the field operation. In addition, they should be already knowledgeable or *briefed as to the history, current politics, local culture and electoral process of the country holding the election*.

E. Length of observation

20. The meaningful involvement of HROs as observers requires their **presence from the beginning of the electoral process**. If the HROs serving as observers are not regularly located in the country, it is preferable to visit the site of the election at least twice — once to review the preparations for the election and the political campaign and a second time to observe the election and vote count. *At a minimum, HROs observing an election should plan at least a seven-day visit.* Election observers should use this time to meet the major actors in the political process, travel outside of the capital city, assess preparations for the election including registration proceedings, observe election day activity, and monitor the vote count.

F. Informing the authorities about the observation

21. If HROs are to serve as *election observers*, their presence *should be expressly permitted by the field operation's mandate, electoral laws, procedures and/or officials*. Because of the visibility of the election process, the role of the observer should be clearly described in public information materials.

22. At the beginning of the election observation process, the HROs should announce their presence at the site of the election. They should explain the specific goals of the observation. They should also stress the independence and impartiality of the HROs in their role as election observers, and the human rights field operation's willingness to receive comments.

G. Contacts and interviews

23. HROs serving as election observers should try to meet with a number of the participants in the political process. It is important to arrange meetings (both prior and subsequent to the election) with Government officials, party leaders and candidates. HROs serving as election observers should also try to meet with members of the Government body administering the election, and representatives of organizations such as labour unions, professional organizations, human rights groups, etc. When meeting with members of organizations, the HROs should inquire as to specific complaints about the electoral process.

1. Key human rights issues

24. In general, HROs who serve as **election observers need to know** whether⁹:
- (1) **freedom of movement, assembly, association and expression** have been respected throughout the election period;
 - (2) all parties have conducted their **political activities within the law**;
 - (3) any political party or special interest group has been subjected to **arbitrary and unnecessary restrictions regarding access to the media** or generally with regard to their freedom to communicate their views;
 - (4) *parties, candidates* and supporters have enjoyed equal security;
 - (5) voters have been able to **cast their ballots freely**, without fear or intimidation;
 - (6) the **secrecy of the ballot** has been maintained;
 - (7) the overall conduct of the ballot has been such as to **avoid fraud and illegality**.

2. Interested groups

25. HROs should attempt to **determine the position and impressions of interested groups** by asking the following questions:
- (1) What are the **concerns of each of the contending political parties**?
 - (2) What are the **concerns of the local non-governmental human rights organizations**?
 - (3) What are the **concerns of interested international human rights organizations**?
 - (4) What are the **concerns of the legal community**?
 - (5) Have all **major national players agreed publicly to abide by the outcome** of the elections?
 - (6) What are the **concerns of the diplomatic community**?

⁹Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice* 62 (1994).

3. National infrastructure

26. The HROs serving as election observers should also **examine the country's existing infrastructure** and ask:

- (1) Is the national administrative structure **experienced in the organization of free and fair elections**?
- (2) Are the political **parties experienced in contesting multi-party elections**?
- (3) Are the political parties **able to contest the forthcoming election**?
- (4) Is the **judiciary sufficiently independent and well-functioning** to allow it to adjudicate electoral matters?

27. Furthermore, HROs serving as election observers are making the following **determinations about the country's laws and procedures**:

- (1) Do the **laws and procedures respect international standards**?
- (2) Do they **reflect the particular needs, aspirations and historical realities** of the people involved?
- (3) Do they **give voice to the political will** and rights to self-determination of the people?

H. Travel

28. It is particularly important for HROs serving as **election observers to be afforded free movement and access**. Under the basic mandate of the field operation, they should also be protected from harm or interference with their official duties.

29. As campaign abuses and election fraud may occur throughout the country, officers should travel as widely as possible in order to obtain an accurate assessment of the electoral process. During their travels, HROs should not use Government or military escorts. Travelling with Government security forces, Government officials or party representatives may have an intimidating effect on the individuals to be interviewed.

I. Monitoring elections¹⁰

30. In observing an election process, a human rights field operation might divide its efforts into four periods: pre-election preparations and campaign period, voting, counting and post-election follow-up.

¹⁰This part is based principally on United Nations Centre for Human Rights, *Human Rights and Elections*, UN Doc. HR/P/PT/2 (1994).

1. Monitoring the pre-election preparations and campaign period

a. *The development of election law and procedures*

31. The **process of identification of electoral districts and boundaries should respect the international norm of equal suffrage**. Such delimitation should not be designed to dilute or discount the votes of any particular groups or geographic areas.

32. **Fair constituency-delimitation procedures** will take into account a range of information, including available demographic information, territorial integrity, geographical distribution, topography, etc. If delimitation is based on census data, the HROs should determine *whether the census was accurate*. Moreover, **polling stations** should be distributed so as to **guarantee equal access** within each constituency.

33. Electoral laws and procedures should guard against unfair advantage being bestowed upon Government-supported candidates. **Provisions concerning candidate qualifications must be clear and must not discriminate against women or particular racial or ethnic groups**. Disqualifications should be subject to independent review.

34. **Political parties should not face unreasonable restrictions** on participation or campaigning. There should be protection under the law for party names and symbols. Procedures for designation of party agents, for nomination time and place requirements, and for campaign financing should be clearly established by law. In addition, the **electoral calendar** should provide adequate time for campaigning and public information efforts.

b. *Monitoring the electoral administration*

35. Provisions of the law should ensure that an **objective, unbiased, independent and effective administrative structure** is in place. HROs should pay careful attention to *provisions for appointment, remuneration, duties, powers, qualifications and reporting structure of electoral staff*. The HRO should ask: (1) Is a single line of ultimate authority established?; (2) Is the method of appointment objective and unbiased?; and (3) Is the means of compensation potentially corrupting?

36. At all levels, **staff must have the necessary qualifications** to perform well; staff should also **be insulated from bias and political pressure**. Adequate advance training is imperative for all election officials. All electoral activities, including the decision-making process, the legal process, and the organization of events, should be conducted in a wholly transparent manner. In addition, public consensus should exist on the administrative structure.

c. *Monitoring registration*

37. If **advance registration** of voters is proposed, the process must be **carefully constructed to ensure fairness and effectiveness** of *provisions concerning elector qualifications, residence requirements, election lists, registers, and the means provided for challenging those documents*. *Voter lists should be available to interested parties*. If no registration is to take

place in advance of polling, **alternative measures for the prevention of double-voting** (for example, the use of indelible ink) and of voting by unqualified persons must be put in place.

38. Disqualifying factors must not represent impermissible discrimination, and should be limited so as to provide the maximum reasonable enfranchisement of the people. Procedures for **registration should accommodate broad participation**, and should not create unnecessary technical barriers to participation by otherwise qualified persons.

d. Monitoring civic education

39. Funding and administration should be provided for **objective, non-partisan voter education and information campaigns**. The voter education campaign should be based upon the voting experience of the population. The **public should be well informed as to where, when and how to vote**. The public should also be educated as to why voting is important.

40. Literature should be widely available and should be published in the various national languages to help ensure the meaningful participation of all eligible voters. **Voter education should encourage participation by all, including members of ethnic groups and women**. Multimedia methods should be employed to provide effective civic education to people with various levels of literacy. Voter education campaigns should extend throughout the territory of the country, including rural and outlying areas.

e. Monitoring the media

41. Arrangements for **fair media access** by candidates and parties is especially important where the major information media are Government-controlled. Media **regulations** should provide for **safeguards against political censorship, unfair Government advantage, and unequal access during the campaign period**. Fair media access implies not only equality of time and space allotted, but also attention to the hour of broadcasting and the placement of printed advertisements. HROs should also try to determine if broad agreement exists on the media regulation system.

42. HROs serving as election observers should monitor both national and local media. Monitoring political broadcasts, broadcast civic education programmes, and allocation of time to various political parties permits an evaluation of participants' access to the political process.

2. Monitoring the vote

43. HROs should try to **cover as many polling stations as possible on election day**. HROs should pay particular attention to observance of the following principles.

44. Free and fair elections should be guided by **detailed provisions regarding the form of ballots**, the design of ballot boxes and voting compartments, and the manner of polling. These provisions should *protect the process from fraudulent practices* and should respect the secrecy of the vote.

45. **Ballots should be worded clearly and contain information that is identical in all native languages.** *To avoid fraud and to give each participant an equal chance, however, the positions of candidate and party names should be rotated on the ballot.* Moreover, the ballot form should **take into account various levels of literacy** in the country. Proxy and absentee voting provisions should be designed to encourage the broadest possible participation, without compromising electoral security. **Voters with special needs** (such as the disabled, elderly, students, conscripts, workers, foreign service personnel and prisoners who have retained voting rights) **should be accommodated**, without compromising electoral security.

46. **Sufficient quantities of voting materials should be available at each polling place.** Polling personnel should have clear guidance in admitting and identifying qualified voters. The questions that are put to the voters should be limited by statute. In addition, HROs should *watch for evidence of voter intimidation or discriminatory treatment of voters.*

47. HROs should not interfere with the polling process, unless assistance is requested by the authorities. Whether or not an HRO should respond to such requests for assistance depends upon the circumstances at hand. In taking such a decision, the HRO should be mindful of his/her “observer” status and ensure that no action taken could possibly be perceived as partisan or otherwise misconstrued. Serious problems should be reported to the central electoral authorities.

3. Monitoring the count

48. It is especially important for **HROs to be present at the closing of the polls and the counting of the ballots.** Counting should be open to official observation by concerned parties, including national and international observers. All issued, unissued or damaged ballot papers must be systematically accounted for. **The processes for counting votes, verification, reporting of results, and retention of official materials must be secure and fair.** Recount procedures should be available in case of questionable results. Ideally, alternative, independent verification procedures such as parallel vote tabulation will be in place.

49. HROs should **determine whether individuals who are denied voting rights have access to substantive redress.** The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation, and the powers of the independent judicial body charged with such review.

4. Monitoring results and follow-up

50. Immediately after the election, the media usually asks the UN and other international observers to pronounce whether or not an election was free and fair. **Making a final judgement regarding the election so quickly is impossible** as complaints have not yet been filed and information from the countryside has not yet been received. To capitalize on the media attention, however, it is *usually necessary for UN Headquarters or the Special Representative of the Secretary-General to make a tentative and qualified statement* based on the information available at the time.

51. *Only after complaints have been received from opposing political parties, voters and others can HROs get a full picture of what has transpired. After HROs have inquired into complaints to determine whether they are justified and determined whether they affected the results, the leadership of the human rights field operation monitoring the election can assess whether or not the election was free and fair. Any announcement of such an assessment, however, is usually made by UN Headquarters, the Special Representative of the Secretary-General, or after consultation and authorization, by the leadership of the human rights field operation. Under no circumstances should an HRO or election observer take it upon him/herself to address the media evaluating or otherwise judging the election or its outcome.*

Appendix 1 to Chapter XIV

Guidelines for Electoral Assistance, Monitoring and Observation

UN Office of the High Commissioner for Human Rights
*A Human Rights Checklist
for Examination of Electoral Arrangements*
(OHCHR Internal document, 1993)

*The will of the people shall be the basis of
the authority of government.
article 21 (3), UDHR*

Purposes of UN involvement include:

- confidence building
- deterrence of violence and intimidation
- facilitation of dispute resolution
- deterrence of fraud
- detection of fraud
- encouragement of acceptance of results
- support for civic education
- promotion and protection of human rights

Subjects for monitors and advisors include:

- the development of election law and procedures
- the electoral administration
- registration
- voter list preparation
- campaign period
- civic education
- the vote
- the media
- the count
- the results and follow-up (hand-over of power, etc:)
- the situations of minorities and other vulnerable groups before, during and after elections

Questions for monitoring, observation and verification include:

- is the presence of observers expressly provided for?
- will national observers be allowed?
- will international observers be allowed?
- is their role clearly set out by law?
- is their role described in voter education materials?
- are they to be afforded free movement within the country?
- will they have access to all important events?
- how will they be protected from harm?
- how will interference with their duties be prevented?
- how will they be trained and oriented?
- will they be sufficient in numbers?
- how will they be housed and otherwise accommodated?
- what will be their specific role?
- will they have standing to file complaints and petitions?

Advance questions for United Nations involvement:

- has a formal request/mandate been received from the government?
- does broad public support exist for UN involvement?
- is there sufficient advance time for meaningful UN involvement?
- is there a clear international dimension to the situation?
- human rights concerns to be advanced?
- conflict resolution potential?
- has a decision in favour of UN involvement been rendered by an authoritative UN body (e.g., the security council, the general assembly)?
- does a situation of gross violations of human rights exist?
- is the scope of assistance requested appropriate?
- should it be expanded?
- should it be reduced?
- will UN involvement encourage unwarranted confidence in a flawed or disingenuous process?
- will UN involvement improve the process?
- will UN advice be implemented by the government and major political actors?

Enquiring about positions and impressions of interested groups:

- what are the concerns of each of the contending political parties?
- what are the concerns of the local non-governmental human rights organizations?
- what are the concerns of minority groups?

- what are the concerns of women's groups?
- what are the concerns of interested international human rights organizations?
- what are the concerns of the legal community?
- what are the concerns of the diplomatic community?
- have all major players agreed publicly to abide by the outcome of the elections?

Examining the existing infrastructure:

- is the national administrative structure experienced in the organization of free and fair elections?
- are the political parties experienced in contesting multi-party elections?
- is the judiciary sufficiently independent and well-functioning to allow it to adjudicate electoral matters?

Reviewing electoral laws and procedures:

- do the laws and procedures respect international standards?
- do they reflect the particular needs, aspirations, and historical realities of the people involved?
- do they give voice to the political will and rights to self-determination of the people?

Judging whether the elections are to be free :

- will they allow unfettered expression of the will of the people?
- will they be set in an atmosphere free from intimidation?
- will they be accompanied by mechanisms for the protection of human rights?

Determining whether the prerequisite rights are secured:

- free expression?
- free opinion?
- free information?
- free assembly?
- free association?
- free movement?
- independent judicial procedures?

Examining arrangements for the secrecy of the ballot:

- are booths, shields, ballots, and boxes adequate for secrecy? (objective analysis)
- are the voters secure that they are safe to vote as they wish? (subjective analysis)

Measuring arrangements for fairness:

- is equal suffrage established?
- is universal (adult) suffrage established?

- is non-discrimination in political rights guaranteed?
- what are the technical safeguards to protect fairness?

Evaluating adequate periodicity:

- are there reasonable intervals for new elections?
- is there adequate preparation time for each phase of the process?
- are there adequate limitations on permissible emergency interruptions?

Projecting whether elections will be “genuine”:

- are there genuine *procedures* to accommodate the will of the people?
- will there be genuine *effects*, including a transfer of power?
- is there to be a genuine *choice* of different parties or candidates?

Evaluating equal access to candidature and service:

- do the laws, procedures or facts on the ground operate to discriminate against possible candidates?

Measuring potential for an informed choice by the electorate:

- has campaigning been adequate to make people understand issues and positions?
- have understandable voter education materials reached all sectors of the voting public?
- do voters in fact understand the central issues and parties?

Evaluating plans for the electoral administration:

- is the administrative structure independent and objective?
- is it effective?
- is a single line of ultimate authority established?
- is the method of appointment objective and unbiased?
- is the means of compensation potentially corrupting?
- will staff have the necessary qualifications to perform well?
- are all levels of staff insulated from bias?
- from political pressure?
- from politically motivated salary adjustment or denial?
- are legal guarantees in place to prevent corruption ?
- to prevent bias?
- to prevent fraud?
- is there public consensus on the administrative structure?
- will there be adequate advance training of officials?

Examining constituency delimitation:

- do the districts and boundaries respect equal suffrage?
- are they drawn to discount the votes of a particular group?
- a particular geographic area?
- do they take into account available demographic information?
- is there an accurate census?
- do they take topography into account?
- do they take geographic distribution into account?
- will polling stations be distributed evenly?

Evaluating registration of electors:

- is advance registration proposed?
- are provisions for qualifications fair?
- are resident requirements fair?
- are procedures for lists and registers fair?
- are they effective?
- are procedures established for challenges to the lists?
- for appeals on such decisions?
- are lists accessible to interested parties?
- do disqualifying factors represent impermissible discrimination?
- do they allow maximum reasonable enfranchisement?
- are there technical barriers to voting by qualified persons?
- procedures for registration of those approaching minimum age?
- is the registration period long enough for maximum access?
- if no advance registration, will there be other means of:
 - preventing double voting?
 - preventing unqualified voting?

Looking at nominations, parties, and candidates:

- is unfair advantage given to government-supported candidates?
- are provisions for candidate qualifications clear?
- are they fair?
- do they discriminate against women?
- do they discriminate against particular racial groups?
- against certain ethnic groups?
- is disqualification subject to independent review?
- do parties face unreasonable restrictions on participation?
- on campaigning?
- are party names and symbols protected under law?

- are procedures for party agents, if allowed, fair and clear?
- are nomination times and places clearly provided?
- does the law fairly address campaign financing?
- is there adequate time for political campaigning?

Examining polling, tabulation, and reporting:

- are there detailed provisions form the form of ballots?
- for the design of ballot boxes?
- for the design of voting compartments?
- for the manner of polling?
- do these designs protect the process from fraud?
- do they respect the secrecy of the vote?
- are ballots clearly worded?
- are proxy and absentee voting procedures in place?
- do such procedures facilitate broad participation?
- do they compromise electoral security?
- are disabled voters accommodated?
- are others with special needs accommodated?
- elderly or infirm voters?
- students?
- conscripts?
- workers?
- refugees and displaced persons?
- foreign service personnel?
- prisoners who have retained voting rights?
- do polling staff have clear guidance on identifying voters?
- are questions to be put to voters limited by statute?
- is the attendance of observers provided for?
- is counting open to official observation?
- are all ballot papers to be systematically accounted for?
- is the counting process secure and fair?
- are there provisions for safe storing of election materials?
- are recount procedures established for questionable results?

The complaints, petitions and appeals process:

- is standing provided to all aggrieved parties?
- is substantive redress available?
- does petition process set the scope of available review?
- does the law clearly establish procedures for petitions?

- are petitions the sole means of challenging results?
- are the powers of the body charged with review clear?
- is that body an independent judicial body?
- are multiple levels of review available where appropriate?
- what is the effect of confirmed irregularities on outcome?
- is there redress for individuals denied voting rights?

Attention to respect for fundamental human rights:

- is free expression guaranteed?
- free opinion?
- free information?
- free assembly?
- free association?
- free movement?
- respect for the rights of the person?
- respect for other human rights?
- is there a prevailing atmosphere of intimidation?
- are there other laws which may discourage participation?
- is a state of emergency in effect?
- is other exceptional legislation in effect?
- are any exceptional measures strictly required by the exigencies of the situation?
- are exceptional measures calculated to corrupt the process?
- are exceptional measures calculated to unnecessarily delay the process?
- are there problems with discrimination on the basis of race, colour, gender, language, religion, opinion, origin, property, birth or other status?

Offenses, penalties, and maintenance of order:

- does the law protect the process from corruption?
- from official nonfeasance, misfeasance, and malfeasance?
- from obstruction?
- from undue influence?
- from personation?
- from bribery?
- from treating?
- from intimidation?
- evidence of disappearances?
- allegations of torture?
- cases of arbitrary arrest and detention?
- cases of summary or arbitrary executions?

- any such cases brought to the attention of the various thematic mechanisms of the UN commission on human rights?
- does the law guard against all forms of illegal and corrupt practices?
- do penalties and procedures respect international standards for the administration of justice?
- are police to be present at the polls?
- if so, is this only to the extent absolutely necessary?
- will it have an intimidating effect on voters?
- could polling officials fulfil the police function in some cases?
- is criminal liability imposed for official misconduct?
- is civil liability imposed for recovery against officials?

Evaluating media access and regulation:

- are arrangements in place for fair media access?
- by all parties?
- by all candidates?
- are the major information media government-controlled?
- are the major information media government-licensed?
- are safeguards provided against censorship?
- against favouritism?
- against unfair government advantage?
- against unequal access during campaign periods?
- are there provisions for equal time?
- for equal priority of broadcasts?
- is there broad agreement on the regulation system?

Public information and voter education enquiries:

- is a voter education campaign planned?
- is it sufficiently funded?
- is it unbiased?
- is it based upon the level of voting experience of the population?
- is it educationally appropriate?
- is it culturally appropriate?
- is it targeted to all qualified age groups?
- does it encourage participation by women?
- does it encourage participation by all ethnic groups?
- does it explain where to vote?
- does it explain when to vote?
- does it explain who can vote?

- does it explain how to vote?
- is it conducted in all native languages?
- does it encourage confidence in the process?
- is literature widely available?
- is programming widely broadcast?
- are outlying and rural areas reached?

Examining issues of legal authority and structure:

- are political rights enshrined in the constitution?
- in other high organic law of the state?
- does this expressly include the right to free elections?
- to periodic elections?
- to universal, equal, nondiscriminatory suffrage?
- to a secret ballot?
- to stand for office and be elected?
- to have access to public service on equal terms?
- to free expression, opinion, information, assembly, and association?
- for pluralism and political parties?
- is statutory language clear and concise?
- is it specific enough to forestall potential abuse of discretion?
- to forestall discriminatory application?
- to forestall interpretations which discourage free speech?
- to forestall interpretations which discourage full participation?
- is statutory language gender neutral?
- does it encourage participation by women?
- are laws and regulations translated into all languages?
- has subsidiary legislation be promulgated?
- are regulations sufficiently detailed?
- are administrative instructions clear and comprehensive?
- have manuals been produced to guide staff at all levels?

International legal responsibility analysis:

- is the state a member of the United Nations (charter)?
- is it a party to the international covenant on civil and political rights? (Art. 25).
- is it a party to the international convention on the elimination of all forms of racial discrimination? (Art. 5).
- is it a party to the international convention on the elimination of all forms of discrimination against women? (Art. 7).
- is it a party to the convention on the political rights of women? (Arts. I, ii.iii).

- is it a party to the international convention on the suppression and punishment of the crime of apartheid? (Art. ii).
- is it a party to the first optional protocol of the covenant on civil and political rights?
- if so, has the human rights committee considered any complaints regarding article 25 of the covenant on civil and political rights?
- is the state a party to any regional human rights instruments providing for political rights?
- do the laws and procedures for elections conform with all of the requirements of the above instruments?
- do they meet the requirements of art.21 of the universal declaration of human rights?
- do they meet the requirements of the charter of the United Nations, where applicable?
- do they respect art. 4 of the declaration on the elimination of discrimination against women?
- do they respect art. 5 of the proclamation of Teheran?
- do they respect arts. 2 and 5 of the declaration on the granting of independence to colonial countries and peoples?
- do they respect arts. 5 and 18 of the declaration on social progress and development?

NOTES:

.....Chapter XV

MONITORING DEMONSTRATIONS AND PUBLIC MEETINGS.....

Key concepts

While all international and regional human rights treaties grant individuals the rights to freedom of association and peaceful assembly, they allow States to impose certain restrictions on those rights, for the reasons and at the conditions specified in the treaties themselves.

In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

Human rights officers monitoring demonstrations should:

- | *recognize that their role may be complicated by the actions of the demonstrating crowd and law enforcement officials;*
- | *realize that their role is to verify that the authorities are not interfering with freedom of assembly and peaceful association;*
- | *neither encourage nor discourage holding a peaceful assembly;*
- | *never participate in or associate themselves with demonstrations;*
- | *establish contact with the organizers and collect information about the planned activities, route, number of participants, duration, goals, etc.;*
- | *stay at a prudent and sufficient distance from the demonstration;*
- | *be aware of their location and have an escape plan;*
- | *devote special attention to persons arrested or beaten; and*
- | *write a detailed report on any assemblies or public meetings observed.*

A. Introduction

1. Monitoring demonstrations can be a rather common task of HROs, especially in periods of political and electoral campaigns in the country of operation. This chapter covers the international human rights standards the respect of which HROs seek to ensure in performing this specific function, and a number of practical and technical aspects which need to be kept in mind to professionally and effectively monitor demonstrations.

B. International standards for free assembly, association and expression

2. As discussed earlier in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**, the **right to freedom of peaceful assembly and association** is guaranteed by international human rights law. Article 20 of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of peaceful assembly and association.” Article 21 of the Covenant on Civil and Political Rights secures the right to peaceful assembly and Article 22 protects freedom of association. Article 11(1) of the European Convention declares, “Everyone has the right to freedom of peaceful assembly and to freedom of association with others...” In addition, Articles 15 and 16 of the American Convention guarantee the rights of peaceful assembly and freedom of association.

3. The Covenant on Civil and Political Rights, the European Convention, and the American Convention provide that States may impose certain lawful restrictions on the exercise of freedom of association. The limiting language found in the two regional conventions is similar to Article 22(2) of the Covenant on Civil and Political Rights: “No **restrictions** may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of rights and freedoms of others.”

4. The rights of freedom of association and assembly are also set forth in the African (Banjul) Charter, but in a slightly different manner. Article 10(1) states, “Every individual shall have the right to freedom of association provided that he abides by the law.” Article 11 provides that, “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

5. While all international and regional human rights conventions grant individuals the right to freedom of association and peaceful assembly, they allow States to impose certain permissible restrictions on those rights. **European jurisprudence**, however, suggests that European States (and probably other States with similar human rights treaty obligations) may have an obligation to take further steps to guarantee those

rights. In *Plattform 'Ärzte für das Leben' v. Austria* (Judgement of 21 June 1988 (No. 139), 13 E.H.R.R. 204), the European Court of Human Rights noted that,

A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The **participants must, however, be able to hold the demonstration without having to fear that they will be subject to physical violence by their opponents**; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.

Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 [of the European Convention]... Article 11 sometimes requires **positive measures to be taken**, even in the sphere of relations between individuals, if need be.

6. See also *Ezgin v. France*, Judgement of 26 April 1991 (No. 202), 14 E.H.R.R. 362 and Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted at a conference convened by Article 19 on October 1, 1995.

7. The right to **freedom of expression** is a fundamental right that is necessary for the enjoyment of the rights to freedom of association and peaceful assembly. Article 19 of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through the media and regardless of frontiers.” The right to freedom of expression is also set forth in Article 19 of the Covenant on Civil and Political Rights, Article 9 of the African (Banjul) Charter, Article 13 of the American Convention, and Article 10 of the European Convention. For a more detailed discussion of freedom of expression, see **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”** of this Manual and *The Article 19 Freedom of Expression Manual* (1993).

C. Standards for use of force by law enforcement officials

8. Generally, both local and national **authorities have the power to control demonstrations in the interest of restoring public order**. In some countries (including continental Europe, Japan, and the United States), police forces have specialized para-military riot control squads trained to handle demonstrations.¹

9. Some international standards for the use of force by law enforcement officials are set forth in the Code of Conduct for Law Enforcement Officials, adopted by

¹Robert Reiner, “Forces of Disorder: How the Police Control “Riots””, 52 *New Society* 914, 951 (1980).

General Assembly resolution 34/169 of 17 December 1979. Pursuant to Article 2 of the Code of Conduct for Law Enforcement Officials, “In the performance of their duty, law enforcement officials shall **respect and protect human dignity and** maintain and uphold the **human rights** of all persons.” Article 3 states that, “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”. Commentary (b) to Article 3 discusses the proportionality principle and proclaims, “In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.”

10. Principle 12 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990) states,

“As **everyone is allowed to participate in lawful and peaceful assemblies**, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.”

11. Pursuant to Principle 13, “**In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.**”

12. Principle 14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that, “**In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.** Law enforcement officials shall not use firearms in such cases, except **under conditions stipulated in principle 9.**”² For more detailed and very pertinent standards on the use of force by law enforcement officials, see **Chapter IV-2-C: “Limits on the use of force by government officials to prevent arbitrary executions”**.

D. Challenges in monitoring demonstrations

1. Purpose of monitoring demonstrations

13. Monitoring demonstrations may be one of the most difficult tasks for HROs. The **goal** of the HRO is to **monitor respect for freedom of assembly and peaceful**

²Principle 9 states that, “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

demonstration. Yet the role of the HRO may be complicated by the actions of the demonstrating crowd and law enforcement officials.

14. The HROs' presence is intended to ensure freedom of expression and assembly. *It is the officers' duty to verify that the authorities are not interfering with freedom of assembly and peaceful association.* Also, assemblies are a common means of expressing opposition to human rights abuses and thus can be an important step towards improving the situation.³ In any case, the **presence of HROs is not affected by the legality or illegality of the demonstration or meeting under national or local law, or whether the authorities have been notified.** Hence, HROs **should not express any opinion** on the legality or illegality of demonstrations under national or local law. In addition, HROs should **neither encourage nor discourage** people who express their intention or desire to hold a meeting or to form a peaceful demonstration. HROs are only authorized to observe whether rights are respected and to detect violations. **HROs should never participate in or associate themselves with demonstrations.**

15. Unfortunately, past experience has shown that in some situations, *the mere presence of UN HROs may be enough to spark a spontaneous demonstration.* HROs need to be cognizant of the fact that the UN insignia on clothing and vehicles may actually create a demonstration. Demonstrators may gather in the belief that the UN symbol offers protection and authorizes an assembly. HROs may, therefore, decide to observe a particular demonstration from a distance. In any event, *HROs should be constantly aware of their location; they should have an escape plan in case the crowd overcomes or attempts to surround them.*

2. Before the demonstration

16. Upon receipt of information that a demonstration is being organized, the HROs **should be available to proceed to wherever the demonstration is taking place** — whether it is in a public place or on private property.

17. If possible, the HRO should **establish contact in advance with the organizers and collect information** about the scenario, including the site, planned activities, route, number of participants, duration, goals, expected response of the authorities, and alternative courses of action.

18. The HROs should **explain** to the organizers **that the officers and their vehicles will stay at a prudent and sufficient distance** from the demonstration. If possible, HROs should request that the organizers advise demonstrators to avoid approaching the field operation vehicles and to avoid behaviour that could involve the officers in the demonstration, and impede them from carrying out their task.

19. During the days preceding the demonstration, HROs **should acquaint themselves with the route planned by the organizers.** Familiarity with the route will assist the HROs in identifying possible difficulties, dangers, and escape routes. In addition, officers can identify the best radio frequency or means of communication for the area.

³See Diane Paul, *Beyond Monitoring and Reporting, Strategies for the Field-level Protection of Civilians Under Threat* (1996).

20. Such a preliminary visit to scout the route should, however, be **carried out with the utmost prudence and discretion**. It should not be carried out on the day of the demonstration. In addition, to avoid revealing the proposed route, the preliminary visit should include other streets and areas of the town. For the same reason, HROs should avoid any conversation, sign, or indication that might enable anyone to identify the route. Furthermore, nothing should be communicated to the civilian or military authorities about the demonstration or the HROs' plans regarding the demonstration, except with regard to the matters mentioned in para. 16 above.

21. When studying the route during the preliminary visit, the HRO should give the driver specific instructions to take into consideration all possible scenarios for the demonstration, the approach of the UN officers, and **escape routes**. If at all possible, driver(s) who are well acquainted with the area should be used.

3. During the demonstration

22. On the day of the demonstration, HROs must **avoid participating or being seen to participate in any way**. They must make every effort to be *viewed as observers, and not as demonstrators*. The HROs must avoid encouraging the demonstration with their presence. They must take actions that discourage the demonstrators from taking risks which could have uncontrollable consequences. For example, HROs should not photograph or video tape demonstrations. The use of a camera could lead some people to “act for the camera”.

23. The HROs should **keep a prudent and sufficient distance between themselves and the demonstrators**, as well as between themselves **and the military and/or the police**. The *observers should be both visible and discreet*. Too much exposure could be perceived as participation, and encouragement, or could aggravate the situation. Too little visibility, however, would hinder monitoring and limit any potential deterrence of repression.

24. If the HROs risk serious danger, they should leave the scene and take a position outside the danger zone. In all cases, officers should avoid remaining in the same place; they should attempt to maintain a certain mobility. If possible, officers should use several vehicles and park them at different points near the demonstration route.

25. HROs **should be aware of** or inquire as to **the identity of the police chief or of the responsible authority**, so that they know who to approach about difficulties and should later include this information in the report.

26. HROs should discuss in advance and **decide whether it would be prudent to park a vehicle or station a UN officer near the barracks or jail in order to observe the arrival of any arrested demonstrators**. This suggestion is optional because: (1) parking near the barracks/jail could be considered as provocative by the authorities and could trigger reprisals; (2) this observation post is not necessarily the best as there is no way to verify that the people brought in were arrested during the demonstration; and (3) implementing this suggestion could be particularly difficult in a locality where there are many potential places of detention.

27. If arrests take place during or after a demonstration, it is essential to **try to obtain the name(s) of persons arrested**, and possibly the names of witnesses to the arrest. In order to do so, the HRO should proceed cautiously and avoid any behaviour or language likely to exacerbate an already tense situation. HROs should **visit detention centres** where the arrested persons have or might have been brought. If HROs are refused entry to detention centres, they should neither impose themselves nor remain outside waiting for admission. (See **Chapter IX: “Visits to Persons in Detention”**.)

28. HROs should **keep frequent and regular radio contact with the operational base**. Officers should use coded messages and avoid the use of important words of which the sense can easily be understood by the authorities or the demonstrators who may overhear the radio. Furthermore, if possible, the officers should verify that they are not being taped.

4. After the demonstration

29. Following the demonstration, the HROs who attended the demonstration should **write a detailed report**. The written report should be as precise as possible and include the following information:

- ✓ place;
- ✓ date;
- ✓ hour;
- ✓ organizations calling for the demonstration;
- ✓ reasons;
- ✓ goals;
- ✓ slogans;
- ✓ number of demonstrators;
- ✓ attitude and behaviour of armed forces, and;
- ✓ subsequent threats or provocations against the UN HROs.

30. Any additional information on the demonstration and its effects which reaches the HROs in the days following the demonstration should also be included in follow-up reports.

31. **Special attention** should be devoted **to cases of persons arrested, beaten, ill-treated, etc., during a demonstration**. The HROs should visit them where they have been taken: hospital, detention centre, etc. The same rules apply to the follow-up of cases in which persons are hospitalized or detained after a demonstration as apply to inquiries and reports about individual cases (see **Chapter VIII: “Interviewing”**). With regard to detained persons, the rules concerning prompt visits to prisons to see individual prisoners (see **Chapter IX: “Visits to Persons in Detention”**) should be followed.

.....Chapter XVI

MONITORING DURING PERIODS OF ARMED CONFLICT.....

Key concepts

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

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

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

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

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

A. Introduction¹

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

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

B. Determining the existence and classification of an armed conflict

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

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

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

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

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

2. Categories of armed conflict

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

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

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

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

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

a. *International armed conflict*

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

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

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

b. *Non-international armed conflict*

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

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

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

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

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

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

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

(b) **taking of hostages**;

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

(d) the **passing of sentences and the carrying out of executions without previous judgement** pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

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

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

12. Common Article 3 does not provide a definition of “non-international armed conflict”. **Additional Protocol II**, however, clarifies at its article 1 that the Protocol applies to armed conflicts which take place in the territory of a Party **between its armed forces and dissident armed forces** or other organized armed groups which:

- (1) are under **responsible command**;
- (2) exercise **control over part of its territory**;
- (3) are able to carry out **sustained and concerted military operations** and to implement the Protocol.

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

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

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

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

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

C. Factors affecting monitoring in periods of armed conflict

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

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

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

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

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

Applicability of Human Rights and Humanitarian Law⁷

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

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

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

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

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

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

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

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

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

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

f. Whether human rights information can be regarded as reliable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Avoiding giving recognition to armed opposition groups

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

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

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

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

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

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

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

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

2. Transparency

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

3. Preserving impartiality

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

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

4. Assessing security concerns

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

5. Avoiding interference with other humanitarian organizations

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

6. Understanding the structure of non-State actors

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

¹¹*Id.*

¹²*Id.*

7. Explaining the mandates and objectives

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

8. Engaging in promotion activities

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

9. Determining persuasive arguments

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

¹³*Id.*

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

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

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

¹⁴*Id.*

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

10. Reconciling monitoring and other efforts

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

11. Mediating

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

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

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

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

Appendix 1 to Chapter XVI

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

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

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

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

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

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

A. Statement of Humanitarian Principles

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

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

B. Mutual Obligations

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

C. Use of Relief Property and Supplies

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

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

D. Employment of Staff

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

E. Rents, Taxes, Licences, Protection Money

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

F. Implementation of this Agreement

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

G. Mechanisms for Resolving Alleged Violations of Ground Rules

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

.....Chapter XVII

MONITORING

ECONOMIC, SOCIAL AND

CULTURAL RIGHTS

Key concepts

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

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

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

A. Introduction

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

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

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

B. Summary of economic, social and cultural rights

1. UN Charter

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

2. Universal Declaration of Human Rights

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

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

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

3. International Covenant on Economic, Social and Cultural Rights

a. Nature of State obligations under the Covenant

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

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

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

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

b. Rights guaranteed by the Covenant

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

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

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

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

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

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

⁴*Id.*

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

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

4. Declaration on the Right to Development

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

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

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

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

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

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

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

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

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

2. Possible measures by the human rights field operation

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

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

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

3. Assisting the Government to assess and meet needs

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

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

4. Test cases

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

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

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

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

5. Common misconceptions about economic and social rights

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

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

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

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

.....Chapter XVIII

BACKGROUND OF UNITED NATIONS MONITORING STANDARDS

Key concepts

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

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

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

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

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

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

A. Introduction

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

B. Evolution of United Nations monitoring standards

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

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

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

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

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

The Mission's mandate shall include the following powers:

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

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

C. Non-United Nations monitoring standards

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

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

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

Part Four



FOLLOWING-UP AND REPORTING

.....Chapter XIX

FOLLOWING-UP AND SEEKING CORRECTIVE ACTION.....

Key concepts

“Follow-up” includes actions taken by a human rights field operation to address human rights problems about which it has gathered information, for example, seeking corrective action by national and local authorities directly or through the use of international human rights protection mechanisms.

Human rights officers should:

- | *prepare an organization chart/ list of key officials at local/ national levels;*
- | *make regular contacts with key authorities before major problems arise;*
- | *decide which information can safely be given to the authorities;*
- | *be aware of and coordinate with efforts of other international organizations in the field;*
- | *encourage the national and local authorities to function properly;*
- | *decide which higher authorities to address, if there is no improvement;*
- | *report in a timely manner within the human rights field operation;*
- | *report to the head of the UN presence in the country and seek his/ her intervention with higher authorities if necessary;*
- | *be aware of and address the human rights situation through UN mechanisms as relevant, for example, (a) any relevant country rapporteur or representative of the UN Commission on Human Rights, (b) relevant thematic procedures of the Commission and General Assembly, (c) treaty bodies, (d) the High Commissioner for Human Rights.*

A. Introduction

1. The term “follow-up” is employed here to describe the **actions taken by a human rights field operation or its individual officers to address human rights problems** identified through the different activities explained under Part Three — The Monitoring Function (Chapters V to XVIII). Specifically, follow-up refers to *the use HROs make of the information they have gathered on violations or other human rights abuses*. The **most prominent form of follow-up involves seeking corrective action by national and local authorities**.

2. Once the HRO has verified the information and, where appropriate, consulted with colleagues, s/he may determine that the case is an urgent matter which may require prompt follow-up. The question of follow-up raises several **issues**: Who will have the **authority to decide** whether such interventions should be made? **At what level** should various kinds of interventions be made? (For example, should a case be raised with a junior judicial official or with the minister of justice?) Should a case be **raised by the HRO who began the enquiry**, by his/her supervisor, or by the chief of the operation? What are other international, national and local organizations doing? How can the UN human rights operation **coordinate their interventions with other actors** in the field? If efforts to persuade the local/national authorities are not initially successful, **are there UN and other mechanisms for pursuing the matter?**

3. Errors in judgement at the crucial follow-up stage can have serious consequences. In order to avoid making such mistakes, HROs should always act in close consultation with colleagues. Difficult or especially sensitive situations should be referred to the appropriate level of the operation for advice.

4. As a general rule the *first stage of follow-up will be to take information to the relevant authorities*. Ultimately, most human rights violations can only be addressed by the authorities themselves. It is however important that *HROs select the correct authorities to meet*. They must also be careful in *choosing the information they give to the authorities* — remembering in particular the basic principle of monitoring: “do no harm”.

5. *Where the first meetings with the authorities do not lead to any improvement in the human rights situation, it may be necessary to address higher authorities*, to make written communications to ministries, or to make use of other United Nations mechanisms. This chapter addresses each of the above points.

B. Preparing for follow-up at local and national levels

6. **At the local level**, HROs should prepare for later interventions by **developing contacts with local authorities** and by **identifying the key officials** of the civil administration, military administration, police, courts, prosecutors, prisons, and other sectors of the society. Area offices should **prepare an organization chart** of these key officials, so that it will be possible to determine the appropriate official for particular

contacts. In addition, the area office should keep a **list of authorities with contact information** (name, address, telephone number, etc.) It is also useful to develop a file mentioning very briefly each contact made with the most relevant officials. All this information will be useful as a record and quick reference facility for the staff members of each area office.

7. Similar information — an **organization chart of Government ministries and divisions and contact details** — should be gathered by the **central office at the national level**. It is important that the **HROs maintain periodic contacts with key authorities** at both the local and national levels. HROs should visit these authorities regularly; the visits should be made apart from other visits regarding a specific case or problem. If HROs have developed good relations with the most important and relevant officials, they will find it much easier to address problems when they arise. It is often a good idea to establish regular weekly meetings.

8. As a general principle, the field operation should try to encourage the national and local level authorities to function properly. The operation should **avoid displacing or replacing ordinary governmental functions**. For example, if there is a functioning criminal justice system, it would be far better for investigations of criminal offences to be pursued by the police and prosecutors than by HROs. Indeed, if the criminal justice system is not functioning properly, the objective of the human rights operation should be to encourage and assist the national system to work rather than replacing it.

C. Initial steps at the local level

1. Selecting the right authority to address

9. If an HRO has received information which would indicate a need to get the reaction of the authorities, the officer should ordinarily consult the files and appropriate colleagues (for example the area coordinator, if any) to **get a sense of which local administrator or police official would be most appropriately contacted**.

10. Depending upon the relations which have been developed and the procedures which have been followed, it may be easiest to make contact at a relatively low level in the hierarchy. Unless the case is obviously and unusually controversial, the **lower level officials may be able to provide routine information which may resolve the matter**. It is in the interests of both the local officials and the human rights operation to resolve problems at this early juncture. The *contact should not, however, be made with an official who has no power to respond appropriately*.

2. Coordinating follow-up with other organizations

11. Some human rights violations might draw the attention of other organizations and UN operations. At a minimum HROs should **be aware of what efforts have been**

made by other international organizations, so that they do not unnecessarily duplicate or conflict with each other. At best human rights operations should **coordinate information gathering and follow-up** with other international organizations in the field. With particularly serious cases HROs should coordinate their interventions with partner organizations. Sometimes it can be useful for several different organizations all to approach the same authorities on one specific case of human rights violation. This combined approach can help to place greater pressure on the authorities to correct the abuse. HROs should, however, ensure that the different interventions are coordinated and that the requests made of the authorities are consistent with each other. Where there are inconsistencies the authorities may use them to stall and to do only the very minimum to address the problem.

12. HROs should ascertain and be aware of the mandates and scope of activities of the other organizations present in the country of operation, so as to be able to assess which kind of assistance, contribution or coordination may be expected with a view to improving the human rights situation in the country — particularly as to follow-up. A brief overview of the most common organizations and departments present in the field is provided below. The list does not purport to be exhaustive, but only to provide a general orientation to HROs. Human rights field operations have at times developed memoranda of understanding with several of these organizations to facilitate cooperation. Memoranda of understanding may also exist between the Headquarters of the human rights field operation (for example the Office of the High Commissioner for Human Rights or the Department of Peace-Keeping Operations) and other organizations present in the field. HROs should be aware of any such agreement, when they exist.

a. Peace-keeping operations

13. In coordinating with other international organizations, it is useful to note that *human rights field operations are sometimes components of a larger UN presence or peace-keeping operation in which the other components* may, depending upon the mandate, be an armed military component, military observers, civilian police, humanitarian assistance, civil affairs, civil administration and electoral monitors. Such a larger UN presence is usually under the direction of a Special Representative of the UN Secretary-General. There are various types of peace-keeping operations, including the maintenance of cease-fires and separation of forces (e.g., in Cyprus and Kashmir), preventive deployment (e.g., in Macedonia), implementation of comprehensive settlements (e.g., Cambodia and El Salvador), and protection of humanitarian operations during continuing conflicts (e.g., former Yugoslavia). The UN *Security Council gives different peace-keeping operations their mandate depending upon political exigencies and the needs of the situation*. Those mandates often involve observation, reporting, interposition between opposing factions, liaison, negotiation, good offices, maintenance of physical presence in specific sectors or checkpoints, guarding of facilities, and public information.

14. The United Nations Department of Peace-keeping Operations (DPKO) serves as the operational representative of the UN Secretary-General for the planning and management of peace operations, and as such has been responsible for managing various human rights field operations, for example in Cambodia. The United Nations Department of Political Affairs assists the Secretary-General by providing research, analysis and policy advice. The DPA also includes the *Electoral Unit* which has

coordinated and provided assistance to election monitoring and elections. Other human rights field operations have been mounted under the auspices of the High Commissioner for Human Rights, such as the Human Rights Field Operation in Rwanda (HRFOR), the Human Rights Field Operation in Burundi (HRFOB), the Cambodia and Colombia Offices of the High Commissioner for Human Rights, and others. Still in other more recent cases, such as in Angola or Sierra Leone, human rights components of peace-keeping operations, although administratively managed by DPKO, receive substantive guidance from the High Commissioner for Human Rights.

i. Military component

15. Under the terms of reference provided by the Security Council, the *military component* usually functions within a Status of Forces Agreement with the country of operations, Standing Operating Procedures (SOP), and Rules of Engagement (RoE). Military components are usually armed though under strict constraints as to the use of arms, normally organized in battalion size units, and directed by a Force Commander; they provide a large number of small armed detachments for observation posts, patrols, escorts, etc.¹ UN Peace-keeping missions are usually staffed by soldiers who carry unloaded weapons, but are prepared to act in self-defence.

16. Peace-keeping should be achieved without use of military force, except in self-defence, i.e., direct attacks, threats to the lives of UN personnel, jeopardy to UN security in general, forceful entry into UN positions for use as a fire base, or attempts by force to disarm UN troops. *UN peace-keepers may only use the minimum of force as last resort*, should prevent the use of force by negotiation or persuasion, should give prior warning (for example orally, using flares, giving warning shots in the air, firing short) unless to do so would increase the risk of death or grave injury to the peace-keeper or any other person.

ii. Military observers

17. United Nations Military Observers (UNMOs) normally monitor the performance of the military *in the context of demilitarization or a broader peace process*. They are generally not armed. *Some human rights field operations have developed close working relationships* with UN Military Observers and other military components of international peace-keeping operations, for example, to meet regularly — for example, every morning — to coordinate their efforts or at least be aware of their respective activities. The establishment of Civil-Military Coordination Centres has become standard practice in countries where multi-component peace-keeping operations are established, or where peace-keeping operations coexist with humanitarian, human rights and other civilian-run operations. Military observers and other military components have been able to provide transportation, communications, information, and/or security for HROs.

iii. Civilian police

18. Human rights field operations have also worked closely with the United Nations Civilian Police (CIVPOL or UNCIVPOL). CIVPOL components of

¹United Nations Department of Peace-Keeping Operations/Office of Planning & Support/Training Unit, *Peace-keeping Handbook for Junior Ranks* 12, 19, 54-55 (1994).

peace-keeping and other field operations are composed of professional members of police organizations who are provided to the UN by member countries. CIVPOL officers are generally not armed. CIVPOL helps to ensure human rights and criminal justice standards are fully respected, monitor law enforcement activities of local police and judicial investigative authorities, sometimes carry out general police duties (such as investigation of incidents), provide appropriate assistance to the UNHCR and other humanitarian agencies, advise local police on procedures, and assist in (re-)training of local police forces. CIVPOL components are organized in groups or teams under a Police Commissioner. CIVPOL activities are conducted in accordance with the overall mandate of the peace-keeping operation and pursuant to Standard Administrative Procedures (SAP) and Standard Operational Procedures (SOP).

19. *CIVPOL officers who come from countries where police are regularly engaged in the investigation of crime may be particularly helpful* in encouraging local police to investigate violence and other human rights abuses. If local police are not able to pursue such human rights abuses, HROs may cooperate with CIVPOL in undertaking inquiries to document the facts and thus to encourage more effective response by the local authorities.

iv. Civil affairs and electoral components

20. A peace-keeping operation may also have components for civil affairs, civilian administration and electoral monitors. *Civil affairs* may provide the diplomatic/political component of the operation. Civil affairs officers may serve as the local eyes and ears of the Special Representative, focusing on human rights as well as other aspects of the UN presence. In the UN Transitional Authority in Cambodia (UNTAC) there was also a *civilian administration* component to fulfil the administrative responsibilities delegated to UNTAC under the Paris Accords. The civilian administration component worked very closely with the human rights component — often sharing office space and projects in the provinces. *Election monitors* have served in UNTAC, Namibia, Bosnia, and elsewhere, often in parallel with human rights field operations and/or components. In these cases, electoral monitors have focused on the technical aspects of preparation and monitoring of elections, while HROs have focused on monitoring respect for the human rights related to the electoral process (see **Chapter XIV: “Election Observation”**).

v. Humanitarian aid component

21. The *humanitarian aid* component of peace-keeping or other UN field operations may include UNHCR, UNICEF, UNDP and non-governmental organizations to help distribute food, supply medical aid and shelter; provide other necessities for living; and work on development projects. The United Nations Office of Humanitarian Affairs (OCHA) has been responsible for coordinating the efforts of UN relief agencies in the context of complex emergencies and natural or technological disasters, including armed conflicts, floods, earthquakes, hurricanes, etc.. OCHA operations may also be present independently of peace-keeping operations. A very brief descriptions of several of the international humanitarian organizations which human rights offices may encounter in the field is provided below.

b. UN Resident Coordinator

22. The UN Resident Coordinator is designated by and responsible to the UN Secretary-General and has overall responsibility for, and coordination of, the UN system operational activities for development carried out at the country level. This coordination function is to be pursued in conformity with the objectives and priorities of the Government. The main concern of the RC is to support effective dialogue and interaction in the UN system with the Government's policy-making and coordinating mechanism, to develop a coherent frame of reference for cooperation and assistance by the system, and to promote effective division of labour and joint reviews of major programmes and projects.

c. UNHCR

23. **Appendix 1 to Chapter X** contains an introduction to the *United Nations High Commissioner for Human Rights (UNHCR)*.

d. UNICEF

24. UNICEF (*United Nations Children's Fund*) has established a defined role for itself in the sorts of emergency situations in which human rights field operations often are conducted. UNICEF's *principal focus is on protection and advocacy for children*. UNICEF brings both a developmental and a human rights perspective to its emergency action, which has four primary elements: advocacy, assessment, care (including the provision of essential services), and protection of vulnerable children and women from intentional harm.² The basic framework within which UNICEF operates is the UN Convention on the Rights of the Child. UNICEF is centred in New York, but has programmes in over 130 countries principally working on child survival, care and protection of vulnerable children from harm, development, capacity-building, strengthening civil society, re-establishment (and improvement) of basic social services, education, health care for children and women, demobilization of child soldiers, family reunification of unaccompanied children, work with internally displaced children, employment, physical and psychological recovery and social integration of child victims of neglect and abuse, etc.

e. UNDP

25. The *United Nations Development Programme (UNDP)* is the largest provider of economic and social *development assistance* to countries throughout the world. The UNDP Resident Representative in many countries not only directs UNDP assistance, but also serves as the Resident Coordinator of the UN. Through a network of 134 country offices, UNDP works in 174 countries and territories to support development, focusing on poverty elimination, environmental regeneration, job creation, the advancement of women, and increasingly, and in close cooperation with OHCHR, human rights institution building. UNDP is frequently involved in promoting "good governance" and support for rebuilding societies in the aftermath of war and

²UNICEF, *Children and Women in Emergencies: Strategic Priorities and Operational Concerns for UNICEF*, UN Doc. EICEF/1997/7 (1996).

humanitarian emergencies. Its principal mission is to help countries build national capacity to achieve sustainable human development, as the largest member of the UN development family. UNDP works closely with OHCHR, in a relationship governed by a Memorandum of Understanding signed in 1998, pledging the two offices to collaborate in advancing the right to development, staff human rights training, programming and policy development.

f. IOM

26. The *International Organization for Migration* (IOM) is an intergovernmental organization which assists in meeting the operational challenges of migration, advances understanding of migration issues, encourages development through migration, and works towards the effective respect of migrants' rights. Founded in 1951 as a response to the problem of displaced persons and refugees in Europe after World War II, today, IOM is operational in over 70 countries in the world. IOM is also concerned with issues relating to trafficking in persons — particularly women. The IOM is centred in Geneva.

g. WFP

27. The *World Food Programme* (WFP) provides *food aid* to low-income countries to combat hunger, *promote economic and social development*, and respond to relief needs of victims of natural or other disasters. The WFP operates in more than 90 countries and is the largest multilateral food aid organization in the world. The WFP administers the International Emergency Food Reserve and is providing humanitarian assistance in some areas of conflict. The World Food Programme is centred in Rome.

h. WHO

28. The *World Health Organization* (WHO) works with national health administrations, professional organizations and others to achieve the highest possible level of health throughout the world. It provides and coordinates technical assistance, expert advice, emergency relief, and prevention/control of diseases through its Division of Emergency and Humanitarian Action. The WHO is centred in Geneva.

i. ILO

29. The ILO is the United Nations specialized agency which seeks to promote social justice and internationally recognized human and labour rights. Its Headquarters are in Geneva, but it has offices in various countries. The ILO main activities include:

- ✓ the formulation of international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues;
- ✓ providing technical assistance primarily in the fields of vocational training and vocational rehabilitation, employment policy, labour administration, labour law and industrial relations, working conditions, management development, cooperatives, social security, labour statistics and occupational safety and health;

- ✓ promoting the development of independent employers' and workers' organizations and providing training and advisory services to those organizations;
- ✓ promoting the rights of migrant workers.

j. Regional organizations

30. In some parts of the world, human rights operations may work in cooperation with regional organizations, such as the **Organization of American States**. Indeed, the human rights operation in Haiti has been conducted jointly by both the OAS and the UN (through the Department of Political Affairs). The **Organization for Security and Co-operation in Europe** has had responsibility for monitoring the human right situation in Bosnia-Herzegovina and in cooperating with the UN human rights field operation there. The Organization for Security and Co-operation in Europe (OSCE) arose from the Conference on Security and Co-operation in Europe (CSCE) and the Helsinki Final Act of 1975. For its first 15 years the CSCE met periodically to discuss reducing tensions between Eastern and Western Europe and developing cooperation in such fields as democracy, economics, environment, family reunification, human rights, rule of law, science and technology. Several of the CSCE meetings resulted in final standard-setting statements. Under the CSCE Governments were entitled to express concerns and initiate dialogue with countries in which human rights problems were arising. In the 1990s the CSCE became the OSCE with its central office in Vienna and an Office for Democratic Institutions and Human Rights in Warsaw, the Conflict Prevention Centre in Vienna, and the High Commissioner for National Minorities in the Hague. The OSCE has sent conflict prevention, crisis management, election, and human rights monitoring missions to a number of countries including Bosnia-Herzegovina, Estonia, Georgia, Latvia, the former Yugoslav Republic of Macedonia, Moldova, Tajikistan, Ukraine and Kosovo. The **Council of Europe** — although not directly responsible for managing field operations as defined in this Manual has a number of institution building projects on human rights, often involving the presence of experts in the field, in countries where UN field operations have been or are operating.

k. Non-governmental organizations

31. In addition to the international and regional organizations, there are also a large number of international non-governmental — humanitarian assistance, relief and advocacy — organizations, which should be very helpful to the human rights field operation. Among the most prominent is the **International Committee of the Red Cross**, which is discussed in **Chapter IX-E: "Coordination with ICRC"**. Other international organizations the UN human rights operation may encounter in the field are Adventist Development and Relief Agency, Action Internationale Contre la Faim, Amnesty International, American Refugee Committee, Cooperative for American Relief Everywhere (CARE), CARITAS, CONCERN, Catholic Relief Services, Church World Service, Danish Refugee Council, Diakonisches Werk, Equilibre, Handicap International, Human Rights Watch, International Catholic Migration Commission, International Commission of Jurists, International Federation for Human Rights, International Federation of Red Cross and Red Crescent Societies, International Islamic Relief Organizations, International Rescue Committee, Jesuit Refugee Service, Lawyers Committee for Human Rights, Lutheran Immigration and Refugee Service,

Lutheran World Relief, Médecins du Monde, Médecins sans Frontières, Mercy Corps International, Minnesota Advocates for Human Rights, Movimondo, Norwegian Refugee Council, Oxford Committee Famine Relief (OXFAM), Pharmaciens sans Frontières, Rädda Barnen (Save the Children Fund), Refugees International, Reporters sans Frontières, Save the Children, Trocaire — Catholic Agency for World Development, World University Service, World Vision, *and many others*. To the extent these organizations are active in the country, **they may be able to assist the human rights field operation in gathering information, follow-up, dealing with requests for assistance** (education, emergency aid, food aid, food production, health care, legal assistance, logistics, medical supplies, shelter, transport, sanitation, water, etc.), and in other ways.

32. There may also be local *human rights* organizations with which the human rights operation will want to cooperate as discussed in **Chapter VII-B: “Developing contacts and establishing a presence in the community”**.

3. Deciding what information may be given to the authorities

33. Before contacting the authorities, the HRO should be **careful to determine precisely what information should be given to the authorities** in raising a case. Has the complainant or witness given permission to use his/her name or even to raise the matter at all? What risks might mature in harm if the authorities are contacted? Are those risks worth taking in the light of the information or response which is expected?

4. Planning the meeting with a particular authority

34. It is very important to note that when visiting authorities, especially the military and law enforcement officials, **two HROs should always be present**. HROs should plan their intervention with the authorities carefully. Where there are two or more officers it should be clear as to which roles each person will play. It is usually easier if *one person “leads” the meeting and the other supports*.

35. In preparing for the meeting, the HROs should identify **which issues they wish to raise**, and in which order. **Should they take notes**, and if so which HRO will do so? What is the **precise objective of the visit**? **What information or undertaking would the HROs like to obtain** from the authority? **What objections are expected**? How should the HROs **overcome those objections**? For example, objections may be countered: by reference to the terms of reference; by showing that it would be in the interests of the Government official to cooperate; by politely giving responsive arguments; by simply repeating the question or the point to show that the HROs can not be diverted from their objective; or by indicating that it may be necessary to raise the issue at higher levels, etc.

36. Thought should be given as to what **language** the meeting will use. In general, it is best to use a language in which the HROs can communicate easily — and without having to use an interpreter — but in which the Government officials can also converse comfortably. There is some advantage in selecting a language in which the HRO will be

able to communicate comfortably, but the Government official must be able to understand and respond. HROs should use interpreters only where there is no other alternative.

37. In setting the visit or interview with the Government official, it is useful to determine how long the Government official will have for the discussion. The strategy for the interview will be different depending upon the **amount of time** which is expected.

5. Conducting the meeting itself

a. *Introductions*

38. The meeting will usually begin with introductions. If this is the first contact between any member of the field operation and this particular authority, the HROs should briefly **explain the mandate of the operation and their own specific tasks**. They may also *refer to any relevant agreements* with the national authorities and should be prepared to present a *copy of the relevant terms of reference* or governmental authorization for the operation.

39. In order to be taken seriously the HROs should be clear, impartial, and professional in presenting themselves and the reason for their visit. HROs *should carry and present official visiting cards* which will simplify spelling of names and giving addresses. The presentation of a card will also encourage the official to present his/her card with useful information as to full name, official title and address. They should be careful to observe customary rules of courtesy and dress and should use the correct title of the official — Captain, Colonel, Justice, Doctor, Mr, Cheik, etc. The HROs' demeanour towards the authorities should be **firm and polite**. In addition, the HRO should avoid an arrogant or provocative attitude towards the authorities.

b. *Addressing the main reason for the visit*

40. The leading HRO should then explain the reason for the visit. There may be *different strategies for reaching the purpose of the visit*. If there is adequate time to handle the significant issue, it might be useful to begin with a less important and less controversial question, so that a tone of cooperation can be developed. The HROs should, however, try to avoid being side-tracked or lectured, so that all the time of the visit is consumed with inconsequential matters. In this case, it may be necessary to immediately raise the major reason for the visit.

41. The HROs should **listen carefully** to the response of the official. Has the official given any useful information or response? The HROs should try to pursue their objective with **firmness and clarity**, but they should not try to push the Government official into a negative or defensive attitude. Whatever occurs with regard to the principal issue or issues, it may be useful to raise another more easily resolved issue towards the end of the interview, which will allow more easy agreement. Such a tactic should, however, be avoided, if it would distract from the major thrust of the interview and would not significantly improve the atmosphere. In any case, at the end of the meeting the leading HRO should **outline the results of the meeting and the next**

steps which will be taken based on the discussion. Where possible the HROs should try to fix with the authorities a date and time for a second meeting, and to define the steps that the authority will take in addressing the problem. In any event the tone at the conclusion of the meeting should leave the door open for further contact.

6. Addressing the problem through a written communication

42. As the level of the intervention rises, the area coordinator may **consider whether an intervention should be made on the basis of an oral and/or written presentation**. Correspondence with the authorities on human rights violations should be approved by the head of the operation or a person by him/her delegated for this purpose.

43. Unnecessary correspondence with the authorities should be avoided. The operation should only resort to writing a letter in serious cases, when oral communication is impossible, or when oral communication has not produced the expected results. The same rules regarding demeanour to be observed vis-à-vis the authorities apply here with regard to a written communication. When a written communication is to be sent to the authorities, the operation must devote special attention: to remaining **within the mandate**; to being extremely **accurate** in their reference to facts, cases and legal aspects; to using **formally correct written expression** (these letters should be written or at least carefully reviewed by an HRO whose mother tongue is the language used); and to using the **customary polite terminology**.

D. Taking the problem to a higher level

44. If the HRO does not receive an adequate response, the next step may be to pursue further inquiries outside of the authorities before raising the issue at a higher level in the local governmental structure. The objective at this stage is usually to encourage the authorities to provide information and possibly to initiate their own investigation about the case.

45. As the level of the concern and/or the Government official rises, however, it becomes *more necessary to involve staff of the field operation with corresponding levels of responsibility, up to, in some cases, the chief of the operation*. The initial HRO who did the inquiry and who knows the case should obviously continue to be involved.

46. The intervention of the head of the operation or the central office may be required when the human rights violations are particularly bad, and/or when the violations may have been committed or at least sanctioned by a high level member of the local authorities. In these situations it may be easier to address the problem through the national authorities.

47. HROs may also wish to *refer a case to the central office and the leadership of the operation* when they feel that it may be *dangerous for them to pursue the case locally*. If, for example, the perpetrators of a particular violation are local soldiers, it may be very risky for the human rights staff to continue an enquiry that may threaten those soldiers. The operation's staff in the capital will be better able to address the problem.

48. In some situations the field operation may find that it is unable to provide the necessary follow-up on a situation of human rights violations. A number of different methods can then be used, including the **publication of information** in the national and international press and discussions with concerned governments through their ambassadors in the country of operations. *Decisions of this kind rest with the leadership of the operation.* Consultation with the High Commissioner for Human Rights in Geneva, or with the Special Representative of the Secretary-General, or both, may be needed, depending on the institutional arrangements relevant to each human rights field operation. The following section of this chapter provides some guidelines on the use of the media and different possibilities offered by other UN mechanisms.

E. Contacts with the media

50. With regard to contacts with the media, each staff member of the United Nations is bound by Staff Rule 101.2, stating that “*staff members shall not*, except in the normal course of official duties or with the prior approval of the Secretary-General, engage in any of the following acts, if such acts relates to the purpose, activities or interests of the United Nations: (i) *issue statements to the press, radio, or other agencies of public information*; (ii) accept speaking engagements; (iii) take part in film, theatre, radio or television productions; (iv) submit articles, books or other material for publication.

51. In addition, guidelines on “United Nations Secretariat Relations with the Media” were issued by the Secretary-General in April 1999. These provide, *inter alia*, that, as a matter of principle, every member of the Secretariat may speak to the press, within the following limits:

- ✓ to speak only within their area of competence and responsibility;
- ✓ to provide facts, not opinions or comment;
- ✓ to leave sensitive issues to officials who are specifically authorized to speak on them based on the same guidelines.

52. The officials authorized to speak on sensitive issues are: the United Nations Spokesperson, on the basis of guidance; designated members of the Secretary-General's staff and Heads of Departments, within their area of competence; staff authorized by their Heads of Department, on the basis of guidance; and Directors of United Nations Information Centres, on the basis of guidance from Headquarters.

53. Within these rules, **guidelines concerning contacts with the media** may be issued for each specific human rights field operation, and may differ depending on whether the operation is part of a larger peace-keeping presence administered by DPKO, or part of the Office of the High Commissioner for Human Rights. In general, however, the **chief of the human rights operation has delegated authority to**

decide how the operation and its results are presented to the media. For particularly sensitive issues, he/she may need to consult UN Headquarters in Geneva or New York, or the Special Representative of the Secretary-General leading the peace-keeping operation, prior to taking part in interviews, making statements to the press and issuing media releases. Careful consultation will help to avoid errors and will help prepare officials at each level for further questions from the media. **Other staff** of the field operation **should have specific authorization from the chief** of the operation **before** providing information on the operation to the media. It is important for HROs to be aware that while deployed in a field operation there is no such thing as “speaking in my personal capacity” about an operation. Any staff member talking to the press about an operation — on or off the record — while deployed in that field operation is, for all intents and purposes, speaking in an official capacity. It is therefore important that all staff abide by the relevant staff rules and the specific guidelines for contacts with the media relevant to each organization and/or operation.

54. When the chief does need to make statements for media use, those statements should be broadly disseminated through UN Headquarters, to relevant UN agencies, to non-governmental organizations, and to international and local media. In general, insofar as consistent with security concerns, its mandate, and the effectiveness of its protection efforts, the human rights operation should **make available its general findings** and achievements on a regular basis. **Details of specific cases under investigation by the operation should, however, never be made public** while the investigation is going on. The chief of operation may also wish to consider appeals to the general population, contending parties, moderates, influential groups, or other targeted groups as techniques for dealing with grave problems.

F. Longer-term follow-up

55. Through monitoring human rights, field operations collect a considerable quantity of information. Some of that information needs to be communicated through appropriate channels and at the appropriate levels to Government officials so that they may deal with particular problems. If the Government fails adequately to respond, the information may need to be *disseminated further through the UN mechanisms* discussed below. The human rights information gathered by the field operation, however, may also be useful in developing medium-term promotion and technical assistance within the context of the field operation or longer-term capacity-building efforts.

56. In fact, monitoring, protection, promotion and technical assistance are usually interconnected and complementary tasks. For example, if a prison is not handling its inmates properly under international standards, the best way of handling the problem may be to discuss the problem with the responsible Government officials. If they do not respond adequately, the field operation may prepare a critical report. At the same time, if the analysis of the causes of this specific human rights problem suggests that the lack of preparation of the prison staff is the main cause of the violations, the operation may offer training or technical assistance in prison management and techniques for achieving international norms for the protection of detainees.

57. Another example of the relatedness of monitoring and promotion arises in the context of nearly every contact between HROs and Government officials. If HROs realize that there are repeated human rights violations in the area where they work, they are encouraged to meet with the local administration responsible for that area. The HRO may devote an hour explaining to the official the mandate of the operation, explaining the role the field operation can play in the region, and perhaps providing examples of the way in which human rights operations have contributed to improving human rights in other countries. If at the end of the conversation the official has a better understanding of the operation and is receptive to future contacts with the HRO, human rights will have been promoted.

58. Information developed through monitoring can be used in encouraging the Government to develop a needs assessment and to select priorities for **building its capacity for the sustainable protection of human rights**. The needs assessment can identify a relationship between a situation of human rights abuse and an institutional weakness/absence. In the short and medium term, the needs assessment/priorities might identify promotion and technical assistance with which the human rights field operation might help in partnership with the Government, local NGOs, other intergovernmental organizations (such as UNDP, UNHCR or UNICEF), etc. In the longer term, the needs assessment might identify the programmes which the Government should pursue and the capacity-building assistance which the UN might provide. Capacity-building involves the development and strengthening of structures that contribute to the protection and promotion of human rights. Capacity-building can refer to governmental structures, such as courts or legislative committees, but can also concern neighbourhood human rights committees or NGOs which will help to protect human rights. *The objective is to foster and develop sustainable local institutions and not to substitute HROs for the people and Government of the country of operations.*

59. Depending upon the presence or absence of non-governmental organizations (NGOs) in the country of operation, it may be necessary for the human rights field operation to **encourage the formation and/or strengthening of NGOs**, provide financial support to fledgling NGOs, and train them in how NGOs are organized and function with regard to promotion, assistance, and ultimately monitoring. NGOs are critical — not only because they may assist the operation in achieving their objectives, but also because they should continue serving those functions after the operation departs.

60. Since most human rights field operations are not themselves funders of promotion and technical-assistance activities, field operations may **assist institutions**, such as the Ministry of Justice or NGOs, **in developing proposals for funding by interested agencies**, governments and foundations. They may assist in identifying the potential funders, clarifying the intersection between the interests of the funders and the needs of the institutions, determining the range of funds available from each potential funder, reviewing proposals, making sure that initial contacts are made with the funders before submission of proposals, assuring that the funders actually receive the applications, assuring that institutions keep in touch with the funders, monitoring supported activities, encouraging that an evaluation is prepared as to whether objectives were achieved, making sure that adequate reports are prepared on the work accomplished, etc.

61. Protection and reporting activities cannot be effective without promotion and capacity-building as possible remedies, but, similarly, promotional activities must be based on an accurate analysis of the human rights problem. Hence, there must be a cooperative approach between the monitoring tasks on the one hand, and promotion and technical assistance within the context of the field operation, as well as longer-term capacity building efforts on the other.

G. More long-term follow-up: truth commissions and tribunals

1. International tribunals

62. As discussed in **Chapter VII-I: “Evidence for criminal prosecutions”**, human rights field operations must develop policies as how to handle information which might be relevant to criminal prosecutions — either in international criminal tribunals for such places as the Former Yugoslavia and Rwanda, or in any future situation that may be dealt with by the International Criminal Court — 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. Indeed, in some cases action by HROs and other organizations, if not professionally conducted, may even tamper with criminal investigations conducted by international tribunals and therefore be detrimental to the effective prosecution of perpetrators of human rights violations. As indicated above, HROs should avoid disrupting criminal justice investigations and should generally avoid gathering physical evidence. Hence, if personnel from a relevant tribunal or court is available and/or present in the country of operation, specific arrangements need to be established for coordination and exchange of relevant information between the human rights field operation and the tribunal’s staff. The issue of coordination with international tribunals raises various **important questions** including, for example, how to balance the need to preserve the confidentiality of the sources of the information gathered by the HROs and not to endanger witnesses and victims, the need to preserve the ability of the human rights field operation to independently carry out its mandate, and the need to assist international tribunals to enhance human rights protection. These issues raise significant *policy decisions* which can only be determined by the leadership of the human rights operation or its Headquarters, 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 truth and justice commissions, and (3) investigations for international criminal tribunals.*

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. The Statute of the permanent International Criminal Court was developed under the auspices of the UN General Assembly and agreed in Rome in July 1998.

In any case, HROs should *strictly follow the guidelines* issued by the leadership of the operation or its headquarters on this matter⁴.

2. Truth commissions

63. Similarly, human rights field operations may also **collect information relevant to truth and justice commissions which have been established to provide an authoritative historical record of past abuses**, to permit the Government to **acknowledge past violations** and thus provide some closure for suffering, and **to recommend prosecution, compensation, and/or other redress**. For example, in Haiti the International Civilian Mission received information about abuses which had occurred during the Duvalier period. That information was outside the mandate of Mission but it was relevant to a national truth and reconciliation commission later established by the Government of President Aristide. In the case of El Salvador a United Nations Truth Commission was established in 1992 as a result of the Peace Accords to investigate the “serious acts of violence” that occurred in El Salvador between 1980 and 1991. The three commissioners came from Colombia, the United States and Venezuela. The leadership of human rights field operations needs to develop policies about what information to share with such truth and reconciliation commissions at the national or international levels. Indeed, human rights operations may need to consider what information to collect in the expectation that a later truth commission may be established.

H. Addressing the human rights situation through UN mechanisms

64. As will be discussed in the following chapter, the chief of the human rights operation is responsible for reporting to the head of the UN presence in the country, for example, the Special Representative of the Secretary-General or the UN High Commissioner for Human Rights. There are various kinds of reports which may be produced by a human rights field operation, including: (1) *reports on individual cases* as indicated in the interview form, (2) *periodic* (weekly, monthly, etc.) *situation reports* which state the present conditions relating to matters within the mandate (including specialized activity reports) and indications of trends, (3) *emergency reports* of situations which require particular attention (for example attacks on human rights personnel, imminent risks of grave injury to individuals within the operation’s terms of reference, etc.), and (4) *incident reports*. Samples of forms for preparing such reports are found in **Appendices 1, 2, 3, and 4 of Chapter XX: “Human Rights Reporting”**. (See the same chapter for more detailed discussion.)

⁴For example, guidelines on cooperation with the International Criminal Tribunal for the Former Yugoslavia were issued by the Office of the High Commissioner for Human Rights for staff of the *Special Mission of the High Commissioner for Human Rights to the Former Yugoslav Republic of Macedonia, Montenegro and Albania* in 1999.

65. There are also various UN human rights bodies and mechanisms — especially *thematic or country mechanisms of the UN Commission on Human Rights* — which can be used to maximize the impact of UN work in the country of operation, by **making available to them the information gathered and analysed by the field operation**. The chief of the operation and all HROs should be aware of the existence of these mechanisms and how they can be used in relation to a specific country or problem. Depending as to whether the field operation is part of a peace-keeping presence or directly managed by the Office of the High Commissioner for Human Rights, there will be specific guidelines as to the channels for the transmission of the field operations' reports to other relevant UN mechanisms. In any case, however, the chief of the operation should, in consultation with OHCHR, assess to which office/official/body within the UN or elsewhere information should be provided so as to contribute to human rights protection and the achievement of the operation's overall mandate.

66. The material produced by human rights field operations may be used in **several UN procedures within the United Nations system**. These procedures can produce a public report, or raise individual cases with the Government, and — by *making the information more visible* — can help increase the pressure on Governments to improve their conduct. Since it often takes considerable international attention to mount a UN human rights operation, it is likely that some of these UN procedures will already have been invoked by the time the operation has been established. For example, the UN Commission on Human Rights may well have already established a Special Rapporteur on the situation of human rights in the country where the operation is located.

67. There are quite a large number of UN organs and procedures relevant to human rights. Those **organs** include the Security Council, the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Commission on the Status of Women, which all derive their authority **from the UN Charter**. There are also a number of **treaty bodies** established under human rights treaties. A quick sketch of those bodies may help to place the human rights operation into the context of the UN system and to identify some of the organs and procedures in which the reports of the human rights operation may be relevant.

68. From the perspective of the human rights field operation the various UN bodies indicated below may have quite different accessibility and relevance to their mandate. While all of these organs may find information from the human rights operation to be useful in considering an issue arising in the country of operation or if the country is on their agenda, the **most likely recipients of reports** from the operation are: (1) any relevant **country rapporteur or representative** of the UN Commission on Human Rights; (2) relevant **thematic procedures** of the Commission and General Assembly; (3) the **Commission on Human Rights**; (4) **treaty bodies**; and (5) the **High Commissioner for Human Rights**.

1. The Security Council

69. The Security Council is the principal organ of the UN, on which the Charter confers **primary responsibility for the maintenance of international peace and security**. The Council is composed of fifteen members, including five permanent members (China, France, Russia, the United Kingdom and the United States) and ten

non-permanent members elected for two-year terms by the General Assembly. Under Chapter VII of the Charter, the Security Council makes recommendations or decides what measures should be taken to maintain or restore international peace and security. Council measures may include humanitarian aid, economic sanctions and military intervention. With the end of the Cold War, the Security Council's role has become more visible as the permanent members have more frequently agreed on action.

70. The Security Council's activism becomes apparent when contrasting the number of actions taken during and after the Cold War. During the Cold War, the Security Council considered on five occasions whether human rights violations qualified as threats to the peace so as to justify measures under Chapter VII. Furthermore, from 1945 to 1987, the Security Council established only 13 peace-keeping operations. The Council established more than twice that number of operations between 1987 and 1997. In addition, based principally upon Security Council decisions, UN operations with a significant human rights dimension have taken place in more than a dozen countries since 1989, including Angola, Burundi, Cambodia, El Salvador, Guatemala, Haiti, Mozambique, Namibia, Rwanda, Somalia, South Africa, the former Yugoslavia, and others. Information from the human rights field operation can be transmitted to the security council if the human rights operation is part of a broader peace-keeping operation authorized by the Council, and in this case the periodic reports by the peace-keeping operation will contain a section on human rights developments. In other cases, reports by human rights field operations established directly under the authority of the High Commissioner for Human Rights have been transmitted by the Council as part of reports of the Secretary-General.

71. In 1993, the Security Council further contributed to the development of human rights law when it authorized an international tribunal to prosecute persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia (Security Council resolution 827 of 25 May 1993). In addition, following widespread killings in Rwanda during April 1994, the Security Council established a second tribunal using the same basic approach as in the former Yugoslavia.⁵ The Yugoslav Tribunal is located in The Hague, Netherlands, and the Rwanda Tribunal is in Arusha, Tanzania.

2. The General Assembly

72. The General Assembly is the most authoritative **source of international declarations and conventions**. Human rights issues are generally discussed in the Assembly's Third Committee. The General Assembly is also the most representative decision-making organ of the UN, where all members of the UN are entitled to vote. Furthermore, the General Assembly elects the ten non-permanent members of the Security Council, elects the members of the Economic and Social Council (ECOSOC), regularly reviews ECOSOC recommendations, and receives reports from several of the human rights treaty bodies. The General Assembly usually meets from September to December and considers resolutions on several hundred matters.

⁵Security Council res. 955 of 8 November 1994.

73. Despite long-standing tension between Charter Article 2(7)'s prohibition against invading states' domestic jurisdiction and human rights protections in Charter Articles 1, 55 and 56, the General Assembly has increasingly drawn attention to the situation of human rights in several countries. Since the mid-1970s the General Assembly and other UN organs have more regularly expressed concern and taken other actions with regard to country situations. Information from the human rights operation can be transmitted to the General Assembly if authorized by the General Assembly, the Economic and Social Council or the Commission on Human Rights. Annual reports on the activities of the Cambodia Office of the High Commissioner for Human Rights, for example, are submitted to the General Assembly.

74. In 1993 the General Assembly voted to create the post of the *High Commissioner for Human Rights*, which is described more in detail below.⁶ In 1996 the General Assembly authorized a Special Rapporteur on Children in Armed Conflicts which will receive information on this subject from all over the world, have an operational capacity through UNICEF, and report annually to the General Assembly.⁷ (See the discussion below on the thematic procedures of the Commission.)

3. The Economic and Social Council

75. The Economic and Social Council (ECOSOC) oversees the Commission on Human Rights and the Commission on the Status of Women. The Council is also responsible for monitoring compliance with the Covenant on Economic, Social and Cultural Rights through the Committee on Economic, Social and Cultural Rights. In addition, it has issued such human rights standards as the Standard Minimum Rules for the Treatment of Prisoners and the Principles on the Effective Prevention of Extra-Legal, Arbitrary and Summary Executions.

4. The Commission on Human Rights

76. The Commission on Human Rights, composed of 53 member-states elected by the Economic and Social Council for three-year terms, meets annually in Geneva for six weeks in the spring. In urgent situations the Commission can convene for extraordinary sessions. As its name suggests, the Commission is the **most important UN body concerned with human rights**. It may **initiate studies and fact-finding inquiries, draft conventions and declarations** for approval by higher bodies, **discuss specific human rights violations** in public or private sessions, and initiate suggestions for improving the UN's human rights procedures. Non-governmental organizations (NGOs) are allowed to express their concerns to the Commission during the six-week session.

77. Reports from some human rights field operations are submitted to the Commission, either in the name of the Secretary-General — as for Cambodia — or in the name of the High Commissioner — as in the case of Colombia.

⁶High Commissioner for the Promotion and Protection of All Human Rights, G.A. res. 48/141, 48 UN GAOR (No. 49) at 411, UN Doc. A/48/49 (1993).

⁷See United Nations, *Impact of Armed Conflict on Children*, UN Doc. A/51/306 (1996)(report of Graça Machel).

78. The Commission has established three principal approaches to serious and widespread violations of human rights: establishment of country rapporteurs and working groups under the authority of ECOSOC resolution 1235; consideration of country situations under the confidential procedure of ECOSOC resolution 1503; and review through 18 thematic procedures.

a. Country rapporteurs

79. The most visible action the Commission can take regarding a serious human rights situation is the appointment of **special rapporteurs**, special representatives, experts, working groups, and other envoys **to monitor human rights violations in particular countries**. These countries have included Afghanistan, Bolivia, Burundi, Cambodia, Chile, Cuba, El Salvador, Equatorial Guinea, Guatemala, Haiti, Iran, Iraq, Myanmar, Nigeria, Occupied Palestinian Territories, Poland, Romania, Rwanda, Somalia, Southern Africa, Sudan, Togo, former Yugoslavia and the Democratic Republic of Congo. The special rapporteurs, representatives, and others **collect information on human rights violations and prepare annual reports to the Commission**, and, if requested, to the General Assembly. Information can be gathered from individuals, groups, organizations and governments. The experts or rapporteurs often attempt to obtain the relevant information by visiting the countries. Difficulties arise, however, when governments refuse to grant permission for these visits. In some cases, human rights field operations have been present in countries on which the Commission on Human Rights had appointed a Special Rapporteur or Representative — such as in Rwanda, the Democratic Republic of Congo, Cambodia — or have been established *to support* the work of country Special Rapporteurs — such as in the case of the Special Rapporteur on human rights in the Former Yugoslavia. It should be noted that reports by Special Rapporteurs are public, while reports by human rights field operations are not always made public in their entirety. In this respect, Special Rapporteurs may therefore have a complementary role with respect to field operations.

b. Thematic procedures

80. The Commission has also established thematic procedures on the issues of forced disappearances, arbitrary detention, summary or arbitrary executions, torture, religious intolerance, independence of the judiciary, racism, arbitrary detention, internally displaced persons, violence against women, freedom of opinion, sale of children, mercenaries, development, migrant workers, and human rights and toxic waste, effects of foreign debt, human rights and extreme poverty, education, compensation of victims of human rights violations, right to development, etc. In general, the thematic working groups, rapporteurs and representative of the Commission receive information with respect to their subjects of concern and prepare **annual reports** to the Commission summarizing the information they receive. If the information relates to an urgent matter, most of the thematic procedures are entitled to make **urgent appeals** to the governments concerned. Most of the working groups, rapporteurs and representatives have also been invited to visit specific countries and to prepare reports for the Commission on their visits. Complementary action by thematic procedures — through both reports and urgent appeals — and human rights field operations through all the means highlighted in this Manual, can be usefully considered to address specific human rights problems and cases faced by the operation.

5. The Sub-Commission on Prevention of Discrimination and Protection of Minorities

81. The Sub-Commission on Prevention of Discrimination and Protection of Minorities is composed of 26 persons elected by the Commission, for four-year terms, in their **individual capacities** rather than as governmental representatives. The Sub-Commission plays an important role in selecting countries for consideration under the confidential procedure established by ECOSOC resolution 1503, reviews other information regarding human rights violations, and reports its findings to the UN Commission on Human Rights. The Sub-Commission is often the source of resolutions and ideas that are considered and adopted by the Commission. With the assistance of the Office of the High Commissioner for Human Rights, members of the Sub-Commission also prepare studies on human rights problems. Representatives of NGOs actively participate in the Sub-Commission's sessions.

6. The Commission on the Status of Women

82. The Commission on the Status of Women was established by the Economic and Social Council in 1946. The Commission is composed of representatives from 45 United Nations member states, elected by the Council for four-year terms. Its functions are to prepare recommendations and reports to the Council on **promoting women's rights in political, economic, civil, social and educational fields**. The Commission may also make recommendations to the Council on problems in the field of women's rights that require immediate attention. The Commission has a procedure for receiving confidential communications on human rights violations. The Commission's works to implement the principle that men and women shall have equal rights, to develop proposals that give effect to its recommendations, and to adopt its own resolutions and decisions. The Inter-American Commission of Women and the Commission on the Status of Arab Women submit reports to each session of the Commission on the Status of Women.

7. Treaty bodies

83. In addition to the above organs and procedures which derive their authority directly or indirectly from the UN Charter, there are **six treaty bodies** which have played and continue to play an increasingly significant role in the implementation of human rights. These expert bodies include the *Human Rights Committee*, which considers States' reports under the International Covenant on Civil and Political Rights and adjudicates individual cases under the Optional Protocol to the Covenant on Civil and Political Rights. The other five treaty bodies that oversee the implementation of multilateral conventions in their respective domains are: *the Committee on the Elimination of All Forms of Racial Discrimination*, *the Committee on the Elimination of Discrimination Against Women*, *the Committee Against Torture*, *the Committee on the Rights of the Child*, and *the Committee on Economic, Social and Cultural Rights*.

a. *Reporting obligations*

84. The main aim of the reporting requirements is to **help governments bring their laws and practices into conformity with their treaty obligations**. The reporting requirements encourage governments and citizens to focus their discussions regarding a nation's human rights performance. Governments may then remedy problems that become evident while preparing reports and, thus, reaffirm their commitment to comply with treaty obligations.

85. Each treaty body meets periodically — usually two or three times per year — to review the States' reports. Each reporting Government is invited to send a representative to the public meeting who may orally introduce the report and place it in legal, social, economic and political context. The representative also may update information submitted earlier. After the introduction, Committee members in turn engage in a dialogue with the representative by asking questions about the report and the Government's fulfilment of treaty obligations. **Committee members** are not limited to information in the State's report but **may utilize** their own expertise, information **available from other sources** (*including reports from field operations*), and materials submitted informally by NGOs.

86. After a Government representative has presented his/her report and answered questions from committee members, most of the committees have since about 1992 or 1993 begun to issue **concluding observations** evaluating the State party report, the dialogue with the delegation, the positive developments that were noted during the period under review, and difficulties affecting the implementation of the treaty, as well as specific issues of concern regarding the application of the provisions of the treaty. Comments also include suggestions and recommendations formulated by the Committee for the attention of the State party concerned.

87. Based on their overall experience in reviewing State reports, most of the treaty bodies have also issued **general comments or recommendations** which authoritatively interpret the provisions of their respective treaties or provide guidance to reporting States.

88. Human rights field operations may play an important role in assisting governmental authorities in preparing reports to be submitted to the treaty bodies, by advising on methodology, data collection and legal issues, or by providing training. They may encourage national NGOs — through training and other forms of assistance — to submit relevant information as provided by the treaty bodies' methods of work.

b. *Individual complaints procedures*

89. **Three of the treaty bodies** — the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee against Torture — **receive and adjudicate individual complaints from individuals** whose governments have agreed to become the subject of such complaints. The Human Rights Committee has received and made decisions on a considerable number of complaints. The other two treaty bodies have received only a handful of complaints. Similar individual complaint mechanisms are being considered for the other treaty bodies. Human rights field operations need to be aware of the existence, applicability

and methods of work of these complaints procedures, and may advise individuals as to how to access them to submit specific cases.

8. High Commissioner for Human Rights

90. The post of United Nations High Commissioner for Human Rights was created in 1993 by the General Assembly. The High Commissioner has principal responsibility for UN human rights activities and is specifically mandated to:

- ✓ Promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, and in particular the right to development;
- ✓ Provide, through the Centre for Human Rights [*now Office of the High Commissioner for Human Rights*] and other appropriate institutions, advisory services and technical and financial assistance in the field of human rights at the request of the State concerned and regional organizations;
- ✓ Coordinate relevant United Nations education and public information programmes in the field of human rights;
- ✓ Play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action;
- ✓ Engage in a dialogue with all Governments with a view to securing respect of all human rights; and
- ✓ Carry out the tasks assigned to her/him by the competent bodies of the United Nations system in the field of human rights with a view to improving the promotion and protection of all human rights.

91. The High Commissioner can provide “follow-up” — as defined in this chapter — to actions by human rights field operations through private communications with Governments, public statements, reports and long-term technical assistance interventions. The Office of the High Commissioner for Human Rights is based in Geneva, and is also responsible for providing secretarial and substantive servicing to the special procedures of the Commission on Human Rights and the human rights treaty bodies, thus providing the most direct channel for transmission of information to those bodies.

92. The High Commissioner has established or maintained human rights field operations in Bosnia-Herzegovina, Burundi, Cambodia, Colombia, Rwanda, as well as smaller offices in Abkhazia, Georgia, Democratic Republic of Congo, Gaza, El Salvador, Guatemala, Malawi, Mongolia, South Africa, Togo, Republic of Croatia, Former Yugoslav Republic of Macedonia, Federal Republic of Yugoslavia. In other cases, the High Commissioner is responsible for providing substantive guidance to human rights operations established within peace-keeping or other UN missions, such as in Angola, Sierra Leone, Central African Republic and Liberia.

.....Chapter XX

HUMAN RIGHTS

REPORTING.....

Key concepts

Reports should be:

- (1) precise and accurate; based on verified information;*
- (2) promptly prepared; and*
- (3) action-oriented.*

There are typically four kinds of internal reports within the operation:

- (1) Periodic reports document work accomplished and plans;*
- (2) Emergency reports provide a quick way of alerting managers of the need for action;*
- (3) Interview reports/questionnaires provide a way of recording the results of an interview and do not provide an interview protocol;*
- (4) Incident reports.*

External reports are designated by the chief of the operation:

- (1) for the Government as a means of working with the Government to improve their protection of human rights;*
- (2) within the UN system, including to report to the operation's Headquarters; and*
- (3) to the media.*

External reports are usually based on internal reports from area offices, which must provide detailed information, use consistent terminology, and adopt consistent approaches to information, so that the officer at the central office who prepares the external report can rely on the facts gathered and can draw useful general conclusions about the evolving human rights situation.

A. Introduction

1. **Reporting is an essential element of the human rights monitoring function.** Reporting must be adapted to the mandate of the human rights field operation and to the needs of those officers who are managing it. A distinction is made

in this chapter between *internal* and *external* reporting. From the point of view of a specific field operation, **internal reports** are those which are produced by the field operations staff for use within the operation only. **External reports** are those which are produced by the field operation staff using information contained in the internal reports, for a wider distribution including, for example, UN Headquarters in Geneva or New York, other UN bodies (*e.g.* the General Assembly, the Commission on Human Rights) or mechanisms (*e.g.*, country or thematic rapporteurs), the international community, or the media.

2. HROs, particularly those working in offices other than the central office of the field operation, sometimes see their report writing tasks as peripheral to the actual human rights work that they accomplish. They can become frustrated with requests from the central office for a variety of different reports written in a particular way. It is very important that officers be informed of the *reasons for which* they are required to write reports and *how those reports will be used*. Knowing the exact way in which a report is to be used will make it easier for the HROs who have to write them. The HROs should be made aware that certain of their internal reports will later be used in the compilation of reports destined for external use. In order to make sure that complete and accurate reports are prepared, the reporting structure within a field operation should be clearly defined as early as possible.

3. This chapter gives suggestions on some of the *different types of report that a field operation may have, and on the different uses that may be made of them*. Brief guidelines are given on how reports should be written and on the use of report forms.

B. General principles on human rights reporting

1. Accuracy and precision

4. The **first step** in preparing any report is to **verify the information received**. Reports cannot be prepared and interventions with the authorities cannot be undertaken unless they are made on the basis of verified information. Once the inquiry is completed and the information has been checked, the HRO may proceed to write a formal account, for example, of the violation based on the available evidence.

5. Human rights reporting may take different forms, but certain elements are crucial to a UN HRO's report. First, the **report should be precise and accurate**. It should *not be based on rumour or unverified information*. Obviously, more serious allegations require the HRO to exercise a heightened standard of care regarding the precision with which the facts are reported.

2. Promptness

6. Second, the report **should be produced promptly**. The HRO should assemble the relevant evidence and complete the report while the matter is fresh in his/her

memory. This technique is especially important in situations where the officer must make inquiries and report on numerous individual cases containing similar facts. Prompt reporting is also crucial to the effectiveness of the UN operation in raising concerns with the authorities.

3. Action-oriented

7. Third, the **report should be action-oriented**. The HRO should set forth recommendations for the next steps that should be taken. It is important for the officer to make recommendations for the action to be taken because the officer may be in the best position to assess the situation and identify the appropriate responses.

C. Reporting within the Human Rights Field Operation

8. *Internal reports* are most likely to be written by individual HROs or by area offices¹ of the operation, and submitted to the *operation's central office*. HROs should remain informed of the organizational structure and function of the UN field operation in the country and/or region in which they are stationed in order to know where they fit in the flow of information and to whom they should report. Different matters need to be reported to different units/persons. Urgent matters may need to be reported to different units/persons than less pressing individual complaints or general assessments of the situation. The HRO should be provided with forms to report on various kinds of urgent matters, individual cases and general developments. These forms should be used to report information in a structured fashion. This chapter anticipates the need for at least four sorts of internal reporting: periodic reports (including specialized activity reports), emergency reports, interview reports and summary reports on particular incidents.

1. Periodic reports

9. Each area office/officer will generally be asked to prepare reports to:

- ✓ **document work accomplished** (with regard to each aspect of the mandate);
- ✓ **alert managers as to major developments or trends**; and
- ✓ **to plan future efforts to improve the human rights situation.**

10. In some operations such reports have been needed on a weekly basis, but in others periodic reports have been prepared daily, every two weeks, every fifteen days or every month. It appears that **monthly reporting is most common in human rights**

¹The term “central office” is used here to designate the office of the field operation based in the capital of the country. The term “area offices” designates offices established by the field operation at the *regional, provincial or local level* in the country of operation — that is, outside the capital.

operations, but frequency of reporting must reflect the situation, the time available for preparing reports, the ability of HROs to assemble at the central office for meetings, and the needs of managers. Indeed, the periodic reports should ordinarily be timed so as to *coincide with regular meetings at the central office* of a representative from each area office — which is a common practice of field operations — so that progress can be assessed and further objectives can be established. The periodic reports should indicate both improvements and negative trends.

11. **Periodic reports should reflect all of the major activities** of the submitting area office/officer. A **draft periodic reporting form** (Appendix 1 to this chapter) has been provided so as to serve as an instrument for assessing results and developing plans. The draft form should be adapted to the mandate, the needs of the operation and of the managers. For example, **the form identifies certain aspects of the mandate, but the mandate may be different for each operation.**

12. The internal “Periodic” reports might cover the following subjects:

- ✓ Introduction; overview of human rights situation in the region; highlights requiring attention
- ✓ Summary of work accomplished during the reporting period (progress in completing the work plan)
- ✓ Major positive and negative trends in the situation during the reporting period (by mandate areas), for example:
 - ┆ Detention
 - ┆ Returnee monitoring
 - ┆ Demonstration monitoring
 - ┆ Election monitoring
 - ┆ Assistance to the judiciary
 - ┆ Assistance to non-governmental organizations
 - ┆ Etc.
- ✓ Plans for the forthcoming period (by mandate areas)
- ✓ Recommendations for the forthcoming period (by mandate areas)
- ✓ Administrative information on the office (illness/vacation of staff members, vehicles out of order, etc.)
- ✓ Conclusions
- ✓ Attachments

13. Under each section, information should be provided for each specific area of the operation’s mandate. If there are HROs specifically responsible for a certain area of the field operation’s mandate, for example detention or trial observation, etc., *specialized activity reports* on each specific area may be attached to the periodic report. Other documents, including interview forms or other backgrounds materials, may be attached as well to help explain the situation or the report recommendations. There will inevitably be a certain amount of overlapping between different sections, and the central office unit charged with reporting should try to reduce this duplication to a minimum.

14. Periodic reports by area offices/officers are used by the operation's central office to follow the activities of each office, to plan and develop strategies to address the evolving situation, to maintain contact with the present state of human rights, and to produce a single periodic report for the whole operation, to be used externally (see below).

2. Emergency reports

15. Occasionally, incidents occur in the human rights situation which require the *prompt/urgent attention of central office*. It may be necessary for action to be taken by the operation rapidly at a national level to address a particular problem encountered by the staff of an area office. Emergency reports are **intended to provide the most essential information that will enable the central office to take the relevant steps**. A draft emergency report form (Appendix 2) has been provided for this purpose. In some human rights operations, emergency reports have been identified as “flash reports” or “urgent action reports”.

16. Given that emergency reports must reach their destination as quickly as possible, it may not always be practical for the report to be taken by hand from the area office to the central office. Partly for this reason the emergency report form is designed to be brief enough for it to be faxed. Exceptionally, and where fax facilities are not available, it may be necessary to give the information contained in the report by radio or telephone. The emergency report form should be structured in such a way as to facilitate a communication of information by radio or telephone. **As a rule, however, no confidential information should be sent by radio or telephone.**

3. Interview reports

17. Generally, as a part of an inquiry into possible human rights violations or as a part of monitoring certain activities (such as demonstrations or returning refugees), HROs will need to conduct interviews. Reference should be made to **Chapter VIII: “Interviewing”**. Some of the considerations made there are summarized below.

a. Use of the interview form

18. In **Appendix 3** to this chapter, a **questionnaire or interview form** has been provided. This form gives the interviewer an outline of the questions that might be covered in an interview — more or less in the order they might arise. For example, it begins with a very open-ended question which would permit the witness to tell the story without much prompting or interruption for subsidiary questions. Nonetheless, the *questionnaire is intended as a way of recording the results of the interview and not as a protocol for the interview*.

19. It is *far more important for the interviewer to listen to the story and the other information provided by the witness than it is to follow the logic of the form* or even to complete the form. After hearing the story of the witness, the interviewer should ask questions which would clarify the information provided and develop facts which might indicate if human rights violations have occurred. Questions to a particular witness should be

more responsive to the story/situation than to any questionnaire or prepared list of issues.

20. *The form is intended to provide an instrument for reporting on the results of the interview and not really for taking notes during the interview or for dictating a particular logic to the discussion.* Instead, the discussion should follow the logic of the information provided. At most, the form (and a subsequent adaptation for a particular UN human rights operation or a particular interview) might **provide a checklist** of important questions which the interviewer might consult before the beginning of the interview and towards the end of the interview — just to make sure that significant issues have not been forgotten during the discussion. In consulting the form before the interview, the interviewer should commit major questions to memory. Eye contact and establishing a rapport are more important than adhering to a particular order of questions. As indicated above, the *form might also be used as a memory refresher just before the end of the interview to be sure that the major questions have been asked.* In any case, the HRO should be careful to avoid allowing the questionnaire to become an artificial barrier to communication with the witness.

21. *This form should also be adapted to the mandate of the UN human rights operation and the needs of the particular interview.* For example, the form anticipates that the interview might relate to such human rights problems as an arbitrary arrest or torture, but the mandate of the operation may focus on more or other human rights violations. Hence, the **form needs to be adapted for the particular operation**. Also, the form may need to be adapted for particular kinds of witnesses. For example, one area office, or an HRO, may find that they are in contact principally with displaced persons; another may be talking largely with persons who have been detained. The questionnaire should be adapted for the particular needs of such witnesses — both to remove unnecessary questions and to add new, relevant issues. In making those adaptations, it might be useful to note that the form requires the use of terminology that is very clear and thus does not require much interpretation. Accordingly, the results of interviews should allow the development of statistical reports. Also, the form is designed to provide precise details to officers at the central office or elsewhere who did not participate in the interview.

b. Contents of the interview report

22. First and foremost, an interview report about an incident must contain an **accurate account of the facts**. It should, however, also include other important information. The goal is to give the clearest description possible of the events based on the evidence available. In addition to personal details concerning the **victim**, such as age, gender, profession, etc., information about the **context of the violation** can be very important to understanding what happened. Moreover, the HRO must include the sources of information and assessment of their reliability (to the extent that one does not violate confidentiality).

23. If possible, the HRO should strive to include the identity of the **perpetrator**, as well as the relationship of the perpetrator(s) to the authorities. The *identity of perpetrators in internal incident reports can be particularly useful in determining whether several victims have suffered at the hands of a particular individual.* If chains of command can be identified, they should also be included. Information about the *identity of perpetrators should generally be kept confidential*, however, because releasing such information may expose the subjects to risk, for example, of retaliation by the victim's family or others. The alleged perpetrator

who is identified might even be killed by others who are responsible, as an exercise in “damage limitation”. If there are particularly strong reasons *for releasing the name of the perpetrator, the area office should consult with the central office* and should, in any case, not reveal the identity unless an effort has been made to permit the alleged perpetrator to respond to the allegations. *Where the system of justice is functioning, it is generally preferable to encourage the local authorities to bring the individual to justice.*

24. In addition, the HRO should **identify what rights have been violated**. The should also set forth **recommended actions** *at the local, national and international levels in the short, medium and long term*. It is useful to provide **attachments** to the report, for example copies of affidavits, maps, photos, documentary evidence, medical records and death certificates.

25. It would be helpful to *assemble a computerized list of all cases by name, case number, and a few other pertinent details in the area office and ultimately to develop a central registry at the central office to prevent duplicate inquiries* by different area office teams, by persons with overlapping responsibilities, or by the human rights component and other components of the operation (for example the civilian police), if any.

4. Incident reports

26. Once enough information has been gathered by interviews, direct observation, and by other means, the HRO who has conducted the inquiry should prepare a detailed and accurate account of the events which may indicate that there has been a human rights violation or which otherwise need to be reported to the central office. In most cases the interview reports will contain all the relevant information and the HRO will be able to provide an overall assessment summarizing the events and making recommendations for action by the operation at the local, national and international levels. **Appendix 4** provides a **standard incident report** which substantially follows the same approach as the interview report form. Since there are so many different sorts of events which might be covered by such incident reports, it is difficult to prescribe a single form which will cover all the needs of human rights officers. Nonetheless, the operation may recognize a certain repetition in violations or other events which might suggest the development of specialized forms.

D. External reports

1. Reporting to Headquarters

27. As discussed in **Chapter XIX: “Following-Up and Seeking Corrective Action”**, the chief of the human rights operation is responsible for reporting **to the head of the UN presence** in the country, if the human rights operation is part of a wider UN operation in the country (for example, to the Special Representative of the Secretary-General). Also the chief of the operation is responsible for reporting **to the Headquarters** of the operation, in Geneva and/or New York, for example the UN

High Commissioner for Human Rights, and/or the Department of Peace-Keeping Operations, and/or the Department of Political Affairs.

28. Reports from the human rights operation to Headquarters and/or to the Head of the UN operation in the country may be required **weekly or monthly**, depending on the nature of the problems and the specific needs of each Office. *It is the practice of the Office of the High Commissioner for Human Rights to receive weekly and monthly reports from the human rights field operations and smaller offices established under its authority.*

29. Reports to Headquarters **may be prepared based on the same formats indicated in Appendices 1, 2 and 4**, depending on whether they are periodic, emergency or incident reports. In fact, in addition to the weekly or monthly reports required of the human rights field operations, the chief of the operation may consider it necessary to alert the UN headquarters to a particular problem and/or incident. This may be necessary especially if the chief of the operation is soliciting a specific follow-up action at the level of Headquarters, as discussed in **Chapter XIX: “Following-Up and Seeking Corrective Action”**. Reports to Headquarters will, however, **contain information related to the entire country and the work of the entire operation**, rather than be related to a specific area/region as is the case of the internal reports. For this reason, these reports are produced at the central office level.

30. In order to produce them, the chief of the human rights operation and the central office must have available from area offices: (1) reports on individual cases as indicated in the interview form, (2) periodic (weekly, monthly, etc.) situation reports which state the present conditions relating matters within the mandate (including specialized activity reports) and indications of trends, (3) emergency reports of situations which require particular attention (for example attacks on human rights personnel, imminent risks of grave injury to individuals within the operation’s terms of reference, etc.), and (4) incident reports.

2. Reporting to other UN bodies and mechanisms

a. UN bodies

31. As mentioned in **Chapter XIX: “Following-Up and Seeking Corrective Action”**, the human rights field operation may be required to report on human rights developments and on its activities to other relevant bodies of the UN system, including for example the **UN Security Council**, the **General Assembly** and the **Commission on Human Rights**. These reports are *generally provided on an annual basis* (but more frequent reports may be required), and are submitted by the Secretary-General or by the High Commissioner for Human Rights. Examples mentioned in the previous chapter include the reports submitted annually to the General Assembly and the Commission on Human Rights on the activities of the Cambodia Office of the High Commissioner for Human Rights, and the annual report to the Commission on the Colombia Office. Also, human rights field operations which are part of United Nations peace-keeping missions are generally required to draft the sections on human rights developments of the periodic reports of the mission to the Security Council. *These kind of reports are usually prepared by the central office in consultation with the operation Headquarters* (DPKO, OHCHR, DPA).

b. UN mechanisms

32. In addition, the operation may provide information to other UN human rights mechanisms, including **country and thematic rapporteurs/procedures** appointed by the UN Commission on Human Rights (and sometimes by the General Assembly), as described in **Chapter XIX: “Following-Up and Seeking Corrective Action”**. In some cases, a *formal link* may have been established between the human rights operation and the country rapporteur and/or representative on human rights, such that one of the operation’s tasks is to provide support to the rapporteur in information gathering, investigation and reporting. In these cases, well-verified information and reports should be systematically transmitted to the relevant rapporteurs/representatives.

33. In the absence of such a well-defined relationship between the human rights field operation and the procedures of the Commission on Human Rights, the human rights operation and its staff should be aware of the fact that the information they gather and the operation’s reports may be used by some of these procedures — especially the thematic procedures — to take action on specific cases or for public reports. As mentioned in **Chapter XIX: “Following-Up and Seeking Corrective Action”**, complementary action by thematic procedures and human rights field operations can be usefully developed to address specific human rights problems and cases faced by the operation. The possible impact on the protection of human rights in the country of operation should be the primary consideration in deciding how and in which cases such action should be taken. Specific arrangements for the transmission of reports and information to relevant thematic mechanisms should be made for each field operation. In general, periodic reports from the field operation should be made available to relevant country and thematic procedures through the Office of the High Commissioner for Human Rights.

34. The human rights operation should also share its public and possibly its internal information with any investigators for an *international criminal tribunal* applicable to the situation, such as exist for the former Yugoslavia and Rwanda.

35. The director of the operation may consider, *in consultation with its Headquarters*, that it may be necessary to produce regular statements on the evolving human rights situation for the national and international media. Those statements may assist the operation in encouraging the Government to comply with international human rights norms and in providing the international community with information necessary to respond to the situation. If the operation decides to release public reports or information to the media, the reports should be broadly and quickly distributed through UN public information offices in Geneva, New York, and in the country concerned.

3. Reporting to the Government

36. It may also be useful and necessary to produce periodic reports for the Government of the country in which the operation is occurring. In general, every field operation will be required to produce a periodic report of its activities, to be distributed, for example, within the United Nations system as mentioned in the previous paragraphs and to members states of the international community. The embassies of *countries contributing to the financing of the operation* may require a regular update on *particular*

programmes in which they are interested, such as a capacity-building project to strengthen the judiciary.

37. In general, public reports on the human rights situation in the country of operation should be shared first with the government in which the human rights field operation is established. As discussed in **Chapter XIX: “Following-Up and Seeking Corrective Action”**, the *field operation should use its external reports as a means of working with the Government to improve their protection of human rights*. Also, sharing reports with the Government may result in required improvements, so that the report will need to be revised or possibly not issued if it is no longer relevant. In addition, the Government may have factual corrections and comments which should be reflected in the report.

4. Writing reports, using report forms

38. Some external reports will be used only for information purposes (notably those sent to the international community). Other external reports (particularly those sent to the Government or reports on particular incidents) will be used to address specific human rights problems. *Some external reports should focus on thematic issues*, for example, the situation of human rights in prisons or other places of detention, human rights in the administration of justice, human rights and the police, etc. In those reports specific incidents can be used as illustrations.

39. As mentioned above, *external reports produced by the operation will usually be based on internal reports, often received from the area offices*. Accordingly, it is likely that the persons at the central office preparing the reports will not have personally experienced the events about which s/he is writing. Hence, *it is critical that reports from area offices provide detailed information, use consistent terminology, and adopt consistent approaches to information, so that the officer at the central office who prepares the external report can rely on the facts gathered and can draw useful general conclusions about the evolving human rights situation*. For example, if one human rights officer reports that a killing occurred in a particular town on a particular date, it would be useful if other officers provide the same level of detail about similar killings.

40. Both human rights officers and members of the central office staff should keep in mind the use which will be made of the information and reports they prepare. Hence, a human rights officer should try to communicate the nature of the local situation to the central office so that the central office can take action in appropriate cases, can prepare reports for the host Government raising concerns, and can prepare reports for others. *Ordinarily the human rights officer will know the local situation very well and should try to write reports which communicate that knowledge to the central office and thus to others*. Often the human rights officer will prepare a report which only records the information in such a way that the officer can recognize what has occurred, but without including relevant facts well known in the locality, but possibly unknown at the central office. *The human rights officer should write with the reader in mind*.

41. This chapter appends four report forms so that information received from the field can be systematized and made more consistent for use of the central office. The forms also suggest an approach to the analysis of the information, which the human rights officer might find useful. *For the particular needs of an operation, these forms may well need to be modified and other forms may need to be developed*. Creating functional reporting forms can be difficult. Ultimately *each form should be carefully adapted to its objective*. Reporting forms

should allow enough latitude for every eventuality; for example, an incident form should allow for different types of incidents (a killing, ill-treatment, a demonstration, etc.). *The form should be specific enough to ensure that different people writing about different incidents will write the same type of information (for example, location of incident, time, people involved, etc.) in the same place in the form, in the same terminology, and in the same way.* If the form is not completed correctly, it becomes very difficult for the information in the forms to be used comparatively, or even to be used at all by someone other than the person who wrote it.

42. *One use of forms is to prepare statistical information which may indicate trends in the human rights situation.* For example, if a form has been prepared in a suitable fashion and if forms are consistently completed, it may be possible for the central office to draw conclusions about the frequency of serious human rights violations or other problems arising in various regions. Those statistics can provide strong evidence of the need for an international response in one area or can indicate that international action is less needed in another. The interview form (**Appendix 1**) and the incident form (**Appendix 4**) of this chapter have been developed with the expectation that they will yield comparative statistical information and help identify trends in the human rights situation. The periodic report (**Appendix 2**) has also been prepared to encourage the regional staff to provide information and assess trends.

<i>CONFIDENTIAL</i>		
	Date of Report:	<div style="display: flex; justify-content: space-around;"> <div>____/____/____</div> <div>D M Y</div> </div>
Questionnaire — Interview Report Number: Q-_____		
Officer(s) Preparing Report:	_____	

Area Office:	_____	
	Date of Interview:	<div style="display: flex; justify-content: space-around;"> <div>____/____/____</div> <div>D M Y</div> </div>

[illegible]

1.1 Does the victim/source of information/witness agree that the given information

☐ may be used for steps with the authorities or

☐ may be disclosed in public reports?

May their name be cited? ☐ yes ☐ no

2. Personal information about the witness

2.1 Surname: _____ First name(s): _____
(or use an identifying number and keep the individual's name elsewhere)

2.2 Male ☐ Female ☐ (Please check a box)

2.3 Date of birth: day _____ month _____ year _____
Approximate age at interview: _____

2.4 Place of birth: _____
(town/city, province/county/state, other indications)

2.5 Present address: _____

2.6 Do you have a telephone? (Please give number:) _____

2.6.1 Is it your own telephone ☐

Or another person's? ☐ Whose? _____

2.7 Address where you can be contacted (if other than above): _____

2.8 Means for the interviewer to stay in contact with the witness: _____

2.9 Civil/family status:

Single ☐ Married ☐ Divorced ☐ Separated ☐ Widowed ☐

(Check the box which is most applicable)

2.10 Family details (number of children and dependants — Please give names and ages if possible):

2.11 Occupation or profession (please specify):

Artisan ☐ Farmer ☐ Government employee ☐ Journalist ☐ Merchant ☐

Military ☐ Professional ☐ Student ☐ Unemployed ☐ Other ☐

(Check the box which is most applicable)

2.12 Education:

Primary school ☐ Secondary school ☐ University ☐ Graduate study ☐

(Please check the box indicating the highest level of education attained)

Names of schools and universities attended: _____

2.13 Identity document:

Type: _____ Number: _____

2.14 Connection with the victim:

- ☐ Witness is the victim
- ☐ Witness has direct evidence of the violation
- ☐ Witness has indirect information
- ☐ Witness is related to the victim
- ☐ Other connection (please specify:)

2.15 Do you have particular comments about the source(s) of information? _____

3. First victim (if different from witness; if there are several, please attach supplementary pages 3-7)

A. General

3.1 Surname: _____ First name(s): _____

3.2 Male ☐ Female ☐ (Please check a box)

3.3 Date of birth: day _____ month _____ year _____
Approximate age at interview: _____

3.4 Place of birth: _____
(town/city, province/county/state, other indications)

3.5 Present address and telephone (if different from above): _____

3.6 Address where victim can be contacted (if other than above): _____

3.7 Civil/family status:

Single ☐ Married ☐ Divorced ☐ Separated ☐ Widowed ☐

(Check the box which is most applicable)

3.8 Family details (number of children and dependants — Please give names and ages if possible):

3.9 Occupation or profession (please specify):

Artisan ☐ Farmer ☐ Government employee ☐ Journalist ☐ Merchant ☐

Military ☐ Professional ☐ Student ☐ Unemployed ☐ Other ☐

(Check the box which is most applicable)

3.10 Education:

Primary school ☐ Secondary school ☐ University ☐ Graduate study ☐

(Please check the box indicating the highest level of education attained)

Names of schools and universities attended: _____

3.11 Political affiliation or sympathies of the victim: _____

3.12 Membership/support of other organizations (please specify):

☐ Association of students: _____

☐ Community association: _____

☐ Human rights group: _____

☐ Peasant movement: _____

☐ Political party: _____

☐ Popular movement: _____

☐ Religious community: _____

☐ Trade union: _____

☐ Youth group: _____

☐ Other: _____

3.13 Other comments/information about the victim: _____

B. Incident

(If there were several incidents, please note here the incident which occurred earliest in time and attach supplementary sheets (pp. 4-7) for other incidents.)

4. What happened to the victim specified above:**4.1 Date and time of violation:**

day: _____ month: _____ year: _____ time: _____

4.2 Place:

(town/city/community, department/province — exact place or address, if possible)

4.3 Circumstances of the incident:

Recitation of the facts (for example: in case of an arrest, how did it occur?; in case of a killing, description of the killing; in case of a disappearance, circumstances of the seizure or place where the person was last seen and where was he/she heading to, etc.; if there were threats or extortions, describe them; if it concerns a displaced person, what was the reason for his/her departure?)

4.4 Apparent violation:

(please specify briefly the elements of the violation and nature of person responsible)

- ☐ Arrest: _____
Perpetrator(s) (use list in 4.7 below and identify as person in 4.7.a., b, etc.): _____
- ☐ Other detention: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Rape: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other torture: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other ill-treatment: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Killing: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Attempted killing: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Disappearance: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Violation of freedom of association: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Violation of freedom of expression: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Threat: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Theft of property: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other form of persecution: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Discriminatory conduct: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other: _____
Perpetrator(s) (use list in 4.7): _____

4.5 How many persons were responsible for the violations during this incident?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6-10 ☐ 11-15 ☐ more than 16 ☐4.6 Can you identify any of these perpetrators? yes ☐ no ☐

Why are they believed to be soldiers, police officers, or otherwise associated with the Government?

4.7	Name/surname (or other identification)	Connection with Government (e.g., army unit, police, etc.)
	a. _____	_____
	b. _____	_____
	c. _____	_____
	d. _____	_____
	e. _____	_____
4.8	How were the perpetrators dressed? uniform <input type="radio"/> civilian dress <input type="radio"/>	
	If uniform, colour of uniform: khaki <input type="radio"/> olive green <input type="radio"/> blue <input type="radio"/> black <input type="radio"/>	
	Boots: yes <input type="radio"/> no <input type="radio"/>	
	Helmet: yes <input type="radio"/> no <input type="radio"/>	
	Mask: yes <input type="radio"/> no <input type="radio"/>	
	Other identifying clothing or insignia: _____	

4.9	How did the perpetrators reach the place of the incident?	
	on foot <input type="radio"/> on motorcycle <input type="radio"/> in police vehicle <input type="radio"/> in army vehicle <input type="radio"/>	
	in another official vehicle <input type="radio"/> in taxi <input type="radio"/> in private vehicle <input type="radio"/>	
	Characteristics of vehicle (type (e.g., jeep), make, colour, insignia, license no.) _____	

4.10	Were they carrying weapon(s)? yes <input type="radio"/> no <input type="radio"/>	
	If so, what? _____	
4.11	Were they carrying radios or other telecommunication device? yes <input type="radio"/> no <input type="radio"/>	
4.12	Did they speak among themselves? yes <input type="radio"/> no <input type="radio"/>	
	If so, did they use any names or other identifications? _____	

4.13	Who was giving the orders? _____	

4.14	How many people were victims of the same violations during this incident?	
	1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5 <input type="radio"/> 6-10 <input type="radio"/> 11-15 <input type="radio"/> more than 16 <input type="radio"/>	
4.15	Can you identify any of these other victims?	
	Name/surname (or other identification)	Means of contacting (address, etc.)
	a. _____	_____
	b. _____	_____
	c. _____	_____
	d. _____	_____
	e. _____	_____

4.16 Were there other witnesses (other than victims)? yes ☐ no ☐

Is it possible to contact them? yes ☐ no ☐

(Please attach their version of the events on another questionnaire.)

4.17 Name/surname Means of contacting
(or other identification) (address, etc.)

a. _____

b. _____

c. _____

d. _____

e. _____

C. Arrest

5. If an arrest has been carried out, was there an arrest warrant? yes ☐ no ☐

What kind of an arrest warrant? _____

5.1 Reasons given by the authorities for the arrest/what are the charges brought against the detainee?
(Specify the acts of which the detainee has been accused.) When? _____

5.2 Has the victim been formally charged? yes ☐ no ☐

If so, give specific details of charges brought against him/her: _____

Has the victim been sentenced? yes ☐ no ☐

If so, give dates: _____

5.3 Has the victim seen an attorney since the arrest? yes ☐ no ☐

If so, give his/her name and address: _____

5.4 Name and apparent location of detention centre: _____

5.5 Other detainees who could be identified:

Name/surname Means of contacting family
(or other identification) (address, etc.)

a. _____

b. _____

c. _____

d. _____

e. _____

5.6 Date of release: day: _____ month: _____ year: _____

D. Torture/ill-treatment**6. At what moment did the torture/ill-treatment take place?**

- ☐ at the moment of arrest
☐ during transport
☐ while in detention
☐ during the interrogation
☐ other (specify): _____

6.1 Describe precisely the nature, duration, and frequency of torture.

Try to give details as to the type of torture, for example:

Beating ☐ to the head ☐ feet ☐ hands ☐ other ☐

Using fist ☐ club ☐ gun ☐ other ☐

Restriction on movements ☐ Suspension ☐ Asphyxiation ☐

Electrical shocks ☐ Sexual assault or other form of sexual violence ☐

Threats to family ☐ Mock execution ☐

Isolation ☐ Period, location: _____

Excessive noise ☐ light ☐ or smell ☐

Other (specify) ☐ _____

6.2 Was any purpose for the torture given? yes ☐ no ☐

If so, what was it? _____

6.3 Were you questioned during torture? yes ☐ no ☐**6.4 Personnel who participated:**

Security ☐ Military ☐ How many? _____

Who did what? (please give names if possible) _____

6.5 Is any physical or psychological consequence of torture evident on date (d:____ m:____ y:____) when the victim is being viewed? yes ☐ no ☐

If so, what is it? _____

6.5.1 Does the victim require medical treatment? yes ☐ no ☐

If so, what kind? _____

6.6 In the opinion of the source of information, what were the authorities' reasons for the violation, and which activities of the victim have really motivated the authorities to this violation?

6.7 Prison conditions in detention centre (for example, solitary confinement, right to visits and correspondence, quantity and quality of food, access to fresh air and exercise, number of prisoners per cell):

6.8 Has the victim or his/her family previously been subjected to other violations? yes ☐ no ☐
If so, what kind?

6.9 Has money been given to the authorities? yes ☐ no ☐
Or have the authorities requested money to stop or to prevent a violation or to improve the condition of the victim? yes ☐ no ☐
How much money was given? _____ or requested? _____

6.10 Were injuries suffered? yes ☐ no ☐
If so, please specify:

6.11 What is the actual situation of the victim?

6.12 Actual situation of his/her family and close relations:

Have they been threatened/prosecuted/harassed? yes ☐ no ☐

Or have they been subject to other violations? yes ☐ no ☐

If so, please specify:

E. Various information

7. Has the witness (yes ☐ no ☐) **the victim** (yes ☐ no ☐) **and/or someone else** (yes ☐ no ☐) **reported the case to the authorities?**

7.1 If so, to which authorities?

authorities responsible for the violation ☐ (please specify) _____

police ☐ judicial authorities: prosecutor ☐ investigating judge ☐ court ☐

ombudsman ☐ other ☐ _____

7.2 Has the witness and/or victim reported the case to a non-governmental organization or other intergovernmental organization? yes ☐ no ☐

If so, please specify: _____

7.3 Did the above organization(s) take action? yes ☐ no ☐

If so, please specify: _____

7.4 What does the source of information/the victim/witness want the human rights officer or the UN human rights operation to do? _____

7.5 Has any action been undertaken by the human rights officer:

With the authorities responsible for the violation? yes ☐ no ☐

With the police yes ☐ no ☐

With the judicial authorities: prosecutor yes ☐ no ☐

investigating judge yes ☐ no ☐

court yes ☐ no ☐

With the ombudsman yes ☐ no ☐

With anybody else (please specify) yes ☐ no ☐ _____

What kind of action? _____

7.6 Response given by the authorities

a) authorities responsible for the violation _____

b) police_____

c) judicial authorities _____

d) other authorities (please specify) _____

7.7 Are documents annexed to this report? yes ☐ no ☐

If so, please specify: _____

7.8 Other comments: _____

After the interview is over and this questionnaire form has been completed, if the witness/victim is still accessible or can return to the office the interviewer may, to the extent possible and consistent with security, read everything which has been written on this questionnaire and ask whether the information is accurate or whether corrections should be made. If the witness/victim agrees with the information written on this questionnaire, the interviewer may ask if the witness/victim wishes to sign the document or place his/her thumb print below:

This form is an accurate account of my statement.

(Signature or thumb print)

Date: ____/____/____
D M Y

Coordinator: _____
(Signature)

Date the report was forwarded to the central office: _____/_____/_____
D M Y

[illegible]

2. Progress in completing work plan during the reporting period:

Note the accomplishments under the major headings of the mandate, *e.g.*, monitoring of human rights in regard to arrests, detention conditions, etc.; training provided to police; inquiries into violations; etc.

3. Major trends in the situation during the reporting period:

For each aspect of the mandate, please describe developments which indicate either improvements, deteriorations, or major problems encountered. To the extent possible, describe how the situation has changed and indicate any available data which illustrates those changes, *e.g.*, increase in the number of ethnic detainees held from 100 to 200.

4. Plans for the forthcoming period:

For each aspect of the mandate and each major development identified above, please describe what plans the area office has for dealing with the aspect of the mandate and the developments that have arisen.

5. Recommendations for the forthcoming period:

For each aspect of the mandate and each major development identified above, please make any suggestions as to actions which should be taken by the central office.

Appendix 3 to Chapter XX

Emergency Report Form

CONFIDENTIAL

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

Emergency Report Number: E-_____

Officer(s) Preparing Report: _____

Area Office: _____

EMERGENCY REPORT

This form is intended for reporting any developments which require the urgent attention of the central office or others higher in the structure. Please use supplementary sheets, if there is insufficient space. Also use supplementary sheets for any additional information not included in the questions, indicating the source of information.

1. Introduction — highlights:

Note the developments which require attention. Try to be as specific as possible with regard to such questions as who, what, when, where, how, and why.

2. Action taken by the area office to confirm the facts:

3. Action taken by the area office to respond to the situation:

4. Action taken by the authorities to respond to the situation:

5. Further actions planned by the area office:

6. Recommendations for action by the central office:

Please specify the unit or individual to take action, if known.

Incident Report Form

[illegible]

2. Identification of the witnesses

2.1 Surname: _____ First name(s): _____
(or use an identifying number and keep the individual's name elsewhere)

2.2 Interview questionnaire number: _____ Date of interview: _____

2.3 Surname: _____ First name(s): _____

2.4 Interview questionnaire number: _____ Date of interview: _____

2.5 Surname: _____ First name(s): _____

2.6 Interview questionnaire number: _____ Date of interview: _____

(Attach other sheets for further witnesses.)

2.7 Reliability of information:

3. First victim (if information contained on interview questionnaires, please identify the questionnaire number _____ where the information may be found.
If there are several victims, please attach supplementary pages 3-7)

A. General

3.1 Surname: _____ First name(s): _____

3.2 Male ☐ Female ☐ (Please check a box)

3.3 Date of birth: day _____ month _____ year _____
Approximate age at interview: _____

3.4 Place of birth: _____
(town/city, province/county/state, other indications)

3.5 Present address and telephone (if different from above): _____

3.6 Address where victim can be contacted (if other than above): _____

3.7 Civil/family status:

Single ☐ Married ☐ Divorced ☐ Separated ☐ Widowed ☐

(Check the box which is most applicable)

3.8 Family details (number of children and dependants — Please give names and ages if possible):

3.9 Occupation or profession (please specify):

Artisan ☐ Farmer ☐ Government employee ☐ Journalist ☐ Merchant ☐
 Military ☐ Professional ☐ Student ☐ Unemployed ☐ Other ☐
 (Check the box which is most applicable)

3.10 Education:

Primary school ☐ Secondary school ☐ University ☐ Graduate study ☐
 (Please check the box indicating the highest level of education attained)

Names of schools and universities attended: _____

3.11 Political affiliation or sympathies of the victim: _____

3.12 Membership/support of other organizations (please specify):

- ☐ Association of students: _____
- ☐ Community association: _____
- ☐ Human rights group: _____
- ☐ Peasant movement: _____
- ☐ Political party: _____
- ☐ Popular movement: _____
- ☐ Religious community: _____
- ☐ Trade union: _____
- ☐ Youth group: _____
- ☐ Other: _____

3.13 Other comments/information about the victim: _____

B. Incident

4. What happened to the victim specified above:

4.1 Date and time of violation:

day: _____ month: _____ year: _____ time: _____

4.2 Place: _____

(town/city/community, department/province — exact place or address, if possible)

4.3 Circumstances of the incident:

Recitation of the facts (for example: in case of an arrest, how did it occur?; in case of a killing, description of the killing; in case of a disappearance, circumstances of the seizure or place where the person was last seen and where was he/she heading to, etc.; if there were threats or extortions, describe them; if it concerns a displaced person, what was the reason for his/her departure?)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

4.4 Violation:

(please specify briefly the elements of the violation and nature of person responsible)

- ☐ Arrest: _____
Perpetrator(s) (use list in 4.7 below and identify as person in 4.7.a., b, etc.): _____
- ☐ Other detention: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Rape: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other torture: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other ill-treatment: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Killing: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Attempted killing: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Disappearance: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Violation of freedom of association: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Violation of freedom of expression: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Threat: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Theft of property: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other form of persecution: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Discriminatory conduct: _____
Perpetrator(s) (use list in 4.7): _____
- ☐ Other: _____
Perpetrator(s) (use list in 4.7): _____

4.5 How many persons were responsible for the violations during this incident?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6-10 ☐ 11-15 ☐ more than 16 ☐4.6 Can you identify any of these perpetrators? yes ☐ no ☐

Why are they believed to be soldiers, police officers, or otherwise associated with the Government?

4.7	Name/surname (or other identification)	Connection with Government (e.g., army unit, police, etc.)
	a. _____	_____
	b. _____	_____
	c. _____	_____
	d. _____	_____
	e. _____	_____

4.8 How were the perpetrators dressed? uniform ☐ civilian dress ☐

If uniform, colour of uniform: khaki ☐ olive green ☐ blue ☐ black ☐

Boots: yes ☐ no ☐

Helmet: yes ☐ no ☐

Mask: yes ☐ no ☐

Other identifying clothing or insignia: _____

4.9 How did the perpetrators reach the place of the incident?

on foot ☐ on motorcycle ☐ in police vehicle ☐ in army vehicle ☐

in another official vehicle ☐ in taxi ☐ in private vehicle ☐

Characteristics of vehicle (type (e.g., jeep), make, colour, insignia, license no.) _____

4.10 What kind of arms were they carrying? _____

4.11 Were they carrying radios or other means of telecommunication? yes ☐ no ☐

4.12 Did they speak among themselves? yes ☐ no ☐

If so, did they use any names or other identifications? _____

4.13 Who was giving the orders? _____

4.14 How many people were victims of the same violations during this incident?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6-10 ☐ 11-15 ☐ more than 16 ☐

4.15 Can you identify any of these other victims?

Name/surname (or other identification)	Means of contacting (address, etc.)
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____
e. _____	_____

4.16 Were there other witnesses (other than victims)? yes ☐ no ☐

Is it possible to contact them? yes ☐ no ☐

(Please attach their version of the events on another questionnaire.)

4.17 Name/surname
(or other identification)

Means of contacting
(address, etc.)

a. _____

b. _____

c. _____

d. _____

e. _____

C. Arrest

5. If an arrest has been carried out, was there an arrest warrant? yes ☐ no ☐

What kind of an arrest warrant? _____

5.1 Reasons given by the authorities for the arrest/what are the charges brought against the detainee?
(Specify the acts of which the detainee has been accused.) When? _____

5.2 Has the victim been formally charged? yes ☐ no ☐

If so, give specific details of charges brought against him/her: _____

Has the victim been sentenced? yes ☐ no ☐

If so, give dates: _____

5.3 Has the victim seen an attorney since the arrest? yes ☐ no ☐

If so, give his/her name and address: _____

5.4 Name and apparent location of detention centre: _____

5.5 Other detainees who could be identified:

Name/surname
(or other identification)

Means of contacting family
(address, etc.)

a. _____

b. _____

c. _____

d. _____

e. _____

5.6 Date of release: day: _____ month: _____ year: _____

D. Torture/ill-treatment**6. At what moment did the torture/ill-treatment take place?**

- ☐ at the moment of arrest
☐ during transport
☐ while in detention
☐ during the interrogation
☐ other (specify): _____

6.1 Describe precisely the nature, duration, and frequency of torture.

Try to give details as to the type of torture, for example:

Beating ☐ to the head ☐ feet ☐ hands ☐ other ☐

Using fist ☐ club ☐ gun ☐ other ☐

Restriction on movements ☐ Suspension ☐ Asphyxiation ☐

Electrical shocks ☐ Sexual assault or other form of sexual violence ☐

Threats to family ☐ Mock execution ☐

Isolation ☐ Period, location: _____

Excessive noise ☐ light ☐ or smell ☐

Other (specify) ☐ _____

6.2 Was any purpose for the torture given? yes ☐ no ☐

If so, what was it? _____

6.3 Were you questioned during torture? yes ☐ no ☐**6.4 Personnel who participated:**

Security ☐ Military ☐ How many? _____

Who did what? (please give names if possible) _____

6.5 Is any physical or psychological consequence of torture evident on date (d:_____ m:_____ y:_____) when the victim is being viewed? yes ☐ no ☐

If so, what is it? _____

6.5.1 Does the victim require medical treatment? yes ☐ no ☐

If so, what kind? _____

- 6.6 In the opinion of the source of information, what were the authorities' reasons for the violation, and which activities of the victim have really motivated the authorities to this violation?

- 6.7 Prison conditions in detention centre (for example, solitary confinement, right to visits and correspondence, quantity and quality of food, access to fresh air and exercise, number of prisoners per cell):

- 6.8 Has the victim or his/her family previously been subjected to other violations? yes ☐ no ☐
If so, what kind?

- 6.9 Has money been given to the authorities? yes ☐ no ☐
Or have the authorities requested money to stop or to prevent a violation or to improve the condition of the victim? yes ☐ no ☐
How much money was given? _____ or requested? _____

- 6.10 Were injuries suffered? yes ☐ no ☐

If so, please specify: _____

- 6.11 What is the actual situation of the victim? _____

- 6.12 Actual situation of his/her family and close relations:

Have they been threatened/prosecuted/harassed? yes ☐ no ☐

Or have they been subject to other violations? yes ☐ no ☐

If so, please specify: _____

E. Various information

7. Has the witness (yes ☐ no ☐) **the victim** (yes ☐ no ☐) **and/or someone else** (yes ☐ no ☐) **reported the case to the authorities?**

7.1 If so, to which authorities?

authorities responsible for the violation ☐ (please specify) _____

police ☐ judicial authorities: prosecutor ☐ investigating judge ☐ court ☐

ombudsman ☐ other ☐ _____

7.2 Has the witness and/or victim reported the case to a non-governmental organization or other intergovernmental organization? yes ☐ no ☐

If so, please specify: _____

7.3 Did the above organization(s) take action? yes ☐ no ☐

If so, please specify: _____

7.4 What does the source of information/the victim/witness want the human rights officer or the UN Field Operation to do? _____

7.5 Does the victim/source of information/witness agree that

☐ their names may be cited?

☐ the given information may be used for steps with the authorities?

☐ or may be disclosed in public reports?

7.6 Has any action been undertaken by the human rights officer:

With the authorities responsible for the violation? yes ☐ no ☐With the police yes ☐ no ☐With the judicial authorities: prosecutor yes ☐ no ☐investigating judge yes ☐ no ☐court yes ☐ no ☐With the ombudsman yes ☐ no ☐With anybody else (please specify) yes ☐ no ☐ _____

What kind of action? _____

7.7 Response given by the authorities

a) authorities responsible for the violation _____

b) police _____

c) judicial authorities _____

d) other authorities (please specify) _____

7.8 Are documents annexed to this report? yes ☐ no ☐

If so, please specify: _____

7.9 Other comments: _____

F. Recommendations

8.1 Action(s) requested of the human rights operation by the victim or next of kin in the case of a deceased or reportedly disappeared victim:

8.2 Recommendations for follow-up by the Area Office (including further inquiry):

8.3 Recommendations for action by Local Authorities:

8.4 Recommendations for follow-up by the Central Office:

8.5 Recommendations for action by National Authorities:

8.6 Recommendations for action by other UN Bodies/Offices:

8.7 Other recommendations:

8.8 Status of case:

9. Approval by Coordinator

9.1 Coordinator: _____
(Signature)

9.2 Date the report was forwarded to the central office: ____/____/____
D M Y

.....Chapter XXI

CONCILIATION

AND MEDIATION

IN THE FIELD.....

Key concepts

In deciding whether to pursue mediation or other conciliation, a human rights officer should consider the following:

- | *Is this dispute (or problem) within the mandate of the field operation?*
- | *Is there an existing governmental, non-governmental, traditional or other mechanism which can handle this dispute?*
- | *Can societal or governmental dispute resolution procedures be revived or developed?*
- | *Does s/he have the information, capacity, language ability and time to engage in mediation or other forms of conciliation?*

If the human rights officer initiates mediation or conciliation, s/he should:

- | *always pursue a solution which is consistent with international human rights standards;*
- | *try to find mutually accepted procedures;*
- | *listen to the views of each side separately;*
- | *if the parties are willing to meet, initiate the session with encouragement to working together and to strengthen the relationship of the parties;*
- | *if the parties are unable to meet, engage in a form of shuttle diplomacy — talking to each side in turn, explaining the mediator's role, and trying to identify those aspects of the issue as to which there may be agreement, partial agreement or confidence-building.*

A. Introduction

1. *HROs may be involved in resolving disputes which arise in the communities where they are located. Situations amounting to human rights violations may involve elements of negotiation between the HRO and the authorities, or mediation between the*

authorities and the victim or family of the victim. Obviously, in seeking solutions to such kind of disputes, the basis and criteria of the HRO's mediation and negotiation efforts are provided by international human rights standards. The HRO may use techniques from other chapters in this Manual to engage in discussions with the authorities at various levels. Indeed, one could see the *entire human rights field operation as having a role in the mediation of human rights problems* in the country.

2. Other *disputes may not fit within the mandate of the field operation*, for example, a dispute as to grazing rights between two shepherds. Nonetheless, there may be aspects of such a dispute which might raise problems within the mandate of some human rights operations if the shepherds are from different ethnic communities and their specific disagreement has been caused by larger communal cleavages, or if their dispute may become a *cause célèbre* or the trigger for violent ethnic conflict.

3. Even if an HRO has been asked to intervene in dealing with a particular dispute, and regardless of whether the issue falls within the mandate of the operation, it may often be *wisest for the officer to encourage the parties to make use of existing institutions and traditional procedures for dealing with the problem rather than taking an active role in the process*. In all societies there are avenues for dispute resolution. It is unlikely that an HRO will have sufficient understanding of the society to achieve a better and more acceptable result than the traditional dispute resolution processes. Furthermore, the HRO should, in any case, try to *encourage the existing procedures to function and would not want to suggest that such procedures be bypassed*.

4. Nonetheless, *there may be some contexts in which HROs may be asked to play a role in mediation and conciliation — particularly where the traditional processes, for example, within ethnic communities, are not capable of functioning*. HROs may encounter disputes between different communities where the government is not functioning or is not trusted by one or both sides. In those contexts, the HRO may have some role in mediation and conciliation.

B. Basic elements of the mediation process

5. This chapter sets forth a *few very basic questions the HRO might keep in mind when considering or undertaking mediation and conciliation*.

6. Is this dispute (or problem) *within the mandate* of the field operation?

7. *Is there an existing governmental, non-governmental, traditional or other mechanism which can handle this dispute?* The human rights field office may *develop referral lists and other procedures for the triage of disputes which are (1) outside of the mandate, (2) better handled by other procedures, or (3) both*.

8. If the issue falls within the operation's mandate and there exists no suitable mechanism for handling it, *are there some steps the HRO can take to encourage the development or the revival of societal or governmental dispute resolution procedures?* For example, if there is a lack of trust in the capacity of a particular governmental institution to handle the matter, could the HRO lend credibility to the institution by offering to observe the proceedings or otherwise participate in a supportive role?

9. If there is no way to refer the matter or to encourage other institutions to resolve it, the *HRO must consider carefully whether s/he has enough information to resolve the dispute*. Why has the dispute arisen? (In this context, it may be necessary to delve far below the surface.) What are the respective interests of the parties? What sort of dispute resolution approach would be most normal and acceptable for the parties? How can the parties be helped to resolve the dispute themselves?

10. *Does the HRO have the capacity and the time to engage in mediation or other forms of conciliation?* Such procedures take a lot of *time and skill*. The mediator must develop a certain rapport and trust with both parties. In most disputes it is the parties themselves which ultimately find the solution; the mediator merely helps to facilitate that process but it usually takes a lot of time.

11. *The HRO should be able to understand and speak the local language well so as to develop the requisite trust with the parties to a dispute*. Reliance upon interpretation is particularly problematic. While it is often difficult to find an interpreter who can handle interviews well, the demands on an interpreter in mediation are far more exacting. Only if the interpreter is highly regarded by all parties concerned should mediation be attempted through interpretation. It is difficult to over-emphasize the importance of translators of integrity. In the tense and polarized environment of conflict, bias or inaccuracy on the part of the translator might easily be seen as the responsibility of the HRO. The HRO would need to run checks on how particular interpreters are seen by different sides.

12. *If the HRO decides, after appropriate consultation with superiors, that it is important to pursue the mediation*, there still remain several questions of approach. For example, in approaching a mediation, the HRO will often be faced with suspicion or at least questioned as to why the HRO or the human rights field operation would want to mediate. When the proposed mediator is on the staff of a human rights field operation, the parties may assume that the reason is related to the policies of the particular field operation and the UN more generally. If the parties see the UN and the field operation as impartial, no problem arises; but if they believe that the UN really has an agenda that favours one side rather than another, the HRO/mediator is immediately seen as a manipulator. In order to deal with those suspicions, the human rights field operation must be aware of the broader implications of their activities and how they will be perceived. But the field operation cannot cease its human rights work in order to be found acceptable for mediation and, in any case, always strives to be impartial in its human rights efforts. At a minimum, the HRO must deal clearly with the question: “Why are you/the field office interested in mediating this dispute?” And the mediator must also, in the way s/he introduces him/herself, reaffirm that in the process they will use, the power of decision rests with the conflicting parties. The HRO will in no sense be an arbiter.

13. Having dealt with these initial suspicions, the HRO may wish to pursue an approach which most closely replicates the process of dispute resolution commonly used in the society. It may be that the community only has had traditional procedures within communities and not between them. Nonetheless, there may be some common elements in the processes of each community from which the *mediator may be able to find mutually accepted procedures*. Sometimes, however, the way existing institutions function (or fail to function in the eyes of some) may be part of the problem. The HRO may need to inquire as to how the disputants and others feel about the different institutions and procedures available. Observing and advising on the fairness and efficiency of

procedures being used by such institutions would avoid becoming compromised. The HRO may play a useful role in getting the parties thinking about a process for the resolution of the dispute.

14. In the absence of such traditional or mutually acceptable procedures, the *mediator may wish to listen to the views of each side separately*. Such an opportunity to explain one's position is ordinarily therapeutic for the disputants and will give the mediator a better idea of what is involved. During this process the mediator must be both willing to listen and at the same time not take sides in the dispute.

15. If the parties are willing to meet, the mediator might begin with an initial discussion of approach to further substantive dialogue rather than start immediately with substantive issues. The mediator should introduce him/herself, his/her role, and the need for all the participants to work together to resolve the problem. The mediator might also obtain an agreement about his/her role not as a decision maker, but only to help the parties to use their abilities and information to work together. The mediator might have further meetings with each of the parties to hear a confidential account of their respective views, to develop an understanding of the issues, to identify ways in which the parties can work together, and to encourage each side to build a positive image of the other. Eventually, the mediator may conclude that the parties have identified elements of the dispute which might serve the basis for building mutual confidence. They are thus ready to discuss the substance of the dispute and to improve their ability to work together towards its resolution. The mediator might then bring the parties together to reaffirm and express appreciation for the initial agreements they had developed in the separate meetings. The mediator might identify other areas in which the parties may share objectives and could therefore consider further resolution of the problems, thus strengthening the relationship between the parties.

16. Some mediators have found it *helpful to organize a community meeting inviting interested participants from the affected groups to exchange views and discuss efforts to live together*. Such a meeting may help or may be counterproductive, depending upon the previous conflict resolution efforts which have been pursued in individual discussions. Other mediators have organized meetings with only the representatives of the different sides or a relatively small group, for example, a few from each side. The mediator may in such cases need to discuss the parameters of the meeting with each side before convening the joint session. The mediator should work with the sides to get agreement as to how the meeting will be conducted, the agenda, whether minutes will be taken or disseminated, the expected length of the session, etc. The mediator will need to consider how to handle dissonance or aggressive words/deeds during the meeting. The mediator should try to create an open atmosphere for discussion in which the joint interests of the parties are stressed. Some attention should, for example, be paid to how the participants will be seated, for example, in a circle, to avoid accentuating the polarity of the groups. Such meetings should normally be organized only at the request of the community. While a mediator should continue to assist the groups in meeting, s/he should work towards reducing his/her responsibility, thus re-establishing self-sustaining local structures to address community problems. For example, the mediator might eventually reduce his/her role from meeting facilitator to observer.¹

¹See Sonja Valtasaari, *Community Facilitation Meetings* (Organization for Security and Co-operation in Europe, Mission to Bosnia and Herzegovina, 1996).

17. *If the parties are unable to meet, the mediator may need to engage in a form of shuttle diplomacy at the grassroots level — talking to each side in turn, explaining the mediator's role, and trying to identify those aspects of the issue as to which there may be agreement, partial agreement or disagreement.* While it will not make much difference in the ultimate resolution of the process, some mediators believe that it would be useful to begin talking with the less powerful of the sides to demonstrate that the parties should be treated impartially.² With both sides, the mediator should explain his/her role — not as a decision maker but as a facilitator, with the power remaining with the parties to make the decisions.

18. *If there are matters on which both parties agree or as to which they can be helped to see a common interest, the mediator may wish to propose acceptance on those issues as an initial effort at building mutual confidence.* Mutual confidence will help resolve the more difficult questions which separate the parties. A skilful mediator may be able to find some approaches to the problem in which both parties will gain and as to which disputes can be avoided. For example, if both parties have conflicting claims to water rights from a stream, the mediator might be able to suggest a mutual project of improving the flow in the stream or digging a well so that the water supply of both would be improved.

19. *Another confidence-building approach would be to begin discussions with individuals who are members of the different groups, but who are not necessarily the recognized leaders.* The mediator might try to identify members who are willing to take at least some risk for reconciliation or who are just interested in talking with the other side. Selecting the right “representatives” is often quite difficult. The HRO would need to be clear about the status of the individuals selected and to assure that they have some credibility with the broader group. People could be identified as part of a fairly broad process of consultation, then checked out with the appropriate decision-makers. These discussions can identify issues and possibly ways of resolving them. Similarly, the mediator might suggest projects which are directly related to the dispute, but which would be confidence-building if successfully completed.

20. *Yet another approach would be for the mediator to ask one party to identify relatively minor concessions they would like from the other side, how they would like those concessions to be communicated, what minor concessions that party would be willing to offer.* What would be the best way of communicating those concessions so as to be least likely to foster misunderstanding? Having had the same discussion with each side, the mediator might propose an exchange of those concessions with the mediator acting as a depository of each side's concessions until they can be exchanged.³

21. *A further approach would be for the mediator to propose that one party begin to build mutual confidence by taking a unilateral step which would reduce tensions and to invite the other side to do the same.* The mediator can then ask the other side to do the same. The process continues to diminish the conflict. If the other side refuses to take a conciliatory measure, the first party may still take yet another unilateral step and invite the other side to do the same. If the other side takes a retaliatory measure, the first party may respond in kind, but in such a way that the results are less serious and the initial tension reduction effort is not erased. The first party might then begin again by taking a unilateral step which would reduce tensions and to invite the other side to do the same.⁴

²Dudley Weeks, *Conflict Resolution Workshop Packet 17* (1996).

³Friedrich Glasl, *Conflict Resolution 59* (1996); Friedrich Glasl, *Konfliktmanagement* (1994).

⁴*Id.*

In dealing with this approach, however, the HRO needs to be aware of situations where equal de-escalation might have an unequal effect. For example, if the morale of one side is precarious or one side feels they have a hard-won but temporary advantage, pressure for an apparently equal stand-off/truce may actually favour one side.

22. *On issues which are still dividing the parties, the mediator may wish to identify the degree to which each party really cares about each aspect of the problem.* For example, it may be that one party cares about issues 1, 4 and 6, while the other cares most about issues 2, 3 and 5. In such a circumstance, the mediator might be able to propose that each party prevail as to the issues about which they care the most. If they care equally about certain issues, the mediator may be able to find a way of giving each partial satisfaction or of compensating each side for allowing the other to prevail on some matters. It is often very difficult and time-consuming to craft a solution which will resolve the grievances of both sides.

23. Disputes are often generated by the perceptions each side may have of one another or may be caused by the very different ways which individuals may attempt to resolve problems. The mediator may try to have each side describe themselves and then describe the other party. The mediator might ask each party to identify the good aspects and the less appealing aspects of themselves and the other side. *The mediator can then try to focus on developing a mutual understanding of the differences while concentrating on the mutually agreed positive elements of each side.* A mutual understanding of personality differences can help to resolve substantive differences. For example, some people are very much result-oriented. Others need to establish a relationship before they can work towards results. If the result-oriented side understands the approach of the other side, they can begin by developing the mutual relationship as their first task before striving to achieve results.

24. In developing approaches to disputes, the HRO should keep in mind both the mandate of the field operation and the human rights norms which underlie that mandate. ***The resolution of the dispute should be consistent with international human rights law, should resolve the grievances of the parties, and should develop capacities for dealing with further such disputes without the direct assistance of the field operation.***

Part Five



THE HUMAN RIGHTS OFFICER

.....Chapter XXII

NORMS APPLICABLE TO UN HUMAN RIGHTS OFFICERS AND OTHER STAFF

Key concepts

*While they are **within the country** of operations, HROs **remain at all times members of the operation** and representatives of the UN — regardless of whether they are working/ on duty or not.*

HROs should:

- | *be aware of and be bound by UN human rights norms, and promote their observance;*
- | *respect the basic principles of human rights monitoring set forth in **Chapter V: “Basic Principles of Monitoring”**;*
- | *be informed about the social customs in the country of operation, and respect them;*
- | *be informed of expected standards regarding their job performance and appropriate behaviour in field operations;*
- | *be able to discuss, compromise and communicate well with others;*
- | *avoid sexist or other discriminatory attitudes in dealing with co-workers and the people of the country of operation;*
- | *recognize that they are part of a much larger operation and that they cannot determine policy by themselves;*
- | *always avoid criticizing the human rights operation or any of its staff members to any person who is not a staff member; and*
- | *be respectful of the important contribution that all personnel — fellow officers, UN volunteers, seconded staff, support staff, national staff, etc. — are making to the overall effort of the human rights operation.*

A. Introduction

1. HROs comprise the international professional staff of a field operation. This chapter deals with the conduct of HROs.

2. Even more so than with other humanitarian efforts — which might, for example, concentrate on providing material aid — a human rights field operation depends on its staff members for its success. A human rights operation is usually established as a result of a crisis in which there is a great urgency to send HROs to the country where they are needed. *The HROs need skills and knowledge that are relevant not only to human rights, but also to the country or region of operations.* In addition to *language skills* it is useful for HROs to have *knowledge of the region* — in terms of the culture and of the social, political and human rights situation. Many HROs have had useful grassroots or *field experience* in human rights, refugee work, humanitarian assistance, development, or a related field. Their experience can help them meet the very high expectations of the UN and the international community.

3. *A UN HRO in a country of operations is a member of a UN human rights field operation.* The HRO's presence in the country and administrative status are defined in terms of the operation. The travel documents — Laissez-Passer or UN consultant pass — used by staff members attach each individual to the United Nations, and provide him/her with a particular status of a diplomatic nature. In contrast, the staff members of international NGOs travel on their own national passports and, to that extent, do not possess the same international identity when they are in the country of operations.

4. While in the country of operations, *HROs are thus always representatives of the operation to which they are attached.* In their words and actions to people outside of the operation, they are identified with the operation. In the same way, the actions and decisions taken by the operation reflect upon the HRO.

5. HROs may be *required to work long hours in difficult and dangerous situations.* Perhaps most important of all, it must be emphasized that a UN HRO remains a UN HRO 24 hours a day, 7 days a week, while in the country of operations. In order to remain effective, an HRO must take time off from work. The effectiveness of the officer and the operation requires rest, but there are some significant restrictions on the way personal time should be used. *While an HRO remains within the country of operations he/she remains at all times a member of the operation and a representative of the UN — regardless of whether the HRO is working/ on duty or not.* This principle applies in part because of the legal status of UN HROs in the country of operations, and in part because of the perception of other people working and living in the area. The conduct of HROs will be the subject of judgement not only by nationals of the country of operations, but also international staff members from other organizations.

6. *UN human rights personnel should be informed of expected standards regarding their job performance and appropriate behaviour in field operations.* At a minimum, HROs are required to respect any *rules imposed by the UN or by the field operation* itself. These rules might include, for example: avoidance of conflicts with *local cultural norms*, such as, the respect of certain dress or behaviour requirements when in public; care with regard to *financial matters*; propriety with regard to *social and sexual relations*; an evening curfew in certain circumstances; a *restriction on travelling* between certain regions; a ban on visiting certain bars or night-clubs; etc. The majority of restrictions will be motivated by *security concerns*

and are imposed for the security of each individual HRO. Some restrictions, however, may be imposed out of concern for the *image of the UN* and of the field operation.

7. If HROs are mandated by the United Nations to monitor and encourage *compliance with international human rights norms*, officers should in their own conduct exemplify those norms.

8. UN personnel are *sometimes viewed as leading a privileged lifestyle* in the field. International staff may be paid salaries far in excess of national personnel and may thus drive rents and other local prices out of the reach of other people. UN personnel may also experience problems of adjusting to local customs. At the same time local residents may have exaggerated expectations of the UN personnel as perfect representatives of the highest standards of the international community, with no human failings or inadequacies.

9. No matter how well crafted the mandate of an operation, its effectiveness is dependent upon the *legitimacy of its HROs in the eyes of Government officials and ordinary individuals* at the local level, who must work with the operation on a day-to-day basis. That legitimacy depends largely upon the conduct of the HROs.

10. Hence, the UN, its HROs, and the community in which they are working need clear *expectations in a code of conduct* as to the standards to be applied to HROs and other UN personnel in the area.

B. Previous UN codes of conduct for its on-site staff

11. The UN has regulated the conduct of its staff — particularly in field situations — through various documents and guidelines.

12. In 1954 the International Civil Service Advisory Board issued a **“Report on Standards of Conduct in the International Civil Service”** which has been applied since that time and, for example, was used in regulating the conduct of civilian, police and military personnel in the UN Transitional Authority in Cambodia (UNTAC) during 1992-93. Those standards emphasize that

“the obligation and responsibilities of supervisors at all levels to maintain in their relationships with their staff a high degree of integrity, tolerance and understanding and to treat them in all circumstances with fairness... [I]n particular, when serving in the field or on a mission assignment, International Civil Servants must understand and respect the culture, customs and habits of the country of their duty station. They must avoid giving cause for resentment and abstain from conduct which will adversely reflect on their organization. The International Civil Servant has the obligation to set for him/herself a high standard of personal conduct which must be such that it will not infringe upon any demonstrable interest of the organization he/she serves, bring it into discredit or offend the community where he/she lives.” (Internal quotation marks removed.)

13. The International Civil Service Advisory Board also made some useful observations regarding the conduct of staff members serving away from UN Headquarters:

A prime obligation of an international civil servant going to serve in a particular area of the world is to obtain in advance the best possible knowledge of the countries to which [s/he] is going and of the habits, customs and attitudes of their peoples... Such knowledge can help an individual to regulate [his/her] conduct so as to reflect discretion, understanding and tolerance...

In principle, the private life of the international staff member is [his/her] concern and should not be intruded upon by his organization. At the same time, in order that [his/her] private life will not bring his organization into disfavour, [s/he] must set himself a high standard of personal conduct — one that is more complex in some respect [than] that demanded of national civil servants. [S/he] must bear in mind that [his/her] conduct, whether connected or unconnected with official duties, must be such that it will not infringe upon any demonstrable interests of the organization [s/he] serves, bring it into discredit, or offend the community in which [s/he] lives... Scrupulous compliance with laws of the host country, avoidance of illicit or speculative dealings in currencies, honouring of financial obligations — these are only a few of the obvious requirements which derive from the general principle.

14. In 1992 these standards were particularly cited in the context of the United Nations Transitional Authority in Cambodia (UNTAC) to deal with the following problem:

Instances have been reported where female Cambodian personnel have been asked to socialise with international personnel, in such a persistent manner as to make them feel they have no choice but to accept their invitations. Such attitudes could be viewed as sexual harassment.¹

15. UNTAC responded to this problem and stated, “This behaviour is clearly unacceptable and not compatible with the high standards of conduct to be maintained by international personnel. . . . The international personnel is therefore reminded that attitudes which conflict with the established Standards of Conduct could lead to appropriate disciplinary measures being taken.” UNTAC established personnel procedures to implement the Standards of Conduct.

16. The UNTAC Civilian Police Commissioner issued a further directive on 8 February 1993 with regard to UN Civilian Police (CIVPOL) “mingling” with women of a “questionable reputation, such as prostitutes from neighbouring countries.” The Commissioner stated that such relations could cause people to question UNTAC’s neutrality and could create a security threat for the officers involved and others. CIVPOL officers were told that they “should **not** be seen with those women... and are therefore ordered not to engage in any kind of romantic relation with local women.”²

¹United Nations Transitional Authority in Cambodia (UNTAC), Information Circular No. 67/72 “Relations between International and Locally Recruited Personnel”, 27 November 1992.

17. In 1994 the UN General Assembly adopted a **Convention on the Safety of United Nations and Associated Personnel**³ which required ratifying governments to take all appropriate measures to ensure the safety and security of United Nations and associated personnel. UN personnel include military, police or civilian components of a UN operation deployed by the UN Secretary-General. Associated personnel include persons deployed by humanitarian non-governmental organizations working under an agreement with the UN Secretary-General. The Convention provides for a number of protections for the security of UN and associated personnel, but also contains expectations about the conduct of the personnel. For example, if UN or associated personnel are captured or detained in the course of the performance of their duties, they shall not be subject to interrogation and shall be promptly released and returned to UN or other appropriate authorities. The Convention, however, also states in Article 6:

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

- (a) Respect the laws and regulations of the host State and the transit State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

18. This Convention is discussed more fully in **Chapter XXIV: “Security”**, but is also relevant here because of the obligations it places on UN staff and associated personnel.

19. In 1994 the United Nations issued **Staff Rules Applicable to Service of a Limited Duration**, which would apply to the staff of peace-keeping, peace-making, technical cooperation, humanitarian and emergency operations.⁴ The 1994 Staff Rules deal with many personnel issues, including a requirement that staff members shall not, without prior approval, issue statements to the press or other media; accept speaking engagements or take part in film, theatre, radio or television productions; submit articles for publication. The 1994 Staff Rules provide disciplinary measures for failure to observe the standards of conduct expected of an international civil servant, including censure, suspension without pay, fine, separation from service, and summary dismissal. The Rules also provide for appeals by staff members against the imposition of disciplinary measures.

²United Nations Transitional Authority in Cambodia, Commissioner’s Directive: “Personal Behaviour of CIVPOL Monitors”, 8 February 1993.

³UN G.A. res. A/49/59 of 9 December 1994, 49 GAOR (Supp. No. 1) at 299, annex (1994).

⁴United Nations, *Staff Rules, Rules 301.1 to 312.6 Governing Appointments for Service of a Limited Duration*, UN Doc. ST/SGB/Staff Rules/3/Rev.5 (1994) (revising UN Doc. ST/SGB/Staff Rules/3/Rev.4 (1987)).

20. When United Nations Civilian Police (CIVPOL) are deployed, they are regulated by **“Standard Administrative Procedures”**, which contain a very detailed “Code of Conduct”.⁵ For example, the Standard Administrative Procedures issued on 6 February 1995 for the UNPROFOR Civilian Police in the former Yugoslavia, provide that:

8.1 Police officers are drawn from many countries with varying cultures, legal procedures and levels of training. They are, however, serving members of police organizations in their home countries, where they are accustomed and psychologically oriented to the every day problems of policing under a certain code of conduct. To carry out the tasks satisfactorily police monitors will at all times exercise patience, tolerance, tact, diplomacy, good judgement and common sense, but where the occasion demands, they will act with the necessary firmness in the discharge of their tasks and always with complete impartiality toward all communities in the Mission areas.

8.2 The following reflects a common internationally accepted code of conduct by most Police organizations which must be strictly adhered to by all participants in this mission.

8.3 Discreditable conduct

8.3.1. A member of Civpol will not act in a manner which the member knows, or ought to know, would be prejudicial to discipline or reasonably likely to bring discredit to the United Nations.

8.3.2. Perform any act conduct, disorder or neglect, to the prejudice of good order, morality or discipline of the police not specified in these regulations.

21. The Code of Conduct proceeds to forbid misconduct towards another member of CIVPOL including any act that is “oppressive, abusive, discriminatory or likely to cause offence or humiliation.” The Code also prohibits any assault on another member. Officers are required by the Code to “account properly for any money or property received” in his official capacity or “knowingly or through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for United Nations purposes.” Officers “will not make an unauthorized communication in relation to any information which comes to the member’s knowledge in the course of his/her duty and which is not available to members of the public.” “Statements to the Press, Newspaper, Radio or TV or other public media are not allowed unless proper authorization is given.” Officers are forbidden to engage in any “corrupt or improper practice” including improperly using or attempting to use his/her position as UN member for his/her private advantage, wilfully and without good cause failing to pay any lawful debt in such circumstances as to compromise other members, and placing him/herself under a pecuniary obligation to any person in a manner that might affect his/her ability to discharge his/her duty or might appear to so affect his/her ability. Officers will not commit any abuse of authority in treating any member of the public in an oppressive, abusive or impolite manner. Officers may not “render himself/herself unfit for duty through use of alcohol

⁵United Nations Field Operations Division, *Notes for the Guidance of Military Observers and Police Monitors*, 1 March 1992.

or drugs, or drive a UN vehicle while under the influence of alcohol or drugs.” An officer “will not use a UN vehicle without proper authority or outside the scope of the authority given.”

22. The civilian police have also established a procedure for imposing discipline which includes fair opportunity to respond to allegations, appeal, the handling of minor breaches by local supervisors, and the handling of serious breaches by their central office in the country of operations. Sanctions vary including counselling, reprimand, stoppage of daily allowance, and recommendation for separation and repatriation to the home country.

23. In 1995 the United Nations Department of Peace-Keeping Operations issued **General Guidelines for Peace-keeping Operations**, UN Doc. UN/210/TC/GG95, which are instructive also for civilian HROs in stating,

Legitimacy is the most important asset of a peace-keeping operation. It rests on an understanding that the operation is just and is representative of the will of the international community as a whole rather than some partial interest... This legitimacy is further enhanced by the composition of peace-keeping operation, typically including personnel from a broad spectrum of States. Finally, the conduct of the operation is an essential element of legitimacy... The bearing and behaviour of all personnel must be of the highest order, commensurate with the important responsibilities entrusted to the peace-keeping operation.

24. In training junior staff for peace-keeping, the UN Department of Peace-Keeping Operations has stated:

The correct behaviour and conduct required as a UN Peace-keeper.

- Good behaviour and self-discipline are your security.
- A peace-keeper is on duty 24 hours a day, 7 days a week.
- Your behaviour and speech will be closely observed.
- You are an ambassador of UN and your nation.
- Your behaviour will reflect upon the UN organization as a whole.⁶

25. In 1997, the United Nations Department of Peace-keeping Operations issued **Guidelines** and a **Ten Rules Code of Personal Conduct for Blue Helmets**, which read as follows:

“WE ARE UNITED NATIONS PEACEKEEPERS

The United Nations Organization embodies the aspirations of all the peoples of the world for peace. In this context the United Nations Charter requires that all personnel must maintain the highest standards of integrity and conduct.

We will comply with the Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peace-keeping Operations and the applicable portions of the Universal Declaration of Human Rights as the fundamental basis of our standards.

⁶United Nations Department of Peace-Keeping Operations/Office of Planning & Support/Training Unit, *Peace-keeping Handbook for Junior Ranks* 19 (1994).

We, as peace-keepers, represent the United Nations and are present in the country to help it recover from the trauma of a conflict. As a result we must consciously be prepared to accept special constraints in our public and private lives in order to do the work and to pursue the ideals of the United Nations Organization.

We will be accorded certain privileges and immunities arranged through agreements negotiated between the United Nations and the host country solely for the purpose of discharging our peace-keeping duties. Expectations of the world community and the local population will be high and our actions, behaviour and speech will be closely monitored.

We will always:

- Conduct ourselves in a professional and disciplined manner, at all times;
- Dedicate ourselves to achieving the goals of the United Nations;
- Understand the mandate and mission and comply with their provisions;
- Respect the environment of the host country;
- Respect local customs and practices through awareness and respect for the culture, religion, traditions and gender issues;
- Treat the inhabitants of the host country with respect, courtesy and consideration;
- Act with impartiality, integrity and tact;
- Support and aid the infirm, sick and weak;
- Obey our United Nations superiors and respect the chain of command;
- Respect all other peace-keeping members of the mission regardless of status, rank, ethnic or national origin, race, gender or creed;
- Support and encourage proper conduct among our fellow peace-keepers;
- Maintain proper dress and personal deportment at all times;
- Properly account for all money and property assigned to us as members of the mission; and
- Care for all United Nations equipment placed in our charge.

We will never:

- Bring discredit upon the United Nations, or our nations through improper personal conduct, failure to perform our duties or abuse of our positions as peace-keepers;
- Take any action that might jeopardize the mission;
- Abuse alcohol, use or traffic in drugs;
- Make unauthorized communications to external agencies, including unauthorized press statements;
- Improperly disclose or use information gained through our employment;
- Use unnecessary violence or threaten anyone in custody;

- Commit any act that could result in physical, sexual or psychological harm or suffering to members of the local population, especially women and children;
- Become involved in sexual liaisons which could affect our impartiality, or the well-being of others;
- Be abusive or uncivil to any member of the public;
- Wilfully damage or misuse any United Nations property or equipment;
- Use a vehicle improperly or without authorisation;
- Collect unauthorized souvenirs;
- Participate in any illegal activities, corrupt or improper practices; or
- Attempt to use our positions for personal advantage, to make false claims or accept benefits to which we are not entitled.

We realize that the consequences of failure to act within these guidelines may:

- Erode confidence and trust in the United Nations;
- Jeopardize the achievement of the mission; and
- Jeopardize our status and security as peace-keepers.”

and

“TEN RULES

CODE OF PERSONAL CONDUCT FOR BLUE HELMETS

1. Dress, think, talk, act and behave in a manner befitting the dignity of a disciplined, caring, considerate, mature, respected and trusted soldier, displaying the highest integrity and impartiality. Have pride in your position as a peace-keeper and do not abuse or misuse your authority.
2. Respect the law of the land of the host country, their local culture, traditions, customs and practices.
3. Treat the inhabitants of the host country with respect, courtesy and consideration. You are there as a guest to help them and in so doing will be welcomed with admiration. Neither solicit or accept any material reward, honour or gift.
4. Do not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.
5. Respect and regard the human rights of all. Support and aid the infirm, sick and weak. Do not act in revenge or with malice, in particular when dealing with prisoners, detainees or people in your custody.
6. Properly care for and account for all United Nations money, vehicles, equipment and property assigned to you and do not trade or barter with them to seek personal benefits.
7. Show military courtesy and pay appropriate compliments to all members of the mission, including other United Nations contingents regardless of their creed, gender, rank or origin.

8. Show respect for and promote the environment, including the flora and fauna, of the host country.
 9. Do not engage in excessive consumption of alcohol or traffic in drugs.
 10. Exercise the utmost discretion in handling confidential information and matters of official business which can put lives into danger or soil the image of the United Nations.”
26. UNICEF has also provided broadly relevant advice to the Special Committee on Peace-keeping Operations as to the minimum age for sexual relations of peace-keeping personnel:

Internationally, child prostitution is recognized as a form of exploitative child labour. ILO Convention 138 on Minimum Wage sets 18 as the age for engagement in dangerous or hazardous activities such as mining. Given the risk of HIV/AIDS transmission and its physical and psycho-social impact, prostitution is similarly considered a dangerous and hazardous activity. According to the Convention on the Rights of the Child, to which 190 States are Parties, a child means any human being below the age of 18 years (unless under the law applicable to the child, majority is attained earlier). UNICEF and UNHCR recommend the establishment of 18 as the age to prohibit the sexual exploitation of children. This is wholly consistent with the basic principles of the Convention on the Rights of the Child and the current international and legal framework.

27. Hence, one can distil the UNICEF rule as forbidding sex with anyone under the age of 18.

28. To promote proper conduct among personnel of UN peace-keeping operations, in October 1995 the UN established Guidelines for Conduct which, for example, each UN Military Observer in the UN Iraq-Kuwait Observation Mission (UNIKOM) was required to sign before serving. The Guidelines for Conduct forbid the Military Observer, without express authorization of the Chief Military Observer, from (a) accepting speaking engagements, granting media interviews, or making public statements; (b) communicating UNIKOM documents to others; (c) visiting military or industrial installations or participating in official ceremonies sponsored by a Government; (d) taking private photographs — particularly of restricted subjects; and (e) purchasing duty-free merchandise except pursuant to regulations. The Guidelines noted that non-compliance may result in immediate repatriation. The Guidelines furthermore applied the restrictions in points (a), (b) and (c) after completion of the assignment with UNIKOM.

29. The United Nations and the International Committee of the Red Cross in 1996 agreed on “Guidelines for UN Forces Regarding Respect for International Humanitarian Law.” Those Guidelines are not specifically applicable to civilian HROs, but indicate the UN undertaking to ensure that any UN peace-keeping or enforcement force “respects the principles and spirit of international humanitarian law applicable to the conduct of military personnel...”.

30. Similarly, as the UN High Commissioner for Human Rights observed in the Field Guide for International Police Task Force Members of the Peace Implementation Operation in Bosnia and Herzegovina and CIVPOL Offices of the United Nations Transitional Administration in Eastern Slavonia 1 (1996), “Of course, as personnel acting under a United Nations mandate, they are also bound by United Nations standards.” The same observation applies to all UN personnel, including members of a human rights operation.

C. Code of conduct for human rights officers

31. Drawing from previous experience with regard to UN standards for its on-site personnel, and from other principles related to human rights work which were indicated in other parts of this Manual, it is possible to derive some basic principles which might be cited in a code of conduct for human rights field operations.

1. Respect for human rights standards

32. *First, UN human rights personnel should be aware of and should be bound by United Nations human rights norms, including the principles and spirit of the UN Charter, the International Bill of Human Rights, other human rights treaties, and further international human rights instruments.*

2. Respect for principles of human rights monitoring

33. UN HROs should also endeavour to *respect the basic principles of monitoring* set forth in **Chapter V: “Basic Principles of Monitoring”**:

- ✓ Monitoring as a method of improving the protection of human rights
- ✓ Do no harm
- ✓ Respect the mandate
- ✓ Know the standards
- ✓ Exercise good judgement
- ✓ Seek consultation
- ✓ Respect the authorities
- ✓ Credibility
- ✓ Confidentiality
- ✓ Security
- ✓ Understand the country
- ✓ Need for consistency, persistence and patience

- ✓ Accuracy and precision
- ✓ Impartiality
- ✓ Objectivity
- ✓ Sensitivity
- ✓ Integrity
- ✓ Professionalism
- ✓ Visibility

3. Respect for local population and customs

34. In order to achieve the standards which are expected of HROs, it is very important — as mentioned in **Chapter II: “The Local Context”** — that the operation develop a briefing on *social customs in the country*. HROs should be informed about such matters as:

- ✓ forms of address to men, women, officials, different social classes, etc.;
- ✓ social structure;
- ✓ social customs;
- ✓ religion;
- ✓ suitable dress;
- ✓ acceptable and unacceptable conduct in public;
- ✓ how individuals handle dissonance or disagreement; and
- ✓ how individuals may respond to questions.

35. For example, civilian staff of UNTAC were informed in 1992 that:

“It is not polite for Cambodians to look into the eyes of an interlocutor, especially if the interlocutor is considered of a higher social status.” “When seated, one should not cross one’s legs...”. “Smoking is very common among Cambodians. They do not think it is rude not to ask for permission to smoke.” “A person’s head is considered sacred and is never patted or touched.” “A lay person, especially a woman, should never touch a Buddhist monk. Monks should be shown respect at all times.” “A person should never step across any part of the body of another person, especially the upper part of the body. One should walk around that person to get from one place to another.” “The holding of hands between members of the same sex does not have any sexual connotation. It is simply an expression of friendship between two people.”

Notions of time among Cambodians are fairly flexible. One can expect to experience some delay for appointments and meetings. Cambodians do not usually apologise for being late. That is not due to rudeness, but rather to the fact that apologies (or expressions of thanks) are usually not over-expressed in public.” “In an office situation, it is expected that people will dress properly, i.e. no jeans, for example. Slacks and an open neck shirt are appropriate.”

36. This sort of guidance needs to be prepared for any country in which a human rights operation is located to assist staff in their work and in determining appropriate personal conduct at all times.

4. Inter-office relations

37. Relations within the operation are also a very important issue. *HROs, including officers in management positions, should be respectful of the important contribution all personnel — fellow officers, UN volunteers, seconded staff, support staff, national staff, etc. — are making to the overall effort of the human rights operation.* Staff should avoid any act which detracts from the cohesiveness of the operation. Staff should make every effort to share equitably the equipment and other resources which are available to make the operation as effective as possible. Each member of the staff should see themselves as part of the overall human rights operation rather than as a representative of whatever agency may have recruited them. Regardless of how a staff member is recruited, paid, equipped or classified, it should be clear that the head of operations is responsible for the management of the operation. At a minimum, UN personnel should abstain from any act that is oppressive, abusive, discriminatory, or likely to cause offence or humiliation.

38. This principle is particularly important because staff often come to the human rights operation in different ways, e.g., recruitment, secondment (by other agencies, regional organizations or governments), referral as UN volunteers, hiring on-site, etc. Accordingly, the staff may receive quite different salaries, vacation periods, equipment, civil service classifications, etc. because of differences in the sources of their support and recruitment. Nonetheless, each individual can bring valuable experience and skills to the operation — regardless of their status or provenance.

39. This principle is also important because the work of HROs is very stressful and difficult. HROs and other staff must depend heavily upon each other — particularly in small, isolated offices. Staff usually come with different nationalities, cultural backgrounds, professional experiences and working styles. It is critical that they be able to work together relying upon the strengths of each other. Personality differences — often triggered by working under stressful conditions — may undermine the effectiveness of area offices and even their security. Individual HROs must make a great commitment to working with those who share an area office. HROs should be assured of the support they will receive from their colleagues and should appreciate the different contributions each can make to the overall effort.

40. Accordingly, to *summarize the expectations* stated above, the HRO should:

- ✓ Have a willingness to respond effectively in stressful situations.
- ✓ Have a willingness and capacity to live in relatively rough conditions.
- ✓ Have an ability to work well in a team;
- ✓ Have an ability to discuss, compromise and communicate well with others;
- ✓ Avoid discriminatory or sexist attitudes in dealing with co-workers and others;
- ✓ Have a humane concern for the welfare of other people.

41. *Human rights officers should recognize that they are part of a much larger operation and that they cannot determine policy by themselves.* Wisdom resides in consultation. Unless there is a crisis requiring individual action, HROs should consult with their area coordinators and colleagues about major steps. Similarly, HROs must realize that their comments — even off-hand personal observations — may reflect on the entire operation. *HROs officers should always avoid criticizing the human rights operation or any of its staff members, to any person who is not a staff member. Criticism of the operation to people outside of the operation can be very damaging to the human rights work of the operation.* It is particularly harmful to engage in such criticisms when talking with journalists or with the members of other organizations. Such criticism gives an extremely poor impression of the human rights operation and reflects badly on the professionalism of the individual making it. Generally, an HRO who criticizes his/her own operation in this manner is trying to distance him/herself from the operation in the eyes of the person being addressed. If the criticism is genuine and the HRO feels very strongly about the problem, it would be better to raise the issue within the operation or within the UN. If those efforts fail, resignation is preferable to undermining the operation.

42. *The human rights field operation may develop other principles for a code of conduct based upon its own experience and/or the experience of previous UN operations.*

5. OHCHR Code of Conduct

43. The Office of the High Commissioner for Human Rights has issued in 1999 a Code of Conduct for its staff — both at Headquarters and in the field. The Code reiterates legal obligations of United Nations staff, and enumerates ethical principles to be adhered to by all. In the words of the High Commissioner, “[t]he Code complements the provisions of the Charter, the rules and regulations of the Organization, further defining the role, responsibilities and high standard of conduct expected of those who serve the United Nations human rights programme.”

44. The Code reads as follows:

“In the performance of their duties for the Office of the High Commissioner for Human Rights, and in order to attain the highest standard of quality, integrity and professionalism, staff shall abide by the principles of the United Nations Charter and all applicable United Nations rules, and in particular they shall:

1. Promote the advancement and observance of all human rights as defined by international instruments, and base all actions, statements, analysis and work on these standards.
2. Respect, uphold and enforce the United Nations principle of non-discrimination with regard to race, colour, gender, language, religion, opinion, national or social origin, property, birth or other status.
3. Promote the fulfilment of the mandate of the High Commissioner as defined by the relevant General Assembly and other United Nations resolutions, as well as by internal guidelines and policy documents.

4. Respect the United Nations Charter's principle of independence vis-à-vis Governments and other external authorities, accepting directives only from the United Nations and report, through the proper channels, to the High Commissioner.
5. Conduct, and be seen to conduct, themselves in an impartial and objective manner at all times — while always promoting human rights — and avoid expressions of partisanship or prejudice.
6. Discharge their functions with promptness, efficiency, a sense of initiative, competence, good faith, integrity and professionalism at all times.
7. Respect the culture, customs and people of the country of operation and all other people with whom they come into contact.
8. Encourage cooperation among the various United Nations agencies and departments and promote the integration of a human rights dimension in all aspects of their work.
9. Exercise discretion with regard to all official matters, and not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the High Commissioner, nor at any time use such information to private advantage — including after separation from the OHCHR.
10. Refrain from making public statements on official matters, except as provided in the relevant OHCHR guidelines.
11. Refrain from endangering, by way of their words or action during or after their service with the OHCHR, the safety and privacy of the people with whom they come into contact and their own safety, strictly comply with all UNSECOORD security directives, and refer any security queries to the appointed security advisor or Designated Official.
12. Refrain from and oppose any act of corruption or fraud, make use of OHCHR resources responsibly with a view to avoiding waste or self-enrichment, and respect OHCHR property over its assets and work products, including rights of authorship and copyright to research, publications and other materials that OHCHR produces.”

.....Chapter XXIII

STRESS,

VICARIOUS TRAUMA

AND BURN-OUT

Key concepts

HROs work and live under situations in which they are likely to experience secondary trauma, that is: stress, vicarious traumatization, counter-transference, exhaustion and burn-out.

Secondary trauma often causes such symptoms as: fatigue, sadness, depression, cynicism, discouragement, loss of compassion, hyper-arousal, sleep disturbances, intrusive nightmares related to trauma material, somatic problems (headaches, joint pain, abdominal discomfort/diarrhoea), feelings of helplessness, denial, disbelief, anger and rage.

There are a number of measures and practices which can help to prevent and treat secondary trauma, including:

- | *Mandatory intermittent work-free periods (e.g., one day per week);*
- | *Mandatory rest and recreation outside of the country (e.g., one week every six to eight weeks);*
- | *Supportive relationships with family and friends;*
- | *Relaxation techniques, e.g., meditation, listening to music;*
- | *Physical exercise, and others.*

A. Introduction¹

1. HROs work and live under situations in which they are likely to experience stress, vicarious traumatization, counter-transference, exhaustion and burn-out. **Taken together**, psychologists have referred to these phenomena as “**secondary trauma**”,

¹Adapted from UNHCR, *Guidelines on the evaluation and care of victims of trauma and violence (1995)* and Center for Victims of Torture, *Vicarious Trauma and Burnout (1995)*.

which is quite common among those who work intensively with traumatized individuals.

2. HROs often deal with people who are suffering and who need help, but the ability of HROs to help is necessarily limited by their mandate, resources, the needs of others, and the constraints of time. HROs often feel as though they cannot afford to take a break or even to sleep, because their work requires their total commitment. In addition to their work conditions, HROs frequently need to live under less than ideal conditions of housing, food, climate, etc. The stress of work and living conditions is compounded by the vicarious traumatization HROs often feel from interviewing and working with individuals who are suffering or have suffered great loss. Hearing about the trauma suffered by others may also trigger painful memories from the officer's own past; psychologists have termed this common experience "**counter-transference**". In some circumstances, HROs may witness deaths, dead bodies, similar immediate evidence of violations, and other events, which may cause them to be **directly traumatized**.

3. If HROs do not cope well with the tremendous stress and secondary traumatization or if they have had to handle such conditions over a significant period of time, it is likely that they will suffer from burn-out and diminished capacity to live and work effectively in the field. No one is immune from these effects and HROs should understand that such feelings are quite normal. There is a great need for HROs and others in the helping professions to acknowledge and be aware of the consequences of secondary trauma. In addition, the HRO's susceptibility to secondary traumatization is shaped not only by the characteristics of the situation, but also the officer's own unique psychological make-up.

B. Secondary traumatization

1. Symptoms

4. Secondary traumatization often causes such **symptoms** as:

- ✓ Fatigue, sadness, depression;
- ✓ Cynicism, discouragement, loss of compassion;
- ✓ Hyper-arousal, sleep disturbances, intrusive nightmares related to trauma material;
- ✓ Somatic problems: headaches, joint pain, abdominal discomfort/diarrhea;
- ✓ Feelings of helplessness, denial and disbelief, anger and rage.

2. Contributing factors

5. **Contributing factors** to secondary traumatization include:

- ✓ Concern about the potential impact of the HRO's work upon the root causes of violence, war, suffering and violations;

- ✓ Conflicted feelings and issues of trust are typical where survivors may be both perpetrators and victims;
- ✓ Communication difficulty, both of language and of culture;
- ✓ Inadequate resources and equipment;
- ✓ Difficulties in sharing scarce equipment, e.g., an automobile;
- ✓ Lack of privacy for those HROs who work in one area;
- ✓ Feelings of responsibility for having an automobile accident and thus disabling transportation for other HROs in an area; etc.

3. Prevention

6. There are a number of **measures and practices** which can help to **prevent and treat** secondary traumatization, including:

- ✓ Mandatory intermittent work-free periods (e.g., one day per week)
- ✓ Mandatory rest and recreation outside of the country (e.g., one week every six to eight weeks)
- ✓ Supportive relationships with family and friends;
- ✓ Professional support systems, including sharing with fellow officers their reactions that are painful and disruptive;
- ✓ Relaxation techniques, such as meditation, deep-breathing exercises and listening to music;
- ✓ Physical exercise;
- ✓ Feelings need to be openly acknowledged and resolved;
- ✓ Rotation through different types of work activity;
- ✓ Good nutrition and adequate sleep;
- ✓ Avoiding excessive use of stimulants, such as sugar and caffeine; and
- ✓ Psychological debriefing after crises in which the officer reviews the experience and deals with feelings of fear, frustration and success that accompany the work.

7. Since *work-free periods are the most important way of reducing stress*, it should be noted that HROs must be provided with regular opportunities to relax, and to leave their immediate working region. They should make an effort to get to know other international and national workers in the region to which they are deployed. Access to books, newspapers and music can also be ways of leaving work behind at the end of a day. As far as possible HROs should have a separate living and working space. During free weekends it is a good idea for HROs to be provided with the opportunity to leave the region/area office in which they are working and to travel to another part of the country — to the central office or to visit the members of another area office, for example. Vacation time should, where possible, be spent outside of the country of operations, and at least outside the region to which an HRO is deployed.

.....Chapter XXIV

SECURITY.....

Key concepts

Human rights officers should:

- | *before entering a new area, consult the operation's central office security officer about risks;*
- | *consult others in the locality about risks and how to avoid them;*
- | *place UN markings on their vehicles;*
- | *carry UN identification cards (with blood type, medical information);*
- | *wear UN markings on their clothing, e.g., hat, arm-band, shirt;*
- | *be trained to use radio communications or mobile telephones;*
- | *carefully select their office and place of residence;*
- | *contact neighbours when they first arrive;*
- | *notify the security officer of the location of office and residence;*
- | *protect documents, records and computerized information;*
- | *use locks on external and some internal doors of offices and residences;*
- | *keep a week's stock of water and food;*
- | *in dealing with road-blocks explain the operation's mandate or produce other authorizing documentation, but use good judgement in the circumstances;*
- | *learn about the type and location of mines;*
- | *know basic vehicle maintenance: check the oil, fuel, water, tyres, spares;*
- | *know how to drive carefully under local conditions;*
- | *avoid clothing, photos, or other ways of offending local sensitivities;*
- | *follow any travel restrictions;*
- | *always make sure that colleagues know their location in the field;*
- | *know what to do and where to go in an emergency or evacuation;*
- | *have received vaccinations; anticipate medical needs; know of medical facilities available; know about water and food cleanliness; know how to recognize symptoms of serious illnesses; and avoid unnecessary health risks, including sexually transmitted diseases;*
- | *keep informed of security guidelines and security situation; and*
- | *exercise good judgement and be careful.*

A. Introduction

1. Human rights operations are often conducted in countries or regions where the security of HROs may be placed at risk. This chapter deals with the **security of HROs and other staff**. Other chapters (see for example **Chapter VII: “Information Gathering”** and **Chapter VIII: “Interviewing”**) discuss the need and methods for preserving the security of witnesses and the various individuals with whom the human rights operation may be in contact. Unless the HROs can themselves be secure, however, they will be unable to assist or protect others. Indeed, if HROs are beaten, kidnapped, or even killed, the UN operation cannot work effectively and may in extreme circumstances need to be closed.
2. This chapter provides an overview of the main security issues related to human rights officers working in United Nations field operations. For more guidance readers should also refer to the booklet “*Security in the Field — Information for staff members of the United Nations system*”, issued by the Office of the United Nations Security Coordinator¹.

B. Legal guarantees

3. The principal legal guarantee for the security of HROs is the **Convention on the Privileges and Immunities of the United Nations**, 1 UNT.S. 15, *corrigendum* 90 UNT.S. 327, *entered into force* 14 December 1946. For the 136 nations which have ratified the treaty, it **provides security and immunity from legal process for the premises, property, documents, officials and experts of the United Nations**. That treaty implements Article 105 of the UN Charter, which states that officials of the United Nations shall “enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.”
4. Either the **agreement between the host country and the UN** human rights operation or the UN action establishing the operation normally contains several means of protection for the staff of the operation, including the right to travel anywhere in the territory, to visit any facility, to speak with any person, to establish an office where appropriate, etc. With regard to any particular operation, it is critical to determine whether the Government has ratified the Convention on the Privileges and Immunities of the United Nations and what provisions are included in the memorandum or other document establishing the operation. Those provisions constitute a minimum guarantee of the security of the human rights operation. Even if not specifically guaranteed by treaty, agreement or other instrument, the human rights operation should in any case expect that the Government will ensure protection for the security of all staff, offices, records, vehicles **and** other property of the operation.

¹United Nations, New York, 1998.

5. In addition, in 1994 the UN General Assembly adopted a **Convention on the Safety of United Nations and Associated Personnel**² which required ratifying governments to take all appropriate measures to ensure the safety and security of United Nations and associated personnel. **UN personnel** include military, police or civilian components of a UN operation deployed by the UN Secretary-General. **Associated personnel** include persons deployed by humanitarian non-governmental organizations working under an agreement with the UN Secretary-General. If UN or associated personnel are **captured or detained** in the course of the performance of their duties, they **shall not be subject to interrogation** and **shall be promptly released** and returned to UN or other appropriate authorities. Pending their release they shall be treated in accordance with the principles and spirits of the Geneva Conventions of 1949. The Convention does **not apply** to UN enforcement actions authorized by the Security Council under Chapter VII, in which any **personnel are engaged as combatants** against organized armed forces.

6. The Convention *establishes universal criminal jurisdiction* and a duty to extradite with regard to persons who commit attacks or attempted attacks upon UN and associated personnel. The Convention was opened for signature and ratification after 31 December 1995 and will come into force 30 days after twenty-two nations ratify it.

C. Security within a human rights field operation

7. Despite these international legal protections, security questions arise and the **protections are not fully respected**. Indeed, there have been a number of attacks on UN, ICRC and other international personnel which indicate risks in some countries that must be taken into account. Accordingly, the **human rights operation** as a whole has an **obligation to take steps to ensure the security of its staff members** and can take a number of steps to avoid or pre-empt any incidents. Ultimately, however, each individual HRO will be the person best placed to ensure his or her own security. As a general rule individuals should try as far as possible to rely on themselves.

8. This chapter provides guidelines on efforts that the operation central office and individual HROs can take to minimize any security risk. “**Security**” is taken here to mean the **physical security of HROs, including health and the security of property belonging both to the officer and to the United Nations**.

1. General security situation

9. The security situation will be different in each country or each region within the country. The United Nations has defined a number of general security situations in which certain restrictions are imposed on UN staff members operating in the area:

²UN G.A. res. A/49/59 of 9 December 1994, 49 GAOR (Supp. No. 1) at 299, annex (1994).

- Phase I:** Normal/stable
- Phase II:** Precautionary (movements should be restricted to essential activity)
- Phase III:** Restricted movement (all movements should be restricted)
- Phase IV:** Relocation (personnel should be relocated to specific centres in anticipation of a possible evacuation)
- Phase V:** Programme suspension (regular operations cannot continue; all non-essential personnel will be evacuated)
- Phase VI:** Evacuation (all operations halted; all personnel evacuated)

10. These security phases have been developed by the UN for all activities, but they are particularly applicable to UN human rights field operations. Countries that are designated as UN *phase I* are considered to be “*family duty stations*” and UN staff members may be accompanied by family or friends. At the beginning of an operation the director of the human rights field operation should verify the UN phase applied to the country of operation. *In some situations several different phases may be applied to different areas of the same country.*

2. Appointment of security officers

11. **Every field operation should have a security officer**, responsible, under the director, for all security matters within the operation. This person should have experience in dealing with security issues within conflict situations, and should be able to anticipate the evolution of a security situation so as to take preventive rather than solely reactive measures. The security officer should develop contacts with any Government forces towards ensuring the safety of the operation’s staff and will be responsible for advising the direction of any necessary security measures.

12. In larger field operations with various area offices, it can be useful to appoint a security officer from among the staff of each office. This person will be given responsibility for security issues within the team (along with his/her other duties) and for coordinating with the central security officer. The security officer should serve as a repository for security information gathered by other HROs and should consult individuals in the locality who are likely to know about risks to security and how they might be avoided.

3. Security guidelines

13. Every HRO joining a field operation should be **provided with detailed security guidelines** written for that particular operation. In addition, an oral **security briefing** should be given by the security officer, upon arrival of new HROs.

14. The security guidelines and briefing should contain all relevant information on the recent and current security situation within the region and, where possible, the likely evolution of that situation. Each HRO should be aware of the principal threats to their safety (such as mines, armed bandits, general crime, illness, etc.) and the regions in

which those threats are most likely to occur. Before entering a new area or neighbourhood, HROs should consult the operation's central office or field security officer about risks; it is also advisable to consult others in the locality who may be informed of risks and how to avoid them. Generally, people who live in the locality will be best informed of the risks HROs may encounter every day.

15. The security officer should develop a means of collecting **information** from around the country/region **on security-related incidents**. This information should be circulated to all staff members as soon as possible and be regularly updated.

16. It is essential that staff be provided with all of the necessary information that will enable them to make an accurate assessment of the security situation.

4. Identification and visibility of HROs

17. United Nations human rights operations will usually have an impartial role. A key aspect of the protection of HROs will be ensuring that they are easily **identifiable as UN HROs**. To this end, vehicles should be clearly marked with stickers or flags that identify their occupants with the operation.

18. HROs themselves should always carry **identification cards** issued either by the operation or by the Government. It is also useful for any identification card used by staff members to provide medical information such as the blood type, allergies, counter-indicated medication, etc., of the bearer, in the event of accident.

19. In addition, it may be useful to wear clothing, such as a hat, arm-band, shirt or jacket which indicates clearly that the HRO is working with the UN, and which can provide easy identification from a distance. Where relevant, these items should be made available by the UN in Geneva or New York.

5. Radio communications

20. A radio communications network can be a very important factor in adding to the security of the members of field operations. It can also facilitate enormously the everyday functioning of the operation. The availability of radio communications means that HROs are independent of any local telephone communications network which may not function adequately and which may be monitored by the authorities. (Of course, mail, telephone **and** radio communications may be monitored by the authorities and by armed opposition groups. Hence, HROs should **avoid using the radio to discuss matters which should be kept confidential**, unless there is an emergency.)

21. It is strongly advised that a **radio communications or mobile telephone network** be used in field operations and that it be extended to cover the whole region of operations. HROs can be provided with radio handsets or mobile telephones and their vehicles and offices can be equipped with long distance base stations. For security reasons it is essential that new staff members be issued with radios and temporary call signs immediately after their arrival in the country of operation. All staff members should be given **training in how to use the radio**, and in the specific language common to this form of communication. This precaution is particularly important

where the human rights operation shares a radio channel with other organizations. Along with access to a vehicle, a radio is often the most important security device that an HRO has.

22. A *Radio Unit (operations centre)* should be established, from which a radio operator can monitor the movements of each HRO. Such a system helps to guarantee that in an emergency help can be sent to any staff member with a minimum of delay. A number of national staff can be employed as radio operators to ensure that there is *24-hour coverage* where necessary.

6. Office and home security

23. The security of the offices and private residences of staff members is particularly important with regard to the security of property (see below), but can also be important in terms of personal security. Some HROs have chosen their **places of residence** in minority communities or in other places where people are at risk in order to give an extra reassurance of protection to the neighbours.³ Others have avoided such locations because they might invite attack and might be generally less secure. The security officer and individual HROs will need to assess this question in the context in which they find themselves. In any case, entrances to offices and residences should be controlled, with visitors passing through one entrance only. Where possible a second entrance/exit should be made available to be used only by staff members in the event of an emergency.

24. The **security of offices** is also important with regard to the documents, records **and** computerized information which may be lost by theft or destruction. The loss of information may endanger the lives and security of many individuals. Hence, **locked files and passwords on computer systems** are strongly recommended. Computerized files at an area office should be systematically copied and placed in an even more secure location, for example, at the operation central office, or even in a bank vault. Given the risk of theft, computer malfunction, or fire, such back-up computer files can help safeguard the work product and the functioning of the operation.

25. Particularly with regard to residences, there should be locks on all of the outside doors of the building and on several of the inside doors. If there are people who wish to attack the house, they will probably be able to break any locks. The objective, however, is to delay them as long as possible. Locks within the building can help to delay intruders and will provide greater time for help to arrive. In the event of an attack on a residence, HROs should immediately call for help and then leave their radio switched on at full volume so that the attackers know that help is on its way. This tactic may discourage intruders.

26. Every residence should have a *stock of water and food* for at least seven days, which may be used in emergencies. HROs should try to meet their neighbours when they first move into their residence, so that help may be sought if needed. The residences of other members of the international community in the area should be identified.

³See Diane Paul, *Beyond Monitoring and Reporting, Strategies for the Field-level Protection of Civilians Under Threat* (1996).

27. The location of each office and residence used by area offices should be indicated to the operation's security officer and a number assigned to each building for rapid identification. **Appendix 1: "Personal Data Form"** is a form on which the HRO should indicate his/her place of abode and other personal details which will be useful in case of an emergency. The security officer and the area coordinator should have copies of the form and should know how to find all of these locations in an emergency.

7. Road blocks and other contacts with armed groups

28. HROs often work in situations where there are soldiers or other armed groups operating. It may be necessary to pass through road blocks or to make access to particular regions. Other than carrying identification, it can also be useful to carry a **copy of any agreement signed by national or local authorities** which guarantees safe passage throughout the territory. These documents should be available in relevant languages.

29. In dealing with road blocks and similar impediments, it is important to remain calm, not to appear nervous, and to avoid being provoked into an angry reaction. It is sometimes important not to appear too weak and thus not to agree immediately to any restrictions imposed by armed people. It may be useful to explain the mandate of the operation, show the agreement or other authorizing document, and indicate that it is important for the effective functioning of the operation that access be provided. At other times it will be important to obey instructions to the letter. These are situations in which HROs will have to judge for themselves how best to react. More specific advice based upon local experience can be provided in the country of operations.

8. Mines

30. Mines are indiscriminate and can be the biggest threat to the safety of HROs. If there are mines in the country of operation, this information should be included in the security guidelines provided to HROs upon arrival in the operation, along with details of the type and specifications of the mines used. Where possible, a **mine briefing** should be organized allowing HROs to see examples of the mines in use.

31. Mines can remain dangerous for many years and even a country presently at peace may still be under a significant threat from mines. In general, mines and unexploded bombs are found in zones where heavy combat has taken place at some point in the past. Mines are, however, sometimes placed in non-conflict areas with the specific intention of causing harm to civilians.

32. There are a number of precautions that can be taken to protect people from the blast of mine explosions, including the use of blast blankets in vehicles. The utility of these precautions depends on the type of mines used, and on the weight of the vehicles used. These precautions rarely provide complete protection and as a general rule operations should be suspended in areas where mines are known to have been placed.

9. Vehicle maintenance

33. Vehicles are the principal means of security that HROs have. A vehicle allows staff to leave dangerous security situations immediately without depending on any one else for assistance. It is also the principal means by which an HRO will travel around the country.

34. A key aspect of security for HROs is the maintenance and protection of the vehicles they use. Vehicle maintenance should usually be done by experienced mechanics, but there are a number of basic precautions that every HRO to whom a vehicle is assigned should take.

35. Even when a national driver is employed, HROs should themselves *check the oil and water levels* in the engine. They should check the amount of *fuel* in the tanks. As far as possible the fuel reservoir should be kept full and spare cans of fuel kept in the vehicle. Headlights should be checked, along with the condition of tyres. Every vehicle should always have at least one spare tyre (preferably two) and the equipment to change the tyre. All HROs should be able to change a tyre on their own. Every vehicle should have a map of the principal roads in the region.

10. Driving

36. As many HROs as possible should be **able to drive**, so that they can assist in emergency situations. HROs driving UN vehicles should make sure that they carry the necessary UN documents (such as a UN driver's licence) which authorize them to use the vehicle. When driving, national speed limits should be rigorously respected.

37. Field operations may be conducted in places where the road conditions are very poor and there is no lighting for night driving. For example, road surfaces may be uneven with pot-holes and cracks; there may be no signposts warning of hazards such as bends in the road, potential rock-falls or ice. Much driving may be conducted on tracks with no artificial road surface. Training should be given to HROs in using four-wheel-drive gear systems and how to handle the different road surfaces and weather conditions (dry and dusty, very wet and muddy, snow, etc.).

38. It is important to remember that other drivers in the region may not have had any formal training on how to drive. They may not be aware of any highway code or standard procedures that are in use in other countries. In addition, the other vehicles on the road may be very poorly maintained. Such devices as turning indicators, windscreen wipers **and** brakes may not function adequately on other vehicles. HROs should be wary of other vehicles on the road.

39. Pedestrians, particularly in many developing countries, are forced to use roads to walk from one place to another. The majority of these people will never have driven a vehicle themselves, are unaware of how difficult it can be for drivers to see them, and so do not always take adequate precautions. When using a road employed by large numbers of pedestrians, it is often dangerous to drive immediately behind another vehicle. Pedestrians, will only hear the first vehicle, whose noise obscures that of the second, and often step out into the road as soon as the first one has passed.

40. HROs should be very careful when driving. Other drivers and pedestrians can be very unpredictable and accidents happen extremely quickly.

11. General dress and behaviour restrictions

41. Some security incidents are created when an HRO does something to offend local people. Often unintentional, these incidents can be avoided through sufficient attention to the local situation. Some countries, for example, may have restrictions on dress, for religious or other reasons. These restrictions are usually less strictly applied to foreigners than to nationals; however, HROs should make sure that they observe the minimum standards. It is important that guidelines be provided on local customs and things to do and not to do. Photography, for example, is often a sensitive point and staff members should avoid taking photographs, for whatever purpose, in front of Government buildings, airports, bridges, border crossings, military installations, or of soldiers and their vehicles.

12. Travel restrictions

42. In the context of a changing security situation, the direction of the field operation may choose to impose certain travel restrictions. Typically, those restrictions would involve limiting travel **at night** and requiring that HROs travel **in pairs**. In some situations it may be necessary for vehicles to travel **in convoys**. A radio communications network for the operation can allow the use of a check-in/check-out system whereby HROs leaving one location for another are required to inform the radio operator when they leave for a set destination and when they arrive. In this way the movements of HROs can be monitored and the location of each individual checked. As a rule, staff deployed to area offices should always make sure that their colleagues in the office know of their location at all times.

13. Emergency plans, knowing where to go

43. Every HRO should know what to do in the event of an escalation in the security situation. In particular, staff members should be given a list of **several places to which they should go** once a signal is given. It is important that an emergency plan provide several alternatives to HROs, in the event that one particular route is unusable. HROs should make sure that they know the way to these locations, particularly in the dark.

44. Emergency plans focus on getting staff members away from life-threatening situations as quickly as possible. Often such exit plans will mean trying to cross an international border out of the country or assembling at one of several points within the country at which security may be guaranteed, such as an airport.

45. Emergency contingency plans should be defined by the direction of the operation and the security officer, and should usually be developed in close collaboration with other humanitarian operations in the area.

14. Health

46. There are a number of precautions that can be taken with regard to health security. At the beginning of a field operation the needs assessment for the operation should anticipate the medical needs of staff members and should **identify the medical facilities available in the region** (doctors, hospitals). If the local facilities are not adequate, provision should be made for medivac (medical evacuation) arrangements in the case of an emergency, allowing staff members to be transferred by air to another country where better medical facilities are available.

47. HROs should make sure that they have received the various medical vaccinations for the region and that those vaccinations, such as hepatitis, which require a series of injections over a period of months are duly updated. Many regions of the world have problems with malaria, and staff should take prophylactics, at least for the first few months following arrival. Information should be provided on whether or not tap water can be consumed and on the cleanliness of fresh food sold locally.

48. Every HRO should receive **written guidelines on the prevalent illnesses** or other dangers to health, in the region. They should avoid unnecessary health risks, for example sexually transmitted diseases, including AIDS. They should be told how to recognize the symptoms of those illnesses in themselves or in their colleagues, and of what to do in the event of an emergency. Cerebral malaria, for example, is not uncommon in East Africa and can lead to death within 48 hours if not treated within the first day. Illness or accident as a result of psychological stress can occur in field operations, and staff should be familiar with the early indicators of this condition.

49. It is highly recommended that the members of a field operation be given **first aid training** relevant to the security situation in which they will be working. Each area office and every vehicle should be equipped with a **medical kit** and HROs should be familiar with its contents.

15. Property

a. *Personal property*

50. UN staff members are insured for the theft or damage of their personal property and should ask the administrative officer of the operation for details on the particular **insurance coverage** from which they benefit. Such advice is important as the insurance policy may have a number of exclusion clauses (see below).

51. Care should be taken to keep valuable property (cameras, tape recorders, personal computers, etc.) locked away when not in use. Items should not be left in a vehicle as car locks are easily opened. HROs should use these items, and their cash, discreetly, in part to avoid offending the sensitivities of local people who may not be able to afford them, and in part to avoid attracting thieves. Each vehicle should be parked in the safest possible location or, if necessary, kept under surveillance.

52. In the event of an emergency evacuation, staff members may be required to leave behind the majority of their belongings. In order to facilitate subsequent compensation claims, each staff member should be asked to complete an inventory of

his or her belongings (see the example in **Appendix 2: “Inventory of Personal Belongings”**). This inventory should be sent to the organization’s Headquarters in Geneva or New York.

b. UN property

53. HROs will be given the use of UN property. Most notably, HROs may use UN vehicles and laptop computers. The operation should reconfirm that these items are routinely insured for damage and theft. The insurance policy used by the UN requires that the operation administration carry out an assessment of possible **negligence** on the part of the person using the equipment. There are several degrees of negligence and each one requires that the person deemed responsible becomes liable for a maximum amount. In the case of the theft or damage of a vehicle, for example, this amount can be US\$10,000. Negligence may be found if, for example, a vehicle was stolen while being used after a UN curfew and for non-work related activities. It may be quite unwise in some contexts to use UN vehicles at night for non-work related social activities.

54. Upon arrival in a field operation HROs should be informed of the specific rules involved in assessing negligence. In any case, care should be taken in the use and maintenance of all UN property. Regardless of liability issues, it may be some time before the operation is able to replace stolen or damaged equipment and the work of HROs will suffer without it.

16. Concluding comment

55. As discussed above, it is the **responsibility of HROs to respect security guidelines**, to keep informed of the security situation, to exercise good judgement, and to be careful.

Appendix 1 to Chapter XXIV

United Nations Personal Data Form

Please fill out this form immediately and return it to the Chief of Operations for transmission to the Designated Official.

Thank you.

1. NAME: _____
 2. AGENCY: _____
 3. LAISSEZ-PASSER No.: _____ EXPIRY DATE: _____
NATIONAL PASSPORT No.: _____ EXPIRY DATE: _____
 4. NATIONALITY: _____
 5. BLOOD TYPE: _____ RHESUS: _____
 6. UNUSUAL MEDICAL CONDITION/NEEDS/ALLERGIES: _____

 7. PERSON TO BE NOTIFIED IN CASE OF EMERGENCY: _____
NAME: _____
ADDRESS: _____
TELEPHONE No.: _____
 8. ADDRESS IN COUNTRY OF OPERATIONS: _____

HOTEL/RESIDENCE: _____
 9. DIRECTIONS FOR LOCATING THAT LOCATION: _____

 10. ARRIVAL DATE: _____
 11. ESTIMATED DEPARTURE DATE: _____
 12. I will keep the Designated Official informed about any changes of address/telephone during my stay in the country of operations.
- Signature: _____ Dated: _____ At: _____

Appendix 2 to Chapter XXIV

United Nations Human Rights Field Operation

Inventory of Personal Effects

NAME:	_____
ID#:	_____
TEL. OFFICE:	_____
CALL SIGN:	_____
ZONE:	_____
RESIDENTIAL ADDRESS:	_____

HOTEL NAME/ROOM No.:	_____

NOTE : Any staff member wishing to obtain insurance for their personal property, including an automobile, can do so by contacting:

Eebert L. Jumism & Co
100 Executive Drive
West Orange, N.J. 07052 USA

Inventories of Furniture, Household Effects, Automobiles and Valuables

Note: Please complete this form in the following order:

A. FURNITURE AND HOUSEHOLD EFFECTS IN

- | | | |
|------------------|------------------|-----------------|
| 1. Living Room | 5. Bedroom No. 3 | 9. Laundry |
| 2. Dining Room | 6. Bedroom No. 4 | 10. Balcony |
| 3. Bedroom No. 1 | 7. Office | 11. Other Rooms |
| 4. Bedroom No. 2 | 8. Kitchen | 12. Garage |

B. AUTOMOBILE(S)

C. VALUABLES

D. CLOTHING

Name: _____	EOD UN: _____
Functional Title: _____	Grade/Rank: _____
Address: _____	Date of Inventory: _____

Description of replacement items	Place of purchase	Date of purchase	Purchase cost (in currency acquired)	Local currency cost	US\$

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