Trainer’s Guide

Human rights monitoring and fact-finding for National Human Rights Institutions
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Abbreviations

ESC - Economic and Social Committee
GANHRI - The Global Alliance of National Human Rights Institutions
NHRI - National Human Rights Institutions
NPM - National Preventative Measures
OHCHR - The Office for the United Nations High Commissioner on Human Rights
OPCAT - The Optional Protocol to the Convention Against Torture
SDG - Sustainable Development Goals
UNDP - United Nations Development Programme
INTRODUCTION

This training package has been commissioned by the Istanbul Regional Hub of UNDP to help develop the capacity of National Human Rights Institutions in the area of human rights monitoring, fact-finding and research. Recent capacity assessments of NHRIs in the Central and Eastern Europe region have almost invariably found that knowledge and skills in investigations, fact-finding and monitoring have needed further development. Some institutions in the region need to cultivate additional skills on top of the work they already do, while others require capacity development in order to fulfil the most fundamental parts of their mandate.

The context in which this package is being developed is an increased emphasis on the role of NHRIs in preventing, mitigating and responding to the consequences of armed conflict. The 2015 Kyiv Conference on the role of NHRIs in conflict and post-conflict situations concluded that the monitoring capacities of NHRIs need to be strengthened. One of the aims of this was to identify early signs of possible conflict and steps to prevent conflict. Although most NHRIs in the region do not have to deal directly with armed conflict, many are confronted with the results of conflict, for example in the form of massively increased refugee or migratory flows. This has stretched the resources of many NHRIs and has also, in many instances, required them to expand and develop their skills, especially in the areas of monitoring, fact-finding, and investigations. The aim of the planned training materials is to help NHRIs to develop their capacity and skills in these areas.

Three terms have been used for the content of the training package. Although there is overlap between the three, their meanings are distinct:

**Monitoring:** This is commonly understood in the human rights world to refer to two somewhat separate sets of activities (although the distinction between them is not always clearly expressed). First, there is monitoring of a state's compliance with its human rights obligations, for example in relation to a particular treaty. Secondly, there is monitoring of particular events or places. An example would be monitoring visits to prisons or other closed institutions. (Other examples include monitoring public protests or elections.) The skills involved in each are somewhat different, but both will be covered in this training package.

**Investigation:** NHRIs conduct investigations in a number of distinct contexts. Most obviously, institutions investigate complaints submitted to them by members of the public. They may also conduct broader, more systemic investigations into important human rights issues. The latter, sometimes known as national or public inquiries, are an important tool for addressing more serious violations of human rights that may not be the subject of many complaints to the NHRL.

**Fact-finding:** This term refers to one of the basic skills entailed in various types of monitoring and investigation, as well as other types of research that NHRIs may conduct. Fact-finding skills include conducting interviews, evaluating material evidence, and corroboration and triangulation of evidence. They may also include various specialized techniques such as surveys and focus groups.
What is in the package?

The training package is designed to be modular. That is, it consists of a series of twelve modules, usually of 90 minutes, on a number of related but separable topics. The modules can be used in different combinations to make up a training workshop. (Hence, for example, four modules could be used to make a one-day workshop, eight for a two-day workshop, and so on.) Modules can be selected that are of particular relevance to the group being trained. Less relevant modules, or ones that contain already familiar information, may be omitted.

Each module includes facilitator's notes, which describe the content to be covered and give suggestions of activities. These also give suggested readings, which should always be read by the facilitator, if not the group as a whole. The facilitator's notes give, in essence, the narrative that accompanies the visual materials, but it cannot substitute for the facilitator's broader knowledge and ability to lead discussions and answer questions. There is no reason why facilitator's notes cannot also be used as handouts for participants. In addition, there are further materials that allow the module to be run. These generally include a powerpoint presentation and may also consist of role-play descriptions, questions and scenarios for discussion.

It is important to stress that the facilitator's notes are only intended as a starting point, which can be altered and supplemented according to circumstances. For example, the assumption behind these modules is that those being trained work for generic, Paris Principles-compliant NHRI. But it is our hope that the training will be delivered in a variety of country contexts, including where there is not an NIHR that has the breadth of mandate or the full powers referred to in this package. In such circumstances, it will be particularly important to tailor the content of the training to local conditions. Where this is being conducted by an external trainer, it will be of paramount importance for that person to consult with the leadership of the local institution in advance.

The package is being developed in the knowledge that a number of training resources already exist and may be used by NHRI in the region. The intention of this course is to complement existing materials and to direct participants towards them. This training package does not constitute a manual for future reference by human rights investigators, but rather a learning tool. We direct those who participate in the training in particular towards two manuals developed by the Regional Centre: *How to handle complaints* and *How to conduct investigations*. In addition, at the end of this introduction there is a bibliography of useful resources consulted in the preparation of this package.

What topics are covered?

Topics included in the training package are as follows:

**Basic fact-finding techniques**

This module is a general introduction to the range of methods of fact-finding available to the national human rights institution. The starting point is information-gathering in the course of complaints-handling (since this experience will probably be common to all participants). It expands to a discussion of other techniques less frequently used in handling complaints and explores questions about the nature of evidence, standards of proof required for different purposes, and how to corroborate information through the use of different techniques. Monitoring and fact-finding are fundamental to several of the prescribed functions of NHRI contained within the Paris Principles, hence capacity
to perform these skills will be important in developing NHRI s that are entitled to accreditation under the GANHRI process.

**Working with conflict**

This module builds upon basic fact-finding skills to consider the particular obstacles that arise working in conflict situations. These include questions of access by the NHRI and its investigators, risk to both NHRI personnel and the public, impartiality, and ethics.

**Interviews in human-rights fact-finding (double module)**

These two sessions introduce and practice basic interviewing skills. There is discussion of both the practicalities and ethics of interviewing and a consideration of particular issues in interviewing vulnerable groups such as victims of torture or sexual violence, children, refugees and prisoners.

**Monitoring compliance with human rights obligations**

This module looks at the process of gathering information/evidence and compiling a report on a state’s compliance with human rights principles and standards and international obligations. It considers how monitoring combines case-based investigations, systemic research into human rights issues, and legal research.

**Monitoring ESC rights/SDGs**

This module follows the general consideration of monitoring with the specific example of economic, social and cultural rights, with a focus on this rights contained within the Sustainable Development Goals. The module will ask how it is possible to operationalize the SDGs in terms of human rights and looks in depth at the process of developing indicators to measure progress.

**Advanced fact-finding techniques**

This module covers some techniques that are less frequently used by NHRI s, but which may be useful in research projects. This includes how to design and analyse a simple survey and how to organize and conduct focus groups.

**Handling physical evidence**

This module discusses other forms of evidence available to human rights investigators, including documents, pictures and videos, as well as medical and other scientific evidence. It gives the investigator a picture of what can be achieved from these different types of evidence and how to organize investigations to facilitate the work of specialized professionals.

**On-site visits**

This module considers the organizational, practical and security considerations entailed in on-site visits to possible locations of human rights violations. While there is a focus on on-site visits in the context of conflict, the lessons will be applicable for NHRI investigations more broadly.

**Monitoring closed institutions**

This module focuses on a particular type of on-site visit – namely, visits to closed institutions such as prisons, police stations, migrant detention centres, and secure
hospitals. It addresses organizational and practical questions, as well as ethical issues. There are explicit links to other modules, especially those on interviewing and material evidence.

**Research and public inquiries**

This module considers the research function of NHRI and focuses in particular on the "public inquiry" model for conducting systemic investigation of human rights issues.

**Recording and storing human rights information**

This module looks at the practical and ethical issues involved in the secure and retrievable recording and storage of data and testimony gathered by a variety of human rights fact-finding methods.

**The ethics of human rights research**

Surprisingly, there is no commonly accepted ethical framework for human rights fact-finders. This module takes relevant ethical principles from a number of professions – law, medicine, journalism and academic research – which it considers alongside the ethical code developed by the UN Office of the High Commissioner for Human Rights. It then offers a proposed code of ethics for NHRI fact-finders for discussion by the participants.

**Role-play exercise**

Each workshop will conclude with a role-play exercise that will incorporate learning points from a number of the different taught modules.

*Prepared for UNDP by Dr Richard Carver, Oxford Brookes University*
BIBLIOGRAPHY

The following list contains publications on fact-finding, investigation and research that would be useful resources for both trainers and participants in the workshops. Specific readings are provided in the materials for each module.


UN, *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*


MODULE 1: INTRODUCTION TO FACT-FINDING

OBJECTIVES

☐ To offer a general overview on the framework of human rights fact-finding.

☐ To introduce the myriad fact-finding techniques available for implementation by NHRI.

☐ To identify the potential challenges to accurate fact-finding that may confront NHRI.

☐ To offer guidelines on developing possible solutions tailored to the needs of the NHRI.

☐ To present an elemental understanding of human rights fact-finding for a widespread NHRI audience.

EXERCISE

In pairs or small groups, conduct a short brainstorming session on alternative challenges and their corresponding solutions than those listed in the module.

Where possible, groups should consist of representatives from different human rights’ focus areas.

RECOMMENDED READING

Facilitator’s Notes: Introduction to fact-finding

The aim of the first module is to provide a general introduction to human rights fact-finding. Participants are to be encouraged to identify the different forms of fact-finding that their institutions undertake. The one area that will be common to all is complaints-handling, although participants will be encouraged to reflect critically on their practice in handling complaints, in particular how far they gather and corroborate evidence in processing complaints.


Areas where NHRI may use fact-finding techniques include:

- Complaints-handling
- Litigation;
- National inquiries into human rights issues;
- Research;
- On-site visits (for example to closed institutions);
- Monitoring of compliance with human rights obligations.

Typically, many NHRI find their work driven by complaints-handling, with little time or resources to pursue these other activities – even when they are an important part of the mandate (for example when the NHRI has been designated as national preventive mechanism). Even complaints are often not really the subject of investigation, but rather an exchange of papers. The purpose of this whole course is to encourage the development of techniques of research, fact-finding and investigation that can be applied across the range of an NHRI’s work.

Of course, not all NHRI are legally empowered to conduct all the activities listed above. This module (like the course as a whole) is written on the assumption that an NHRI is compliant with the Paris Principles, meaning that it has a broad mandate covering a full range of fact-finding work. Those institutions that do not have such an extensive mandate, will nevertheless conduct fact-finding to the extent that they are permitted. Even among NHRI that do fully meet the Paris Principles, there will also be differences in the legal powers available to conduct investigations. Some, for example, will have the power to compel witness testimony and the production of testimony, with legal sanctions enforceable for non-compliance. Others will have the power to compel evidence, but with only very weak sanctions. And yet others will have no such powers at all. Clearly the actual conduct of any investigation will depend on the powers available.

When the training is being conducted in a country where the NHRI has a weak mandate or legal powers, the facilitator may initiate a discussion about how to extend these powers (through advocacy, using the public and legislators) and how to substitute for their absence, for example through public pressure on officials to comply with an investigation.

NHRI may organize their investigative staff in different ways. Some structure themselves by theme so that, for example, the team responsible for women’s rights will be responsible both for investigating complaints about violations of women’s rights and for doing other
research into women’s rights issues. Other institutions will have a department that handles all complaints, separate from researchers who may investigate other issues. Both structures have strengths and weaknesses. But in either case, all staff engaged in fact-finding will need the requisite skills.

1. Obstacles to accurate fact-finding
There are a number of potential obstacles to accurate fact-finding. The facilitator should initiate a brainstorming discussion about the obstacles that participants have encountered – adding additional suggestions and discussing each in turn.

Bias of informants
Inaccurate claims resulting from bias are probably one of the biggest obstacles. These may come from people who claim that their rights have been violated when they have not, or who falsify or exaggerate details of their circumstances. Or they may come from authorities that conceal or misrepresent their actions. Even when there are no deliberate falsifications on either side, the human rights investigator often encounters competing or incomplete accounts of what happened.

Fear or mistrust of the NHRI
Since NHRI is official bodies established by law, they are sometimes seen as part of “the government” and hence mistrusted – especially if the matter under investigation is serious human rights violations.

Lack of cooperation
Mistrust or even fear on the part of the public may lead to lack of cooperation with the NHRI and its fact-finders. An even greater problem may also be that authorities fail to cooperate with an investigation, concealing evidence and actively misleading the NHRI.

Lack of access
It may sometimes be difficult for the NHRI to gain access to places and material evidence that is relevant to an investigation. This is most clearly the case in a conflict situation, when it may be physically difficult or completely impossible to reach certain parts of the country. Or they may be problems of access to a closed institution such as a prison or police station.

Passage of time
This will not usually be an issue in relation to complaints-handling, since complaints must usually be presented within a time limit, but a systemic inquiry or an investigation into a serious human rights violation may often confront the problem that memories are no longer clear, witnesses are no longer available, and material evidence may have disappeared.

2. How can these obstacles be overcome?
Again, the facilitator may brainstorm possible solutions and lead a discussion on each.

Consistent adherence to high standards of independence and integrity
The trust of the public is not automatic and must be gained. This will only happen over time, as a result of high quality and fearless investigations. In the immediate term, NHRI investigators should adhere to the highest standards of professional and personal integrity, treating all people encountered in an investigation with respect and consideration.
Use of legal powers
NHRIs are often reluctant to utilise the powers usually provided by law to compel the production of evidence or the cooperation of witnesses. It may be a good strategy to use these powers sparingly – but there are occasions when they must indeed be used. Officials who fail to cooperate with the NHRI, whether by overt refusal or failure to produce evidence, should know that the threat of penalties is real. When NHRIs do not enjoy such powers, they will need to devise other strategies (such as the threat of “naming and shaming” uncooperative officials).

Conduct on-site fact-finding
Some access problems cannot be overcome, but too often NHRIs do not make the effort to visit the site of actual or potential human rights violations. Conducting on-site visits is a very important and often neglected tool for the investigator (so much so that there is a separate module dealing with this issue).

Corroboration – use multiple sources
Several of the strategies that investigators can use involve the more sophisticated analysis of evidence. Many NHRIs become used to a rather simple analysis of competing documents. The use of multiple sources to triangulate and corroborate must be an essential feature of any human rights investigation. The importance of different types of evidence is discussed below.

Compare allegations to known patterns
Even when it is impossible to corroborate an individual claim, it should be possible to determine the plausibility of the allegation by comparing it to known patterns of events. Of course, the mere fact that an allegation conforms to a pattern does not make it true (it may indeed have been invented precisely because the pattern was well known). However, it does increase the likelihood of its veracity.

Assess where allegations come from
Any investigator develops experiences of which sources of information are reliable and which are not. This will not necessarily help assess a first-time complainant, but it will apply to information from, for example, a human rights NGO. Does that NGO have a good record for accurate information? Is it professional and does it check allegations? Does it have good connections with the particular community affected? Equally, particular weight will be given to statements “against interest” by officials. If an authority admits to wrongdoing, then such a statement is likely to be true.

3. What types of evidence will the human rights investigator use?

Documentary evidence
Typically, this is the most common type of evidence encountered by NHRI investigators. A complainant very often comes with documents, such as letters, in support of a claim.

Legal evidence
Strictly speaking, laws and human rights standards are not so much evidence as the yardstick against which claims are measured. It is extremely important for human rights investigators to always be aware of the applicable standards in any given case or issue under investigation.

Eyewitness testimony
Assessing the evidence of individuals with direct knowledge of the issue under investigation
is crucial. As well as being an opportunity to gather information that may not be available in documents, this is also an opportunity for the investigator to assess the demeanour and credibility of witnesses.

Observational evidence
NHRIs often do not give enough weight to evidence that they themselves can observe from on-site visits to places relevant to the investigation.

Photo and video evidence
Often NHRI staff themselves can record their observations through photo or video evidence. In an age where most people carry a portable camera and video recorder in their pocket, there will often be contemporaneous records of events. This type of evidence is very important to NHRI investigators. Photo evidence to substantiate medical claims, such as photos of injuries, is also of importance. NHRI investigators should always develop basic photographic skills.

Medical evidence
One of the greatest advances in human rights research in recent years has been the increased use of medical evidence. This can be used to corroborate or disprove claims of bodily injury and so will always be important in investigating claims of the most serious human rights violations.

Other scientific evidence
The popularity of “forensics” in television, film and novels possibly exaggerates what can be achieved through other types of scientific evidence (much of which will not be routinely available to NHRIs). However, this has also been something of a revolution in human rights research, from the use of forensic anthropology to analysis of documents and handwriting. Wherever possible, NHRIs could engage experts in these different disciplines to support their investigations.

4. Different standards of evidence for different purposes
   a) Prima facie – in the absence of contrary evidence, there is persuasive evidence of the fact claimed. In criminal law, this is often the standard for initiating an investigation. For an NHRI, it may be the basis for raising an inquiry with the authorities (for example, if it is feared that an individual may be at risk).
   
b) Balance of probabilities – it is more likely that one thing is true than the other.
   
c) Preponderance of evidence – there is a clear weight of proof in favour of one proposition rather than the other.
   
d) Clear and convincing.
   
e) Beyond reasonable doubt – the usual standard of proof for criminal conviction. An NHRI will never need to prove anything to this standard.
Introduction to fact-finding for national human rights institutions

1/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

When do NHRIs do fact-finding?

- Complaints-handling
- Litigation
- National inquiries
- Monitoring of compliance with human rights obligations
- On-site visits (for example to closed institutions)
- Research
What mandate and powers does the NHRI have?

• Receiving and handling complaints
• Initiating inquiry on own initiative
• Visit and monitor closed institutions
• Require witness testimony and production of evidence
• Sanction those who do not comply

... but not all NHRIs enjoy all these powers.

What are potential obstacles to accurate fact-finding?

• Bias of informants
  – False claims or fabrications by claimants
  – False denials by authorities
  – Partial information leading to mistaken claims
• Fear/lack of trust of NHRI
  – NHRI seen as part of “the government”
  – Fear of reprisals in cases of severe human rights violations
• Lack of cooperation
  – Authorities fail to provide requested information
  – Mistrust or fear leads to lack of witnesses from public
• Lack of access
  – Difficulties in getting to places or securing material evidence
  – Problems of access to closed institutions

• Passage of time
  – Memories fade and material evidence no longer available
  – Not usually in relation to complaints (where there is a time limit), but big problem in relation to many serious human rights violations in the past.
How can these obstacles be overcome?

• Independence and integrity
  – Public will judge NHRI on its record in fearless and impartial investigations
  – Everyone to be treated with respect and consideration

• Use of legal powers
  – To secure testimony and material evidence

• Conduct on-site fact-finding
  – Often neglected, except in prison visits etc

• Corroboration – use multiple sources
  – Variety of sources
  – Variety of types of source
• Compare allegations made to known patterns
  – When individual corroboration is impossible, plausibility can be tested by looking at known patterns of abuse
• Assess where allegations came from
  – Are sources known to be trustworthy and reliable?

Types of evidence

- Documentary evidence
- Legal evidence
- Eyewitness testimony
- Medical evidence
- Photo/video evidence
- Observational evidence
- Other scientific evidence ("forensics")
• Documentary evidence
  – Often the starting point – complainant arrives with letters/documents

• Legal evidence
  – The yardstick against which claims and allegations are measured – the prevailing standards

• Eyewitness testimony
  – Direct knowledge of issue under investigation
  – Test demeanour and credibility

• Observational evidence
  – Test credibility/plausibility by on-site visits
• Photo and video evidence
  – Contemporaneous evidence
  – Or can be used to substantiate medical claims (for example)

• Medical evidence
  – Corroborate or disprove claims of injury
Different standards of evidence for different purposes

• Prima facie
  – Without contrary evidence, claim is likely to be true

• Balance of probabilities
  – It is on balance (51% to 49%) more likely that a claim is true
• Preponderance of evidence
  – Clear proof of one claim over the opposite (perhaps 60%+)
• Clear and convincing
  – Perhaps 75%
• Beyond reasonable doubt
  – The standard of criminal guilt – 90%+

How does NHRI use these?

• Prima facie – basis for opening investigation
• Beyond reasonable doubt – never relevant because NHRI is not criminal court
• Other standards – it depends on the purpose and the nature of the claim. Usually, the more serious the allegation, the greater the standard of proof.
MODULE 2: FACT-FINDING AND CONFLICT

OBJECTIVES

☐ To engage in a deeper analysis of the obstacles facing NHRIs while implementing fact-finding techniques.

☐ To understand some of the more sensitive contexts in which specific challenges may arise.

☐ To critically reflect on three key challenges in particular; namely:

  o Early warning of potential conflict;
  o Monitoring respect for human rights in the course of conflict;
  o Dealing with victims of conflict (such as refugees and other displaced persons)

☐ To suggest the practice of alternative methodologies to mitigate some of the institutional constraints to the aforementioned challenges.

EXERCISE

Further discussion and exercise on interviewing members of vulnerable groups is to be found in the Interviewing module.

RECOMMENDED READING

Facilitators' Notes: Fact-finding and conflict

The aim of this module is to consider some of the specific constraints and obstacles that NHRIs will face when they try to apply the fact-finding techniques discussed in Module 1 in relation to:

- Early warning of potential conflict;
- Monitoring respect for human rights in the course of conflict;
- Dealing with victims of conflict (such as refugees and other displaced persons).


1. Early warning

There has been much talk of the need for “early warning” of conflict, going back two or three decades at least. It is often said that human rights violations can serve as an indicator of impending conflict. This is no doubt true but is, of course, complicated by the fact that human rights violations may take place in many contexts that do not lead to conflict.

An honest assessment would say that early warning has not usually been very successful. An oft-cited example is from the genocide in Rwanda in 1994. The UN peacekeeping mission in the country, among others, encountered clear evidence of the forthcoming killings. The notorious radio broadcasts of Radio Télévision Libre des Mille Collines was a textbook example of early warning. Yet no action was taken.

There may be many structural reasons why the international community failed to respond in the Rwanda case (among many others). But there are also certain problems inherent in the nature of early warning. Early warning is always speculative. It is about events that may happen if certain preventive actions are not taken. The response will always tend towards scepticism – and the earlier (and hence potentially more effective) the warning, the less likely it is to be believed. Conversely, if the situation escalates to the point of posing an imminent danger to human rights, short-term responses are likely to be insufficient. Even when a warning is heeded and action taken, if the expected conflict is thereby prevented, who is to say that it might not have occurred anyway?

NHRIs, whose role is to monitor the human rights situation in their country, are uniquely well-placed to conduct early warning activities. To some extent there may even be warnings contained within the complaints that NHRIs receive. If, for example, there is a systematic pattern of discrimination revealed by complaints from a particular part of the country, these may constitute grievances that, at a certain point, could result in conflict.

However, the more likely causes of conflict would be more serious human rights violations such as suppression of opposition protests, arrests, and perhaps torture or killings of oppositionists or members of a minority.

The approach of conflict is sometimes described in terms of the metaphor of lighting a fire. The logs that are necessary for the conflict to burn are the underlying grievances or differences – the discrimination in our example.
But for the logs to burn they need kindling wood. This could be seen as the suppression of opposition in this example and the violation of their rights.

When these two factors are in place there is more than adequate evidence to justify early warning of the threat of conflict.

Following this metaphor, actual conflict requires a spark to set it ablaze, which of course may or may not happen. (Hence early warning may not always be accurate, even if all the preconditions for conflict appear to be in place.)

Often the most proximate cause of conflict, the spark, is something unforeseen, or even trivial. An NHRI may not predict the spark, but it is well placed to identify some of the underlying problems.

2. Working in conflict

Investigators from NHRIs usually have clear legal authority to conduct their inquiries and, although they do not always enjoy the greatest cooperation, are in principle able to work as they choose. In conflict areas these guarantees and legal powers may be worthless in practice. In the most extreme cases, the de facto authorities in the conflict area may no longer recognize the jurisdiction of the NHRI. In any case, almost by definition, the conflict will create new risks and obstacles to fact-finders.

Research in conflict areas faces obstacles to:

- Access by fact-finders
- Access of complainants to NHRI
- Recognition of NHRI by de facto authorities
- Safety of fact-finders
- Safety of witnesses

These problems with access and safety lead to a situation where the normal processes of fact-finding – careful gathering of information and cross-checking with multiple sources – become difficult, if not impossible.

*Pressure to take sides*

One of the problems with fact-finding in conflict is that the situation is more than usually polarized. If the government is party to the conflict, then the NHRI itself will most likely be perceived as supporting the actions of government forces. (Alternatively, if the NHRI has been highly critical of government, it may be perceived as being hostile to the government military.)

It is impossible to set out a general rule for what position an NHRI should take on the rights and wrongs of the cause of conflict. However, it is important that the NHRI takes its own position freely and independently. In addition, and most importantly, the primary responsibility of the NHRI is to monitor compliance with human rights, as well as international humanitarian law. It is a fundamental principle of IHL that the *jus in bello* (or laws of war) are distinct and separate from the *jus ad bellum* (or the cause of the conflict). In other words, the NHRI must focus entirely on issues of human rights and IHL. The role of the fact-finder is to seek objective, verifiable evidence of human rights performance.

For the individual fact-finder there will also be dilemmas. The individual will inevitably have sympathies among the conflicting parties (which may not always be the same as the
institutional position of the NHRI). However, it is ethically imperative that the investigator is committed to an impartial search for the truth. This is always the case, of course, whether or not there is conflict. But conflict will make this ethical commitment more difficult to follow and will also increase the questioning of the investigator’s impartiality by complainants, witnesses and others.

In any contact within the conflict zone, whether with armed forces, other authorities or the public, it will be of particular importance for the NHRI and its staff to stress their impartial position with relation to the conflict.

Safety considerations
The NHRI will often have to consider whether access to an area is possible at all. If access is only possible under protection from an armed party to the conflict, this may compromise the independence of the investigation to such an extent that it will be ineffective (and undermine the credibility of the institution). These are considerations that will have to be taken into account and to which there is no general answer.

If access is deemed to be possible, it will also be important to take steps to secure the safety of both the investigators and the people that they meet or interview.

For investigators, basic precautions include never travelling alone, providing their own office with a detailed itinerary, maintaining regular contact with the office (through cellphones, or radios), planning research travel carefully and keeping up-to-date with the precise development of the conflict on the ground.

It is usually a good plan for vehicles and clothing to carry some clear identification showing it is from the NHRI. (This has been the convention used by the Red Cross, which is generally observed.) But exceptions to this rule may be considered.

It is usually a bad idea to travel under the protection of one of the parties to the conflict. It will undermine the perceived independence of the NHRI if it appears to be aligned with one side or another. Informants will be reluctant to provide information critical of that party.

Those visiting an area where active armed conflict is taking place should plan how they would act if challenged by military personnel or by armed opposition groups at checkpoints or in other places. Fact-finders should decide in advance how they would identify themselves at a checkpoint. For instance, they should determine whether it would be safe to identify themselves as human rights workers or whether that would jeopardize the mission. They should also decide how vague they can be about their identities and weigh the consequences of such a course of action. [ARTICLE 19]

Safety considerations also apply – even more importantly – to witnesses and informants contacted by the NHRI. The best protection that can be applied is confidentiality – keeping the identity of those interviewed secret. But this is difficult to achieve and not necessarily desirable for an official fact-finding body (as opposed to NGO fact-finders). Best practice in fact-finding in conflict zones – as in monitoring visits to places of detention – may be to be very visible and to interview the maximum number of people. The more people who are in contact with the NHRI, the more difficult it will be for armed groups to identify the sources of any particular piece of information.
Corroboration of evidence
One of the inevitable consequences of access and security problems in conflict zones is that corroboration of evidence becomes much more difficult.

In some situations, particularly in armed-conflict situations, there is a danger that much of the information that was gathered may have been filtered through one of the parties to the conflict. If the human rights organisation does not properly verify such information, the organisation may risk disseminating only the version of one party to the conflict. Therefore, fact-finders should be provided basic training on how to verify and cross-check information gathered by them.

Similarly, in ethnic and other social conflict situations, communities are divided, and from within each social group there may be pressure on the members to blame the other for the conflict. Similarly, there may be a tendency on the part of the victims to exaggerate facts to gain sympathy for the group they belong to. Fact-finders should take care to assess the information they obtain in such situations. Moreover, members of a fact-finding team should be careful to ensure that they are not identified with one of the groups involved in the conflict. [Forum-Asia]

One way of assessing the likely veracity of information gathered is to determine whether it fits into known patterns of human rights violations. Of course, noting that an allegation fits a pattern does not mean it is true, but it may contain prima facie validity.

Uncorroborated information is not useless – further information may emerge in future to confirm its accuracy. In reporting, it will be important to distinguish the level of corroboration obtained. If there are uncorroborated reports of a serious human rights violation, this may constitute the basis for asking the authority concerned to investigate.

3. Working with refugees
An increasing number of European NHRI find themselves confronted with the need to protect and promote the rights of refugees.

Refugees are those who flee their own country because of a well-founded fear of persecution or as a result of conflict. (The European Union Qualification Directive, for example, distinguishes between the former who meet the definition in the 1951 UN Refugee Convention and the latter – victims of conflict – who nevertheless qualify for subsidiary protection.)

There are potentially several circumstances in which NHRI may be called upon to protect the rights of refugees:

- In exercising their right to enter the country and seek asylum;
- If they are in detention;
- In the status determination process;
- If they encounter discrimination or xenophobia.
Of these various circumstances, the situation of refugees in detention is in principle the easiest for an NHRI to address, since it usually has statutory powers to visit places of immigration detention, whether or not it has the function of National Preventive Mechanism under the OPCAT.

In other circumstances, addressing the rights of refugees may entail a deliberate and pro-active effort on the part of the NHRI. Why? Because there is little likelihood that refugees themselves will actively approach the NHRI. They are not nationals, by definition, and will probably have knowledge of the existence of the NHRI. They may not speak the language of the country where they seek asylum or, at a minimum, are unlikely to be fluent. And they may be profoundly suspicious of any of the authorities in the country, since they may fear deportation. This will require positive outreach on the part of the NHRI.

In dealing with refugees, it will be particularly important for NHRI fact-finders to be aware of the applicable legal standards. Of course, this is always the case, but for refugees there is an additional body of law that may not be readily understood by NHRI staff unless they already have substantial experience in this area. And, as with human rights standards, it will be important for the NHRI to apply not only national law but also international refugee law. The 1951 Refugee Convention explicitly assigns a series of rights to refugees that are distinct from those provided by human rights law (although they naturally overlap in many areas). Of particular relevance is the prohibition on states applying penalties to refugees for illegal entry into the country (recognizing that flight from persecution or conflict is not something that can usually be pre-planned, with visa applications, ticket purchases and so on).

Fact-finders interviewing refugee respondents will need to take account of several aspects of the refugee experience, both in conducting the interview and in evaluating the response:

- Interviews will most likely have to be conducted through reliable, trustworthy and impartial interpreters (trustworthy meaning trusted by the interviewee as well as the interviewer).
- Genuine refugees will, by definition, have experienced traumatic events – or the fear of them – before leaving their country. This means that the interview must be conducted with respect and sympathy, but also that the testimony given should be evaluated with that experience in mind.
- Refugees (and other migrants) may often have experienced traumatic events in the course of their flight.
- Refugees (and other migrants) will be highly fearful for their future. While the NHRI will not be in any position to provide assurances, it should be made clear that the NHRI seeks to ensure respect for the rights of refugees, just as it would for the country’s own citizens.

(Further discussion on interviewing members of vulnerable groups is to be found in the Interviewing module.)
When do NHRIs do fact-finding?

1. Fact-finding as early-warning – a means to prevent conflict
2. Fact-finding in situations of conflict
3. Fact-finding and the consequences of conflict – refugees, displaced persons and others.
Kyiv Declaration, October 2015

- Identify early warning signs
- Monitor human rights and IHL in conflict
- Advise parties to the conflict on human rights
- Rights of refugees and IDPs
- Promote dialogue
- Measures to prevent violations
- Measures to overcome consequences of conflict

“A new declaration adopted in Kiev this week is calling for a stronger role of NHRIs in conflict and post-conflict settings”
Early warning of conflict

• NHRIs should be documenting human rights violations – which may be a good early warning of conflict.
• For example, complaints of systematic discrimination in one part of the country may indicate grievances that could lead to conflict.
• Violent incidents could indicate the onset of conflict.
Conflict is like a fire...

It will happen if there are...

- Logs – the underlying issues or grievances.
- Kindling – the factors that lead to a violent resolution of grievances.
- Spark – that sets the conflict alight.

NHRIs cannot identify the spark. But they can often identify...

The underlying grievances (such as discrimination)
And the factors leading to conflict (such as suppression of opposition).
It follows from this that NHRIs have an obligation to report on the warnings that they identify and to use their best efforts to prevent conflict.

Fact-finding in Conflict
What are the obstacles to fact-finding in conflict

- Access of fact-finders to conflict area
- Access of complainants to NHRI
- Recognition of NHRI by de facto authorities
- Safety of fact-finders
- Safety of witnesses

NHRI and impartiality

- *Jus ad bellum v jus in bello* – the responsibility of NHRIs to monitor human rights and IHL impartially
- Role of the fact-finder is to seek objective, verifiable data
- Individual fact-finders may also have dilemmas – personal sympathies must be put aside. This is true at all times, but may be especially difficult in conflict.
Safety – some issues for discussion

- Notification of government authorities?
- Notification of rebel authorities?
- Travelling under military guard?
- Clear identification (an equivalent to the red cross)?

Forward planning

- Plan itinerary in advance and notify NHRI head office
- Keep in touch – use radios if cellphones don’t work
- Keep constantly up to date on developments in conflict (who is in control where)
- Plan what you will do at a military checkpoint
- Travel with reserve supplies (fuel, food, water, blankets etc)
How to protect witnesses

People who are in contact with NHRI investigators are at greater risk than the investigators themselves. What are possible steps to protect them?

• Guarantees of anonymity – how to fulfil these?
• Be very visible and interview the maximum numbers?

Checking the veracity of information

In conflict areas, it is more likely that investigators will receive biased and inaccurate information ... and it is much more difficult to cross-check and corroborate.
What possible strategies are there for doing this?

Refugees – the victims of conflict

Kosovar refugees fleeing their homeland.
01 March 1999
What is a refugee?

Someone outside his/her own country with a well-founded fear of persecution (1951 Refugee Convention).

Someone outside his/her own country who is fleeing conflict (recognized in African and Inter-American instruments, and in EU law as deserving “subsidiary protection.”)

When do NHRIs encounter refugees?

• In exercising their right to enter the country and seek asylum;
• If they are in detention;
• In the status determination process;
• If they encounter discrimination or xenophobia.
What is a refugee?
Someone outside his/her own country with a well-founded fear of persecution (1951 Refugee Convention).

When do NHRIs encounter refugees?
- In exercising their right to enter the country and seek asylum;
- If they are in detention;
- In the status determination process;
- If they encounter discrimination or xenophobia.

Problems for NHRIs working with refugees
- Access
- Language
- Lack of knowledge by refugees of NHRI

Hence, onus is on NHRI to make itself known to refugees and to acquire resources (e.g., translators) to be more accessible.
Interviewing refugees

- They are fleeing traumatic events
- They may have experienced further traumatic events en route.
- They are fearful for their future.

The next session will look in further detail at issues around interviewing.
MODULE 3: INTERVIEWING

OBJECTIVES

- To introduce the skills and techniques broadly involved in interviewing.
- To advance a pragmatic understanding of the interviewing process, from inception to conclusion.
- To identify the various types of interviewees that NHRI investigators may encounter.
- To recommend the relevant considerations that NHRIs ought to take into account, thus ensuring the conduct of humane and effective interviews.

EXERCISE

In pairs or small groups, conduct a mock interview session based on some of the considerations listed in the module.

Alternatively, a moderator could gather a list of questions from participants, and conduct two mock interview scenarios; first with incorrect interviewing techniques and the second, following proper guidelines. This might provide an interesting comparative analysis of the mistakes that are often made during interviews.

Where possible, groups should role-play interviewees from different backgrounds.

RECOMMENDED READING

UNDP, Guide for Ombudsman Institutions: How to conduct investigations, Bratislava, 2006, pp. 74-81
Facilitator’s Notes: Interviewing

This module aims to introduce the skills and techniques of interviewing. It looks in turn at preparing, conducting, and assessing interviews. It considers the different types of interviewees that NHRI investigators may encounter and the specific considerations that will have to be taken into account for each of them.


1. Why interview?
This may seem an obvious question, given that interviews are the single most useful research tool in human rights fact-finding. However, it is useful to think about the purposes of interviews:

• The interviewer can respond to information provided by the interviewee;
• The interviewer can gather information about a variety of different issues;
• The interviewer can make an assessment of the credibility of the interviewee;
• An interview is an opportunity to corroborate previously gathered information;
• An interview gives voice to the interviewee, which may help to build a relationship of trust between the interviewee and the NHRI, resulting in increased confidence in the investigative process.

When do interviews take place?

• When a member of the public comes to your office;
• In the course of an on-site visit (such as a prison visit);
• In the course of an inquiry;
• When the investigator visits an official in their office.

2. Preparation
The extent to which an investigator can prepare for an interview will vary depending on the circumstances.

Wherever possible, an investigator should prepare a list of questions to be answered before the interview. However, good interview technique will dictate that this list will almost never be asked in the form of a questionnaire, but rather used as a checklist to ensure that all issues have been covered. This allows for flexibility in the interviewing process. Sometimes, when the interviewee belongs to a vulnerable group (for instance victims of sexual violence or refugees), it is crucial that the interviewer does not add to their anxiety or intimidate them further.

Occasionally an investigator will interview a person with no prior notice of the case. Usually, however, the interview will be scheduled in advance and the investigator will have available some background details. It is of the utmost importance that the investigator makes thorough preparations for the interview. S/he should be aware of what are the established and disputed facts of the matter under investigation and identify the main points that the interview seeks to clarify. While the investigator may have formed some opinion about the matter under investigation, it is important that s/he remains open-minded in approaching the interview.
Preparing the location: The amount of control the interviewer will have over the interview location will of course vary. If the interview is being conducted at the offices of the NHRI, it is important that the set-up in the interview room does not intimidate or stress the interviewee. Especially in cases where the interviewee alleges serious ill-treatment or has recently been in custody, it will be important to make an interview location that does not resemble the restrictive or adversarial characteristics of custody or a police interrogation. Relative informality can be achieved by not having a desk between the interviewer and interviewee, softening the environment through pleasant furnishings (such as plants), and ensuring that the interviewee is offered refreshments.

When the interview takes place in other locations, the investigator may have less control. In custodial settings, it will be crucial to ensure that confidentiality is ensured by the interview being conducted out of earshot of officials.

Finally, it is important to allocate sufficient time for an interview. One of the important aims of an interview is to allow the interviewee to have their say. They will not trust the process if they feel that they have been cut off and prevented from saying all that they wanted to.

3. Conducting the interview

There are no strict rules for interviewing that will apply in all circumstances. Interviewing someone who claims to be a victim of a human rights violation will usually be a different experience from interviewing a person in authority. One general rule that will apply in most circumstances, however, is not to reveal to the interviewee the extent of your knowledge of the matter under investigation. In other words, it is important to come across as neutral as possible, without being apathetic.

Revealing such information to alleged victims of human rights violations may suggest to them the type of testimony you seek to gather. Whether from a desire to please or to mislead, the interviewee may then be prompted to give certain answers to the questions asked. Similarly, an interview with an official from a body that may have violated human rights should not be given cues that will allow them to evade responsibility.

How long is available? Ideally, interviews should be scheduled so that they are allowed to run their natural course, taking as long as is required. Sometimes – especially when the interviewee is an official – this may not be possible. In the latter case, it will be important to establish precisely the time available before the interview starts.

Keeping a record: It is vital that all interviews be subject to a precise and contemporaneous record. At a minimum, this will consist of full written notes. This is most easily achieved if there is a separate note-taker in addition to the main interviewer, although other considerations may mean that this is undesirable in some circumstances. A better record will be achieved from an audio recording of the interview. The main argument against such recording would be that it may make the interviewee feel uneasy. Even when an electronic voice recorder is used, written notes must always be kept. (Interviewers who discover that the battery in their recorder has failed and they have no record of the interview seldom make the same mistake twice.)

Language: Wherever possible interviewees should be able to answer questions in their own preferred language. For example, if the interviewee is from a national minority, the interviewer should be someone who understands and speaks that language fluently. Sometimes – for example if the interviewee is a non-national, such as a refugee – it will be
necessary to conduct the interview through an interpreter. Choosing a suitable interpreter is very important. The interpreter must:

- Have suitable language skills – interpretation is not only about the ability to speak two or more languages. It also entails very specific ability to render statements accurately and completely from one language to the other. It also entails professional judgment whereby the interpreter does not “editorialize” on the content of what is being translated;
- Have the same qualities as those required of a good interviewer – the ability to listen carefully and to empathize;
- Be perceived as being neutral and trustworthy.

An interview should always begin with the investigator introducing him/herself and explaining the purpose of the interview. (While these points will usually be self-evident, such an introduction is always courteous and can be an opportunity to dispel any confusion about the purpose of the interview.) It is essential to underline how the findings of the interview will be used. If the investigator offers assurances of confidentiality, these must always be adhered to.

It is usually a good practice to begin interviews with open questions that prompt the interviewee to tell their story. This can be achieved by asking open questions. An open question will simply be an invitation to the interviewee to talk about their experience. A closed question that seeks to clarify a particular piece of information will be appropriate later in the interview, but usually not at the outset. People will normally tell their story in a chronological order. A good interviewer will be patient and allow the interviewee to communicate what they see as most important. Interruptions in the early part of an interview are best kept to an absolute minimum; instead, the interviewer should note points that need further clarifications and ask the questions later.

The reason for keeping questions to a minimum in the early part of the interview is that the interviewee may see attempts at clarification as being “critical” questions and indicative that the interviewer does not believe the account being given. This may undermine trust in the interview process. While this consideration is uppermost when the interviewee is a member of the public who alleges human rights violations, similar considerations may apply for official interviewees. In instances of the latter, it is to ensure that the interviewee does not feel antagonized for any reason.

It is good practice for the interviewer to indicate that s/he is paying attention by asking prompting questions that encourage the interview to continue with their story. The simplest way of doing this is to ask: “What happened next?” Other good questions are: Who? What? When? Where? How? Why?

Long, wordy questions are almost invariably bad questions. The purpose of the interview is not for the investigator to show off his or her knowledge. Long questions have several potential drawbacks:

- Often they are not a single question, but several. The interviewee will answer the question of his/her choice (usually the last one asked), which may not be the most important;
- The interviewee may be confused and hence not answer the question at all;
• The lengthy “explanation” of the question will give the interviewee clues as to the preferred answer.

The final drawback is an example of the phenomenon known as a “leading question.” Rules of evidence in many legal systems exclude the use of leading questions in court for the very good reason that they can result in misleading and inaccurate answers.

So, what is a simple example of a leading question:

“Did the police torture you?”

This plants the idea that the interviewer has some expectation that the interviewee may have been tortured. The interviewee may respond by agreeing that they were indeed tortured – even if that is untrue.

A non-leading way of asking the same question would be:

“How did the police treat you?”

(In addition, what the investigator seeks from an interviewee who is a complainant is a precise and factual account of what happened – not an attempt to classify that experience in terms of human rights legal categories.) The purpose of conducting an interview is not to validate the interviewer’s preconceived notions.

Of course, flexibility is required in asking questions. If an interviewee does not understand what they are being asked to explain, some elaboration will be necessary. As a general principle, however, short, non-leading questions are preferable.

4. After the interview

Interview notes or audio recordings should always be written up/transcribed as soon as possible after the interview is completed. This will give an opportunity for the investigator to reflect on what was learned from the interview and to identify any inconsistencies in the testimony. There may also be gaps, or questions that the investigator failed to ask. (The latter is perfectly normal – far better to contact the interviewee and ask the missing questions than to guess at the answers.)

If the interview provides the basis for a statement that will be used in legal proceedings, this will have to be written up in the appropriate format and given to the witness to review and sign.

Often the investigator will have undertaken to the interviewee to do certain things. These undertakings should be clearly noted in the record of the interview and done as soon as possible afterwards.

5. Different categories of interviewee

The investigator will have to be sensitive to the needs of particular categories of interviewee and understand how this may affect the answers that are given.

People suffering from trauma: Anyone whose human rights have been violated will be upset. However, victims (or witnesses) of more serious and gross violations may be experiencing some form of trauma or post-traumatic stress disorder (PTSD). These would usually include victims (or witnesses) to torture or other severe ill-treatment, rape or other sexual violence, killing, arbitrary or prolonged imprisonment and so on.
The symptoms of PTSD include:

- Constantly recalling the traumatic event (for example through nightmares or intrusive thoughts);
- Paranoia;
- Trying to avoid recalling the traumatic event;
- Physical symptoms such as insomnia, lack of concentration or hyper-vigilance.

Any of these symptoms are likely to affect the conduct of an interview. It is vital that the investigator does two things:

- Displays maximum consideration and accommodation to an interview who appears to be experiencing such symptoms;
- Takes these symptoms into account in evaluating the consistency and veracity of the interview.

For example, if someone is lacking sleep or having difficulty concentrating, it may be helpful to break an interview into a number of shorter sessions. It may not even be appropriate to continue with the interview at all. If in doubt the investigator should seek expert medical advice.

However, human rights investigators have also found that sensitive questioning in a non-threatening environment may actual help people who have experienced trauma to cope with the consequences. People who have experienced serious human rights violations have been placed into a situation of powerlessness. The fact that an investigator takes their account seriously may be helpful, irrespective of any other benefits that may flow from the investigation.

*People from vulnerable groups:* The investigator will similarly have to give consideration to the sensitivities of interviewees from among the more vulnerable groups in society.

*Women:* It will often be good practice to have a female interviewer conducting an interview with a woman. When the subject of the interview is at all intimate or addresses abuses (not necessarily physical) that are specifically connected with power relations between men and women, the interviewer should invariably be a woman herself.

*Children:* Whatever the subject of the interview, special arrangements will have to be put in place for interviews with children. Children are always at the inferior end of a power relationship with adults. Careless and insensitive interviewing can not only cause distress and upset to the child but also result in the generation of inaccurate and potentially damaging findings. If the NHRI conducting the investigation has a specialized children’s rights unit, its specialists should be involved in any interviews with children. In circumstances where it is impossible to make special preparations to interview children – for example during on-site visits – investigators should proceed with the utmost care.
Interviewing

3/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

Why do we interview?

- The interviewer can gather information about a variety of issues.
- The interviewer can respond to information provided.
- The interviewer can assess the credibility of the interviewee.
• An interview is an opportunity to corroborate information.
• An interview gives the interviewee a voice.

When do interviews take place?

- When a member of the public comes to the NHRI office
- During an on-site visit
- When the investigator visits an official
- During a public inquiry
An interview is an opportunity to corroborate information.

- An interview gives the interviewee a voice.
- When do interviews take place?
  - When a member of the public comes to the NHRI office
  - During an on-site visit
  - During a public inquiry
  - When the investigator visits an official

What are good qualities for an interviewer?
- Ability to listen
- Patience
- Flexibility
- Empathy (the ability to put yourself in someone else's position)
- Scepticism
- Memory

PEACE
- Preparation
- Explanation
- Account
- Closure
- Evaluation
PEACE was developed for investigative interviewing by police services.

Anders Behring Breivik in police custody

Preparing for an interview

• Briefing on previous evidence;
• Prepare checklist of questions;
• Prepare location;
• Allocate sufficient time.
PEACE was developed for investigative interviewing by police services.

Anders Behring Breivik in police custody preparing for an interview.

- Briefing on previous evidence;
- Prepare checklist of questions;
- Prepare location;
- Allocate sufficient time.

Location

- Privacy
- Safety and security
- Ease of access (for interviewee)

Why are interviewees talking to you?

- Because they have information that they think you should know about
- Because it makes them feel better to talk about their experience
- Because they have been persuaded - by you or by others - that they ought to talk.
Conducting the interview

• Keeping a record – notes or audio recording?
• Language (do you need a translator?)
  – Professionalism
  – Impartiality
  – Perceived as trustworthy

• Start with open questions (invite interviewee to tell their story how they choose).
• Maintain eye contact.
• Only interrupt for brief points of clarification.
• Do not reveal to interviewee what you already know about the case.
Conducting the interview

- Keeping a record – notes or audio recording?
- Language (do you need a translator?)
- Professionalism
- Impartiality
- Perceived as trustworthy
- Start with open questions (invite interviewee to tell their story as how they choose).
- Maintain eye contact.
- Only interrupt for brief points of clarification.
- Do not reveal to interviewee what you already know about the case.

Types of questions

- Open questions: invites interviewee to tell a story.
- Closed question: invites yes/no response.
- Clarifying question: when something is unclear or inconsistent.
- Challenging question: when evidence in your possession seems to disprove what has been said.

These are always good questions...

- Who?
- What?
- When?
- How?
- Where?
- Why?
These are always bad questions...

A leading question is one where the interviewer suggests the answer. For example:

“Did the police torture you?”

Rather than:

“How did the police treat you?”

Some more leading questions...

Did the police beat many people on the demonstration?

Did you immediately feel worse when you stopped taking the medication?

Did the authorities pick on you because of your ethnicity?

Did the poor sanitation cause you many health problems?

How could we reformulate these questions?
Never reveal information from other interviews to the interviewee.

Why should they trust your assurances of confidentiality if you cannot keep your mouth shut?

Long, wordy questions are never a good idea. Either they will confuse the interviewee or they will not receive a proper answer.

The purpose of an interview is not for you to show off how much you know.

Remember: there is no such thing as a stupid question.
After the interview

- Write up the notes/recording as soon as possible.
- Review what you learned.
- What is still missing?
- Do you need to ask more questions? (It happens!)
- What are the next steps?

For discussion

What specific preparations would you need to make to interview:
- Someone who has experienced a traumatic event?
- A woman?
- A child?
MODULE 4: ON-SITE VISITS

OBJECTIVES

☐ To establish the importance of on-site visits as a fact-finding technique for
  NHRIs.

☐ To identify the various types of on-site visits that may be of use to NHRIs.

☐ To forward the key elements of planning an on-site fact-finding investigation.

EXERCISE

In pairs or small groups, formulate a plan for a variety of different types of on-site visits.

Brainstorm possible challenges and their corresponding solutions in each context.

RECOMMENDED READING

  Human Rights Institutions, Sydney, 2013.*
Facilitator’s Notes: On-site visits

This module focuses on all types of on-site visit conducted by NHRI investigators – essentially any time the investigator leaves her office. The suggested exercise is to formulate a plan for a variety of different types of visit. It is suggested that this module could be run in conjunction with that on monitoring places of detention and/or fact-finding in conflict and/or material evidence.


One of the most important fact-finding techniques available to NRIs is to visit locations where there may be a risk of human rights violations, or where human rights violations are alleged to have occurred.

Much NHRI fact-finding consists of exchanges of documents. This may be appropriate for certain types of issues, but almost every issue can be more effectively addressed through an on-site visit. Why?

- Investigators will be more likely to identify potential informants (who might not otherwise come forward);
- Investigators may be able to identify new evidence on site;
- Investigators will be able to judge whether accounts of what happened are plausible (or even possible).

1. Identifying informants

No serious investigation can rely on only those witnesses who choose to come forward and identify themselves. At a minimum, it will be up to an investigator to identify potential witnesses from the evidence already available and then interview them. If the issue under investigation is a broad one (conditions in a prison, what happened at a public protest etc.), then actually going to the location concerned will clearly be the most effective way of identifying witnesses.

2. Identifying evidence

In many types of investigation, material evidence may be available on site. Once again, the obvious example of this would be prisons, places of detention and other closed institutions. The nature of the issue under investigation may mean that conclusions can only be reached through on-site visits (if, for example, the investigation concerned conditions in a place of detention). In other investigations, for example into a violent incident, pieces of material evidence may be found at the site. In normal peace-time circumstances, the duty of NHRI investigators in such a situation will usually be to secure the site for examination by the proper authorities, such as police crime scene investigators. However, in the context of conflict, the investigators themselves may be required to collect such evidence for subsequent forensic scientific examination [see separate module on Material Evidence].

3. Determining plausibility

No competent police investigator would try to solve a crime without visiting the crime
scene. Quite apart from giving an opportunity to gather material evidence, the visit will allow the investigator to test the plausibility of the event under scrutiny. An interviewer often cannot know the plausibility of an account without knowledge of the location where the event is said to take place. Consistency of an account with the geography of the location does not make it true, but it may be possible to demonstrate that an account is necessarily untrue – or at least highly implausible – by examining the scene. It might be, for example, that it was physically impossible for the witness to have seen what they claim from the place where they claim to have been. It might be that actions were impossible – or implausible – because of the distances between different locations or the proximity or size of rooms, or any number of awkward physical realities.

4. Different types of on-site visit
There is potentially an enormous variety of on-site visit. Here are some of the most common:

- Investigating the scene of an alleged human rights violation;
- Monitoring an event with the aim of observing conduct and preventing human rights violations (e.g. a public protest, elections etc.);
- Monitoring conditions, for example in a closed institution.

5. Planning an on-site visit
The first step will always to be make an analysis of the purpose and expected outcomes of an on-site visit and to conduct a risk assessment. The benefits of first-hand presence are usually obvious, but in some situations there may also be risks, both to potential witnesses, who may be put in danger, or to investigators. No on-site visit should take place without such a risk assessment – in many cases this may be a mere formality, but on occasions it will be of great importance.

If the decision is made to go ahead, and a clear purpose has been defined, the next step will be to identify who should participate. If the purpose is to investigate a violation or to monitor a closed institution, such as a prison, a variety of skills may be required. For example, in addition to lawyers (of which NHRI usually have a good supply) medical and possibly psychological skills may be important. If these are not available in-house, the NHRI may need to hire outside experts as consultants. Attention should also be paid to issues such as the languages required and the gender composition of the team.

The modalities of the visit should be determined in advance. Some of the more pressing questions include:

- Is it necessary/desirable to notify the relevant authorities of the visit?
- Will it be necessary to give advance warning to potential witnesses?
- Will the visiting team identify itself publicly (for example by wearing some uniform item of clothing)?
- Who will be responsible for recording information gathered, and by what means?

This is not an exhaustive list. Going out into the world to conduct research is to expose the team to a whole range of variables that may throw any plan off course. But the more thought has been put into planning in advance, the easier it will be for the team to accommodate the unexpected
On-site visits

4/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

What is an on-site visit?

Anything that gets you out of the office!

Actually... a visit to a place where a human rights violation may have occurred, or might occur.
Why are on-site visits important

- More likely to identify new informants
- May identify new material evidence
- Will be able to judge if accounts are possible or plausible

Different types of on-site visit

- Investigating the scene of an alleged human rights violation
- Monitoring an event to observe (and protect human rights)
- Monitoring conditions (for example in a closed institution)
Investigating the scene of a human rights violation

Monitoring an event
Monitoring conditions

Group exercise

You are planning an on-site visit to:

Group 1: An immigration detention centre
Group 2: Monitor an anti-government protest
Group 3: Scene of alleged killing of civilians by army
Group exercise

Make a plan for your visit. Take into account issues such as:

• Composition of the visit team
• Security
• Equipment
• Notification of relevant authorities
• Etc...
MODULE 5: RECORD-KEEPING AND REPORTING

OBJECTIVES

☐ To emphasize the importance of record-keeping and documentation for NHRIs.

☐ To encourage NHRI investigators to ask the pertinent questions regarding accurate record-keeping.

☐ To identify the different elements and stages of record-keeping.

☐ To offer guidelines on reporting and documentation as a follow-up to investigative record-keeping.

EXERCISE

Participants could present a short report or summary according to the guidelines provided in the module. The report could be based on a fictional investigative files provided by a facilitator, or based on an actual case study.

RECOMMENDED READING

Facilitator's Notes: Record-keeping and reporting

This module addresses the important (and sometimes neglected) questions of how to keep records of human rights fact-finding and how to present findings when investigations are concluded.


1. Documentation and record-keeping

Accurate and scrupulous record-keeping is a crucial part of any human rights investigation. Any sort of human rights fact-finding is a team effort. Even if only one investigator is involved, the investigation is the collective responsibility of the institution and must pass into the institutional memory. In practical terms, it may be necessary to share information between co-investigators or to hand over the investigation from one person to another. Even if it remains in one person’s hands throughout, an accurate record of what is found will be essential.

If the investigation results from a complaint to the NHRI, then the nature of the complaint (and the complainant) should be recorded in a standard format. However, not all NHRI s have standard methods for recording the progress of an investigation after an initial complaint. And, of course, some investigations may not be prompted by a complaint.

There is no right or wrong standard way of recording information in the file of an investigation. The important point is that each institution should establish a consistent way of documenting each investigation so that it will be immediately accessible to any staff member. (So, for example, information might be recorded chronologically or by type, but the method should be consistent across all files.)

If information is only recorded digitally, it is essential that this is securely backed up on a regular basis.

What should an investigative file contain?

- Legible notes of what the investigator did, when and what was found, including notes on interviews, phone calls and other communications with complainants, authorities, civil servants or government officials. These notes should be kept chronologically to create an investigative timeline. (Notes should be dated, indicate where the interview occurred, their author and a reference to the complaint they deal with and document every person contacted during the investigation.)

- Copies of all correspondence, including notice of the investigation to the authority and complainant, requests for information, records or testimony communicating the results and findings of the investigation.

- Investigative reports and responses from the authorities.

- Whether the complainant has waived any requirements to keep their identity confidential.
• Copies of records examined in the investigation. Copies should recreate the originals and follow the same order with all pages copied.

• Transcripts, tape recordings, or verified translations of testimonies, if made.

• Anything else discovered or developed during the investigation that would be helpful or needed if the investigation were transferred to another investigator or if the Ombudsperson chose to be briefed in detail on the investigation.

• A record of the time spent on each activity if required by the Ombudsperson.

[UNDP]

2. Using standard formats
A good practice used by many human rights investigators is to record information about human rights incidents using standard formats. Software is available to do this, but it can be most simply done using paper forms.

A standard format is simply a way of recording the essential features of an incident in a way that makes it directly comparable to other similar reports. A standard format would contain information identifying the informant/person involved in the incident, followed by basic data about the incident itself (date, place, nature of incident etc.). The purpose of this is to allow direct comparison with other such incidents. A full description, such as an interview transcript, can be appended. The advantage of standard formats is that they are a completely systematic form of record-keeping that allows the institution to identify patterns of abuse.

3. Security
The security and confidentiality of research records is an overriding priority for any human rights institution. In many instances, information is only provided on the understanding that the informant’s identity be kept secret (this is especially the case in the context of conflict). Even when no explicit assurance has been made to an informant, the investigator and the NHRI have a duty of care to all informants – as well as to those who are potentially implicated by their testimony – not to reveal such information.

4. Report-writing
A report of some sort will almost invariably be the outcome of an investigation. At the simplest level, the findings of an investigation into a complaint will have to be laid out and summarized to form the basis for the decision that the institution makes. Usually this report is not public, although it may be available to both the complainant and the authority complained against.

When the investigation is of a broader, more systemic character, a public report is almost always appropriate. Public reporting is part of the process by which the NHRI itself is held accountable, as well as being a way that the NHRI holds the authorities accountable.

The content of any adverse findings should be made available to the person/authority affected in advance of publication. This may entail showing them the entire report and seeking their comments or it may simply mean presenting them with the substance of the findings and giving them an opportunity to respond.
There is no template that applies to all public reports of investigations, but there are certain principles that will apply in most instances. A report should:

- Be written in clear, low-key and impartial language;
- Explain the matter under investigation;
- Explain the methodology and process of the investigation;
- Set out the relevant human rights and legal standards;
- Present the evidence discovered;
- Present the conclusions;
- Offer recommendations to any appropriate authorities.
Record-keeping and reporting

5/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

Storing information

• Need to identify storing strategy before information is gathered.
  – Means of recording may affect how information is gathered
  – Security considerations should be incorporated into planning investigation
What does an investigative file contain?

- Notes of the investigation – all steps taken.
- Copies of correspondence.
- Reports and responses from authorities.
- Interview transcripts.
- Copies of documents.

Using standard formats

- Standard formats allow comparison of a number of similar incidents.
- Allows analysis of patterns.
- But may not allow detailed analysis of individual case – other records must also be appended.
Sample form for recording information on torture or ill-treatment

Date: __________________  Registration number: ____________
Information compiled by: ________________________________
Interviews of witnesses: Yes by ___________ on ___________
Medical examination: Yes by ___________ on ___________
Photographs: Yes by ___________ on ___________

1. Victim information

Name: ____________________________________________
Date of birth: ___________ Sex: ________________________
Occupation: ______________________ Family status: ______
Address: _________________________________________
Nationality: __________________ Religion: _____________
Ethnicity: __________________ Physical description or picture: __________________

2. Location

Date and time of the incident: ______________________
Exact location: ____________________________
Province: ____________________________ District: ______
Town/village: ____________________________
Street address: ____________________________

3. Nature of the incident

Description of the torture or ill-treatment:
_________________________________________________________________________
_________________________________________________________________________

4. Nature of the injuries

Description of injuries:
_________________________________________________________________________
_________________________________________________________________________
5. Alleged perpetrators
Names: .........................................................
Unit: ..........................................................
Officer in charge: ...........................................

6. Evidence
Witness: ................................................................
Forensic evidence: ...........................................
Court record: ....................................................
Other (video, photographs etc): ...........................

7. Complaints
Was a complaint lodged? No Yes
If yes, where? ..................................................
By whom?

8. Official response
Was an investigation conducted? No Yes
If yes, by whom? ...............................................
when? ..........................................................
Did the case reach court? No Yes
If yes, which court? ...........................................
when? ..........................................................
Did public officials make any statements on the case? if so, what?

(Adapted from Monitoring and Investigating Torture, Cruel, Inhuman or
Degrading Treatment, and Prison Conditions, Amnesty International and
CODESID, 2009)

Winevsys: an example of an electronic standard format
Martus: another example of an electronic standard format

Create reports in Martus
Security of records

All records involving individual records must be kept securely.

Digital records may be encrypted.

Paper records should at least be under lock and key.

Public and confidential material should be kept separately.

Sensitive material such as medical records should usually be kept separately from main file.

Encryption:

What does it look like?

What you see:

What they see:
Public reporting

- Public reports are almost always appropriate (except for individual complaints).
- They allow the public to hold the NHRI accountable, as well as the NHRI holding the authorities accountable.

Reports should...

- Be written in clear, low-key and impartial language;
- Explain the matter under investigation;
- Present the conclusions;
- Present the evidence discovered;
- Set out the methodology and process of the investigation;
- Present the evidence discovered;
- Offer recommendations to any appropriate authorities.
MODULE 6: NATIONAL INQUIRIES

OBJECTIVES

☐ To provide a brief overview of a relatively new and significant form of fact-finding; national inquiries.

☐ To recognise the benefits and importance of NHRIs to carry out national inquiries.

☐ To determine the various steps that comprises a national inquiry.

☐ To present a basic outline as a starting point for each of the steps pertaining to a successful national inquiry.

EXERCISE

In pairs or small groups, participants could draft objectives and terms of reference for a national inquiry as per the steps listed in the module.

Alternatively, participants could also draft a national inquiry plan based on case studies provided by a facilitator.

RECOMMENDED READING


Additional reading to be added

Facilitator's Notes: National inquiries

A possible group activity for this module would be for participants to draft objectives and terms of reference for a national inquiry and/or to make an inquiry plan.


This session introduces a distinct and important type of investigation that national human rights institutions have developed: the national inquiry. The national inquiry has evolved primarily in the Asia-Pacific region under the influence of the Australian Human Rights Commission, which has pioneered this mode of investigation since the late 1980s. The national inquiry is intended as a response and an alternative to the individual case focus that
dominates the work of many NHRI. A national inquiry is aimed at addressing broad,
ystemic human rights problems that are either the subject of many complaints to the NHRI
or, in some instances, not particularly covered by complaints but nevertheless of great
importance. National inquiries are particularly useful for addressing social and economic
issues. They are sometimes referred to as public inquiries and one of their distinct
characteristics is that the investigation process is largely carried out in the public eye.

1. Why hold a national inquiry?
Professor Brian Burdekin was the Australian Human Rights Commissioner and one of the
initiators of the national inquiry process. (He later became a key figure in the promotion of
the Paris Principles and NHRI.s worldwide.) He offers nine reasons why national inquiries can
be useful.

1. A national inquiry is a way of dealing with multiple individual complaints — including
those that may never have been lodged with the NHRI because of ignorance or fear.
2. The terms of reference should be developed in consultation with NGOs and the
community. This increases public understanding of the NHRI role — and vice versa.
3. Public hearings are a very cost-effective way of educating the public and particular
groups in society (such as politicians) about human rights generally and the
particular issues under investigation.
4. A national inquiry is often the most effective way to address systemic violations of
human rights.
5. The process helps the NHRI to effectively carry out its function of advising
government on laws and policy.
6. Through the process of evidence-gathering, the NHRI can increase its practical
cooperation with other bodies.
7. National inquiries tend to underline the indivisibility of human rights, including the
indivisibility of civil and political, and economic, social and cultural rights.
8. National inquiries are very effective way of applying the standards in international
human rights law to national situations.
9. The increased community awareness through the public inquiry process maximizes
the possibility that the NHRI’s recommendations will be followed.

National inquiries are particularly useful for addressing issues that are complex and multi-
dimensional. As point 7 indicated, they tend to stress the interrelatedness of different
human rights. These features mean that national inquiries often address economic and
social rights. Sometimes this offers a chance to bring a rights-based approach to subjects
that are not commonly understood to be human rights issues.

The Australian Human Rights Commission has identified 14 steps in the process of
conducting a national inquiry:

- Choose the issue
- Prepare a background or scoping paper
- Identify, consult and engage stakeholders
- Draft objectives and terms of reference
- Appoint Inquiry Commissioners and staff

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• Gather other resources
• Finalize an inquiry plan
• Obtain information: research and evidence
• Conduct public hearings
• Develop recommendations
• Prepare the report
• Release the report
• Follow up
• Evaluate

There is not time within this short module to look at each of these steps in detail, but the remainder of the session will consist of a brief look at each of these steps.

2. Choosing the issue
The issue to be investigated should be a problem that has widespread impact and national importance. When the issue involves gross human rights violations, such as torture or extrajudicial executions, the absolute number of cases need not be so large, since the seriousness of the problem is so great. The issue will need to be one where public interest can be engaged, because the distinguishing characteristic of this type of investigation is that it is largely conducted in public.

3. Prepare a background paper
The purpose of the background paper is to conduct preliminary research that will determine whether a national inquiry is the appropriate form of investigation and whether it is feasible. The Asia-Pacific Forum of NHRIs suggests the following contents of such a paper, which should:

• Provide an overview of the situation to be addressed;
• Outline the international human rights law that is relevant to the situation;
• Outline the domestic or local law that is relevant to the situation;
• List the particular matters requiring investigation during the course of the inquiry;
• Indicate some options for the results of the inquiry;
• Describe how the inquiry will meet its human rights education objectives;
• Set out the timetable for the conduct of the inquiry;
• State the resource requirements;
• Summarize the views of NGOs and other relevant stakeholders concerning the inquiry.

Of course, one outcome of the paper may be that the NHRI decides not to go ahead with the inquiry.
4. Consult with stakeholders
There are potentially a large number of stakeholders – groups with a particular interest in the subject of the national inquiry. The victims of the human rights violations under investigation are obviously the most important group. Additionally, there will be relevant government agencies, non-governmental organizations and other groups in civil society, the mass media, and of course those alleged to be responsible for the violations.

It follows that not all stakeholders will have the same attitude towards the inquiry – they will vary from the supportive to the openly hostile. Since the national inquiry is a public process, it will be important that there is sufficient support to ensure that the investigation can move forward. And it will be necessary to develop strategies to address those who are not supportive of the process.

5. Objectives and terms of reference

<table>
<thead>
<tr>
<th>Investigation</th>
<th>To find out what is going on, the nature and extent of a pattern of human rights violation and make accurate findings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Analysis</td>
<td>To determine the underlying causes of a pattern of human rights violation.</td>
</tr>
<tr>
<td>Information</td>
<td>To ensure that both the public and key stakeholders are better informed about and more aware of the particular issue.</td>
</tr>
<tr>
<td>Education</td>
<td>Through examination of the issue, to increase understanding of human rights generally and commitment to better human rights observance.</td>
</tr>
<tr>
<td>Finding</td>
<td>To make accurate findings and conclusions based on research and evidence.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>To develop proposals for action to remedy the pattern of violation and prevent future violations.</td>
</tr>
<tr>
<td>Empowerment</td>
<td>To support victims of human rights violation.</td>
</tr>
</tbody>
</table>

Clear objectives and terms of reference are important to the planning – and hence the effective execution – of the inquiry. The Asia-Pacific Forum suggests the following as possible objectives:

Terms of reference could be as follows:

- Issues to be addressed.
- Information or evidence to be collected.
- Who will conduct the inquiry.
- Organizations and persons, or categories of each, to be consulted.
- Tasks to be performed.
- Powers able to be used.
- Areas for recommendation, including the types of recommendation to be made and the persons and organizations to whom the recommendations may be directed.
- Timetable, especially a reporting deadline.
6. Appoint inquiry commissioners and team
The members (or commissioners) of the inquiry are the public face of the inquiry and provide the main strategic direction. Usually at least one member of the NHRI (a commissioner or Ombudsman) will be a member of the inquiry, usually as chairperson. In addition, there are likely to be outside members, chosen for their expertise in the particular issue under investigation, as well as recognized independence and integrity.

The inquiry staff will do much of the practical investigative work. They will have to cover four areas of expertise:

- Administration and management;
- Research and writing;
- Community liaison and relations;
- Media liaison and communications.

There will need to be a director who is responsible for the inquiry secretariat.

7. Gather other resources
First and foremost, the inquiry will need an adequate budget. This will need to cover the costs of staff, equipment and premises (assuming these are separate from those of the NHRI itself), as well as the funds for public hearings. Consideration will have to be given to what equipment is needed – for example recording equipment for the hearings, as well as cameras etc.

8. Finalize an inquiry plan
A plan for the inquiry should be finalized once the inquiry team is in place. Finalizing the budget is part of developing the plan. This will set out a detailed methodology and timetable for the whole process.

9. Obtain information: research and evidence
The research process is a necessary precondition for the public hearings that form the core of the inquiry. It begins with a literature review to establish what research has already been conducted and what evidence is already available. Beyond that, the inquiry team will need to identify information gaps and set about filling them with their own research. Most importantly, this research will focus on gathering hard data, whether this is statistical information or identifying those who can provide first-hand testimony.

In addition, the inquiry team will need to review relevant legislation and government policies, as well as identifying what are the appropriate human rights standards.

An important part of this phase is identifying and encouraging those with relevant knowledge to submit it to the inquiry. Wherever possible, this should be through written submissions, which will make it easier to plan the public hearings.

10. Conduct public hearings
Public hearings are the distinguishing feature of national inquiries. Much of the investigative work of NHRI is done in private. For example, investigation of individual complaints is almost always conducted out of the public eye. Even investigation of some widespread and
systemic problems may sometimes be performed confidentially, for example because this is necessary in order to gain access to relevant information or to protect the victims of human rights violations. A national inquiry, by contrast, is conducted in public because it is intended that the public should both contribute to the inquiry and learn from it.

A public hearing is analogous to a judicial proceeding, in that it gives an opportunity to test the evidence of participants in the events under investigation. This process is not the same as a trial, however – witnesses are unlikely to collaborate voluntarily with a hearing where they may be subject to excessively hostile questioning. In addition, one of the important arguments for the public nature of the hearings is that it gives voice to the victims of human rights violations.

There may be instances where (as occasionally with judicial proceedings) it is inappropriate to hear evidence in public. These instances should be exceptional and undertaken only as a last resort.

As a practical matter, it is unlikely that it will be possible to hear evidence from everyone who wishes to testify. It will be necessary to identify and prioritize those who are to participate.

- Victims of human rights violations clearly have priority.
- Witnesses to human rights violations are also extremely important.
- If allegations are made against specific individuals, they should have the chance to rebut these. (However, since a national inquiry is not about individual cases, it is not the aim of a hearing to put alleged wrongdoers “on trial.”)
- The relevant governmental authorities should have the opportunity to explain the policy choices resulting in the systemic problems under investigation.
- Others with expert knowledge – such as academics and civil society organizations – should also be consulted.

11. Develop recommendations
The investigation of an individual case aims at resolving the problems of the individual – possibly, but not necessarily, through a recommendation from the NHRI to the authorities. The aim of a national inquiry is to effect general policy changes through general recommendations. These recommendations will address the following issues:

- Remedies for the victims;
- How to address human rights violations revealed by the inquiry;
- How to prevent future violations (for example through legal or policy changes);
- How to educate the public about the subject of the inquiry.

It is important that the recommendations developed by the inquiry have a basis in the factual findings made in the course of the research and hearings. The authority of the findings and their potential adoption by the authorities will depend upon this. The recommendations must also be anchored in international human rights standards.

It is often said that recommendations should be SMART:

- Specific
- Measurable
- Achievable
• Relevant
• Timely

It is generally preferable to have a small number of clear recommendations, with a priority among them. This way they are far more likely to be implemented.

12. Prepare the report
All national inquiries must produce a report. While the process of the public hearings is at the heart of the inquiry, the report is the lasting legacy. A great amount of thought needs to go into this. While the report obviously cannot be written in advance, the shape and structure should be considered as part of the planning process. That way, it will be easier to gather the relevant information through the research and hearing phases.

In a formal sense, the report is addressed either to the government or to parliament, depending on exactly how both the NHRI and the inquiry itself is established.

The report will summarize the evidence gathered and provide a voice to the victims of human rights violations. It will present the relevant provisions of international human rights law and explain the findings of the inquiry by analyzing the relationship of the evidence to the legal standards. It will then offer recommendations to the relevant authorities.

It is important that the report be written and presented in a clear and popular format, since the aim will be to give it wide public circulation. Particular consideration will have to be given to special local considerations that may improve accessibility, such as producing the report in minority languages.

13. Release the report
Publicizing the release of the report is aimed at ensuring a wide readership but also, most importantly, promoting the recommendations so that relevant authorities actually feel that they are required to respond. Launch events should be planned to ensure that the report reaches both the authorities and those – first and foremost the victims – who are the subjects of the report.

14. Follow up
Publication of the report should never be seen as the end of the process. As with any other recommendation made by an NHRI, work continues to ensure that there is a response (preferably favourable) from the authorities. This will involve advocacy, both publicly and directly with the authorities concerned, as well as monitoring of their response.

15. Evaluate
As with all activities, the NHRI seeks to learn from the experience and improve its skills and competence through evaluation. The criteria for evaluation should always be set as part of the planning process – not formulated after the end of the activities – and may be carried out continuously through the process. For example, it would make sense to evaluate the public hearings while they are still going on in order to improve them.

While much of the evaluation process would be internal, for a large project such as this there are strong arguments for budgeting for an external evaluator who can assess the entire experience against criteria developed by the NHRI itself.
National inquiries

6/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

What is a national inquiry?

An investigation into an issue widely understood to be of national importance that has systemic causes and can be framed as a human rights issue. Most of the inquiry process is conducted publicly.
<table>
<thead>
<tr>
<th>Why hold a national inquiry?</th>
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<tbody>
<tr>
<td>• Can deal with multiple individual complaints</td>
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<tr>
<td>• Increases public understanding of NHRI role</td>
</tr>
<tr>
<td>• Cost effective way of educating public on human rights in general and issue under investigation in particular</td>
</tr>
<tr>
<td>• Most effective way to address systemic violations</td>
</tr>
</tbody>
</table>

| Helps NHRI advice government on law and policy |
| Evidence-gathering increases cooperation with other bodies |
| Inquiries underline indivisibility of rights |
| Effective way of applying international law |
| Public awareness increases adherence to NHRI recommendations |
Why hold a national inquiry?
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• Helps NHRI advice government on law and policy
• Evidence-gathering increases cooperation with other bodies
• Inquiries underline indivisibility of rights
• Effective way of applying international law
• Public awareness increases adherence to NHRI recommendations

14 STEPS TOWARDS CONDUCTING A NATIONAL INQUIRY

Step 1: Choose the issue

• Widespread impact and national importance
• For gross human rights violations (eg torture) absolute number of cases need not be great – but usually larger for ESC rights
• It must be possible to engage public interest in the issue
Step 2: Prepare a background paper

- Provide an overview
- Outline applicable international law
- Outline applicable national law
- List matters requiring investigation
- Indicate some possible results of the inquiry

- Describe how the inquiry will meet its educational aims
- Set out a timetable for the inquiry
- Identify resource requirements
- Summarize the views of NGOs, government and other stakeholders on the issue under investigation
Step 2: Prepare a background paper

• Provide an overview
• Outline applicable international law
• Outline applicable national law
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• Indicate some possible results of the inquiry
• Describe how the inquiry will meet its educational aims
• Set out a timetable for the inquiry
• Identify resource requirements
• Summarize the views of NGOs, government and other stakeholders on the issue under investigation

Step 3: Consult with stakeholders

• Victims
• Alleged perpetrators
• Government authorities
• NGOs
• Mass media
• Others?

Step 4: Objectives and terms of reference

Investigation  Analysis  Information
Education  Finding  Recommendation
Empowerment
Terms of reference

- Issues to be addressed
- Evidence to be collected
- Who will conduct the inquiry?
- Who will be consulted?
- Tasks to be performed
- Powers that can be used
- Areas for recommendation
- Timetable

Step 5: Appoint commissioners and staff

- Ombudsman/commissioner + external experts
- Director

- Administration and management
- Research and writing
- Community liaison
- Media liaison
Step 6: Gather other resources

- Budget must be adequate to cover:
  - Staff
  - Equipment
  - Premises (if separate)
  - Public hearings

Step 7: Finalize an inquiry plan

- Budget
- Detailed methodology
- Timetable
Step 8: Obtain information – research and evidence

- Literature review
- Identify information gaps

- Review laws
- Review policies

- Research to gather missing evidence
- Identify those who can give evidence

Step 9: Conduct public hearings

Victims of human rights violations
Witnesses to human rights violations
Alleged perpetrators (opportunity to rebut)
Relevant government authorities
Other experts
Others?
Step 8: Obtain information – research and evidence

- Literature review
- Identify information gaps
- Review laws
- Review policies
- Research to gather missing evidence
- Identify those who can give evidence

Step 9: Conduct public hearings

- Victims of human rights violations
- Witnesses to human rights violations
- Alleged perpetrators
- (opportunity to rebut)
- Relevant government authorities
- Other experts
- Others?

Step 10: Develop recommendations

- Remedies for the victims
- How to address human rights violations
- How to prevent future violations
- How to educate the public about the issue

SMART recommendations

Specific
Measurable
Achievable
Relevant
Timely
Step 11: Prepare the report

- Plan report from the start
- Summarize evidence
- Voice for victims
- Relevant human rights law
- Recommendations
- Clear and popular format

Step 12: Release the report and Step 13: Follow up

- Launch events
- Promote recommendations
- Require response from government
- Monitor actions taken
Step 14: Evaluate

- Build evaluation into planning process
- Set evaluation criteria in advance
- Internal and external evaluation
MODULE 7: MONITORING VISITS

OBJECTIVES

- To introduce a general overview of the general principles of a monitoring visit; especially for the benefit of NHRIs not designated as National Preventative Mechanisms.
- To provide a basic outline of the principles pertaining to the planning, conduct and follow-up of monitoring visits of enclosed places.
- To supplement pre-existing guidelines on establishing a monitoring programme for NHRIs.
- To identify potential challenges facing NHRIs in the conduct of such visits.

EXERCISE

In pairs or small groups, participants could develop a plan to visit a specific type of closed-institutions. Depending on the length and complexity of the exercise, the module could be extended to a double session.

RECOMMENDED READING


Additional reading to be added

Facilitator's Notes: Monitoring visits

*For NHRIs that have been designated as National Preventive Mechanisms under the Optional Protocol to the Convention Against Torture (OPCAT), there are relatively plentiful training events (and training materials), provided by organizations with a particular expertise in this area. This 90-minute module cannot pretend to compete with such specialized training materials. However, it may be of use to NHRIs in two ways. First, those that are not NPMs should still be engaged in visiting closed institutions and may not have access to the same range of training resources. For them this module may be useful. Secondly, those who have received more extensive training in monitoring visits could use this module as a way of revising the lessons already learned (and integrating these with some of the points made in other modules about evidence and corroboration).*

*It is suggested that part of the module be an exercise in which participants are required to make a plan for a visit to a specified type of closed institution. Depending on the length and complexity of the exercise, the module could be extended to a double session.*
This module focuses on general principles and the planning, conduct and follow-up of a monitoring visit. Because of time limitations it does not examine in detail many of the specific issues that might be explored during a visit such as torture, physical conditions, medical services, and so on. Nor does it look at the specific characteristics of different detention places. The Association for the Prevention of Torture has several manuals that could provide the basis for further training on these issues.


There are many circumstances in which an NHRI may enter a place where people are deprived of their liberty. Most obviously, fact finders may need to investigate an alleged violation of human rights. This module is not primarily about such circumstances, although it probably contains information that would be useful to an investigator entering a closed institution in any circumstance. It is primarily directed at monitoring visits, of which visits aimed at preventing torture or other forms of ill-treatment (including poor conditions) are the most obvious example.

A note on terminology: for the sake of clarity and consistency, we will use the terms “detainee” and “detention” to describe anyone deprived of his or her liberty and the fact of being deprived of liberty respectively. It is understood that detainee has different meanings in different legal systems (and is usually used of those who have not been brought to trial). In this module, we use the word to refer to everyone involuntarily deprived of liberty (including those who are not part of the criminal justice at all, such as those held for immigration reasons or in secure medical facilities).

When we talk about “monitoring” in this context, the focus is inevitably on the actual visit to the place of detention. However, it is important to understand that monitoring the rights of detainees must also address the laws, policies and resources governing places of detention and those housed within them.

1. Basic principles of monitoring places of detention
   1. Do no harm: Protection of detainees is the primary aim. Confidentiality must be maintained and visits must be properly planned and executed.
   2. Exercise good judgment: Monitors must understand the standards that are applicable but must also be able to exercise flexibility and good judgment in relation to whatever they encounter in the course of a visit.
   3. Respect the authorities and the staff in charge: Custodial personnel are performing a job that is demanding, socially undervalued, and often poorly paid. Sometimes individuals are responsible for inappropriate or even abusive behaviour, but most problems actually result from systemic issues. Treating staff with respect is both courteous and more likely to be effective.
   4. Respect the persons deprived of liberty: The rights of the detainee are paramount, whatever the reason for their being deprived of liberty.
   5. Be credible: Monitors should explain clearly to both staff and detainees the objectives and limitations of their work.
6. **Respect confidentiality:** The ability to conduct interviews in private and then to protect that privacy in all subsequent dealings is crucial to the effectiveness of monitoring.

7. **Respect security:** The authorities are responsible for the security of visitors. They may attempt to use this to restrict monitoring activity. It is for monitors to decide whether to follow this advice. They should behave in a manner that respects security, but also does not accept unjustified security concerns as a reason for the compromising the confidentiality or effectiveness of monitoring.

8. **Be consistent, persistent and patient:** Monitoring seldom achieves overnight results. Any progress will be the result of patient work over a long period, with persistent attention to follow-up actions.

9. **Be accurate and precise:** It is important to collect sound and precise information in order to be able to develop concrete recommendations.

10. **Be sensitive:** It is particularly important to understand the needs of people who may have undergone ill-treatment or torture.

11. **Be objective:** The purpose of monitoring is to document facts; monitors should treat everyone, staff and detainees, with courtesy and consideration.

12. **Behave with integrity:** The guiding principles behind monitoring are the international human rights standards and these alone should determine the activities and judgments of monitors.

13. **Be visible:** Monitors should ensure that staff and detainees know who they are and wear a badge or other visible means of identification.

(Adapted from Association for the Prevention of Torture, *Monitoring places of detention: a practical guide* )

2. **Establishing a monitoring programme**

Monitoring visits seldom take place in isolation. Usually an NHRI is responsible for monitoring all places of detention (or all places in a particular category) and for doing so repeatedly. (Repeat visits are essential to ensure that recommendations are implemented.)

The monitoring programme will need to establish a number of points:

- Establish the legal authority for NHRI’s visits. This should include powers of unimpeded entry, including for unannounced visits, immunities for NHRI members and staff, and the right to private interviews with detainees;
- Identify all places of detention where the NHRI has the authority to visit;
- Determine whether visits should be announced or not;
- Determine the order of the visits;
- Determine the frequency with which visits will be repeated.

Many of these questions can only be answered with reference to the resources available to the NHRI. Many institutions, even those with NPM status, find themselves without enough resources to conduct regular visits to all places of detention. This means that it will be necessary to establish criteria for assigning priority to different places of detention. Some of things to be taken into account are:
• Whether there are known to be problems in any given institution (or type of institution), for example through complaints submitted to the NHRI;
• Whether the detention places contain particular vulnerable groups;
• Whether it is possible to make a cross-section of different types of detention places.

The most important resource of all, of course, is personnel. Human rights fact-finders often have a legal background. The presence of a lawyer who is familiar with the applicable standards and regulations is important, but a variety of other skills are also needed. Most important of these is the presence of a medical doctor. It is unlikely that there is such a person on the NHRI staff, but it is important that the institution is empowered to hire external experts to join visiting teams. A psychologist is often useful too. For specialized places of detention, it will be important for members of the team to have knowledge of the specific characteristics and standards (for example, a psychiatrist would be a useful member of a team visiting a secure mental hospital, someone familiar with criminal procedure for visiting a police station and so on).

It has been found to be very important to have a good gender balance in the team. It is self-evident that it will usually be most appropriate for female members of the team to interview women detainees. But it has also been found that women may be more effective interviewers of men in some circumstances. In other words, representation of women on the visiting team is not just about “political correctness.”

Depending on circumstances, it may be important to have team members who are from ethnic or national minorities. Consideration should always be given to necessary language skills. Sometimes it will be necessary for visiting teams to work with interpreters, but it is preferable if this can be avoided.

Visiting teams will vary in size depending on the places to be visited. The team should never be smaller than two people. It is preferable to have a large team (say about eight people) with a variety of skills that can be broken down into smaller groups in the course of the visit.

And of course, thorough training of visitors is necessary. As far as possible, inexperienced visitors should be assigned to more experienced teams.

3. Preparing a visit
Occasionally a visit will have to be organized hurriedly in response to an emergency. But the general rule should be that all visits are thoroughly prepared, in order that they are effective and that the maximum use is made of the visit itself.

The first step is to review all existing information about the place of detention to be visited. If it has been visited before, then reports of previous visits should be studied closely in order to identify issues and see what recommendations have been made (in order that these be followed up). Whether or not there has been a previous visit, it is important to assemble all available information from a variety of sources. An obvious first place to look is in the records of complaints submitted to the NHRI. If the visit is not going to be unannounced, it may be possible to receive advance information from the detention centre itself or from the responsible government authority. Other sources might be reports from NGOs or the media. Lawyers and families of detainees are also likely to have useful information.

A thorough review of all available sources will help to identify potential issues to be investigated and allow the NHRI to formulate a plan. The first question is the purpose of the
visit: is it a general visit, a follow-up to look at specific issues, or something else? This will help to determine other practical questions, such as who should be on the visiting team and how long is likely to be required for the visit.

Before the visit begins there must be a detailed checklist of issues to be answered on the visit and a preliminary division of responsibilities among the team members.

4. Conducting the visit

The length and scale of visits can vary enormously, from a matter of minutes (in the case of a small police station) to days or even weeks (for large prisons). Some basic principles are constant, however.

The NHRI should have the power to conduct unannounced visits – if it is an NPM under the OPCAT this will be a legal requirement. The purpose of this, clearly, is to be able to use visits to get the clearest possible picture of how the detention place normally operates. However, there may be practical considerations that sometimes make unannounced visits less desirable. On an initial visit, for example, it may be helpful not to antagonize the authorities by arriving unannounced. (It may also be that the authorities in the place of detention will not be aware of their legal obligations.)

The first stage of the visit will usually be to meet the head of the place of detention. (An exception would be in the case of frequent repeat visits.) The APT sets out the following “agenda” for this first meeting:

- Introduce the visiting mechanism and the members of the visiting team;
- Explain the meaning and objectives of the visits;
- Explain the working methods used, in particular the absolute need to talk in private with the persons deprived of their liberty and, if possible, the members of staff looking after them;
- Explain the use that will be made of the information collected;
- Reassure the person in charge of the place as to the behaviour of the members of the team during the visit (respect for rules and security regulations);
- Explain how the visit is to unfold and how long it will last;
- Request information about the place of detention, including whether there are any groups of prisoners with special needs (for example, deaf prisoners, prisoners with other disabilities) and whether there have been any notable changes or events (particularly violent incidents, deaths or other emergencies) since the last visit;
- Ask for the opinion of the person in charge regarding:
  - The conditions of detention and the persons in their charge,
  - Any problematic aspects of these conditions and their causes,
  - His or her own proposals for improvements;
- Fix a meeting to talk about the results of the visit.
At an early stage of the visit, the team should look at the various registers and other documents kept by the administrators of the place of detention. Most importantly this would include the register of people detained. There should also be incident logs detailing any unusual events or problems that have arisen, disciplinary records (in prisons) and information on material supplies, such as food and medical supplies. On a first visit, it would also be important to see a staff list, working schedules and internal rules.

Especially on a first visit, it is very important to see all parts of the premises. The reason, obviously, is to ensure that the authorities are not hiding anything. But it also helps to give the visiting team a general understanding of the detention centre. It will be possible to identify the different parts of the place and to get an initial impression of the mood of staff and detainees. While everywhere should be visited, APT suggests that the following have priority:

- The place where detainees are received and processed on arrival;
- Isolation cells and disciplinary cells;
- The sanitary installations;
- The cells and dormitories.

APT also points out that the team can ask detainees where the worst places are and visit them. The visitors can also use detainee interviews to make sure that places are not being hidden from them.

The most important part of the visit is individual interviews with detainees. These must be conducted in conditions of privacy – which means that while the interview may be within sight of staff, it should never be within hearing. Of course, while detainees should not be forced into interviewing, best practice is to interview all or as many as possible of the inmates. This not only allows the maximum potential for gathering and cross-checking information, but also helps to protect the anonymity of sources. If only a small number are interviewed, these detainees may be at greater risk of reprisals after the visit.

It is important for visitors conducting the interviews to explain the purpose of the visit. This helps to manage the expectations of interviewees. If the purpose of the visit is to monitor conditions, then detainees should not be allowed to believe that the visitors are able to secure their release, for example. It will also be helpful to work from a checklist or questionnaire, to make sure that the interviews find answers to all the questions identified as aims of the visit. However, the interviewers should also seek to make the exchange as informal as possible, making sure that detainees have the opportunity to raise the issues that they think important.

It is worth considering the lessons of the module on interviewing skills and the points we made earlier about the composition of the team. Working with interpreters may present a particular challenge and it is vital that only those who are capable of the highest professional standards are employed.

Sometimes visiting teams have a group talk with detainees. It will be a matter of judgment for the visiting team whether this is appropriate, for example by determining if there is an oppressive atmosphere that could result in reprisals, or at least in a reluctance of detainees to speak freely.
It is very important to make time to talk with members of the staff of the place of detention. This can be used to discreetly cross-check information gathered (never identifying sources, of course) and to understand their perception of the detention place, the detainees, their own conditions of work, and any problems. It is also a way of building up trust, which is important for a continuing monitoring process.

Finally, there should be a concluding meeting with the head of the detention place. In part, this is a courtesy call to offer thanks for facilitating the visit. But it will also be important to share first impressions from the visit and to explain what the next steps are. Any urgent matters (such as a finding of torture or serious ill-treatment) should be raised at this meeting. As with the opening meeting, the length and dynamics of this will vary depending on whether this is a first visit or not.

5. Follow-up
There must always be follow-up. The visit is not an end in itself (although sometimes the visit process can result in improvements). The visiting team must process and analyse the information gathered. Particularly in a larger place of detention and with a larger team, it will only be after the visit that there will be any proper opportunity to share information and make findings from the visit. These must always be written up in the form of an internal report. All findings and material gathered should be stored for future reference and preparation for the next visit.

Best practice also requires the submission of a report to the management of the place of detention visited and/or the government authorities responsible. This should set out the basic facts about the visit (when, who and how) and summarize findings and observations. It is good practice to identify some aspects for praise, even (or perhaps especially) when there are many negative findings.

It is also important that there are clear recommendations for improvement. These should be prioritized according to urgency, as well as feasibility. For example, if there is deliberate ill-treatment going on, this will have to be addressed immediately (and should already have been raised at the end of the visit). Improvements to the physical infrastructure are likely to have to wait to the medium or long term. Keep recommendations realistic, clear and measurable.

It should also be made clear to the various authorities that the NHRI will continue to monitor conditions in the place visited. The aim is to open a process of dialogue with the authorities to drive improvements.

Whether the report is public or private is a tactical question. The OPCAT requires that NPMs be able to publish their reports without government approval. It is good if a general principle is established that reports are always published. This aids transparency and overcomes the idea that publication is a hostile act.
Monitoring visits to places of detention

7/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

Terminology

• “Detainee” and “place of detention” – being used to cover all persons deprived of their liberty
• Monitoring visit – may or may not be under OPCAT – purpose is general monitoring of conditions/treatment, not investigation of individual cases
Basic principles of monitoring places of detention

• Do no harm
• Exercise good judgment
• Respect the authorities and staff
• Respect persons deprived of liberty
• Be credible
• Respect confidentiality
• Respect security

• Be consistent, persistent and patient
• Be accurate and precise
• Be sensitive
• Be objective
• Behave with integrity
• Be visible

(Association for the Prevention of Torture)
Basic principles of monitoring places of detention

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- Be credible
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- Be accurate and precise
- Be sensitive
- Be objective
- Behave with integrity
- Be visible

(Association for the Prevention of Torture)

ESTABLISHING A MONITORING PROGRAMME

- Establish legal authority for NHRI visits
  - Unimpeded entry
  - Unannounced visits
  - Private interviews with detainees
  - Immunity etc
- Identify all places of detention

• Establish legal authority for NHRI visits
  – Unimpeded entry
  – Unannounced visits
  – Private interviews with detainees
  – Immunity etc
• Identify all places of detention
• Determine whether visits should be announced or not
• Determine the order of the visits
• Determine the frequency of visits

Important criteria

• Are there known problems? (eg from complaints submitted to NHRI)
• Does the detention place contain particular vulnerable groups?
• Is it possible to make a cross section of different types of detention place?
Assembling a visiting team

• NHRI staff (including lawyers)
• External experts (including medical personnel)
• Gender balance
• Language skills
• Varying size and expertise for different places

PREPARING A VISIT
Review all existing information

- Reports of previous visits
- Complaints to NHRIs
- NGO and media reports
- Data from authorities (if visit will be announced)
- Information from former detainees and families

Establish purpose of visit

- General?
- Follow-up?
- Focused on a specific issue?
Finally...

- Create a checklist of questions/issues
- Decide how long the visit will last
- Establish a visit team with appropriate skills

CONDUCTING THE VISIT
Meet the head of the place of detention

- Introduce the NHRI and visiting team
- Explain objective of visit
- Explain working methods
- Explain the use that will be made of information
- Reassure on the visiting team’s behaviour

- Explain how the visit will unfold and how long it will take
- Request information about the place of detention
- Ask for the head’s opinion about any problems
Inspect documents

• Detention registers
• Incident registers
• Work schedules
• Internal rules
• Material supplies (eg food, medical)

Priority places to visit

• The place where detainees are received and processed on arrival;
• Isolation cells and disciplinary cells;
• Sanitary installations;
• Cells and dormitories.
• But go *everywhere* on a first visit.
Interviewing detainees

• Privacy – can be visible but not within hearing
• Interview as many as possible
  – Brodest possible picture
  – Protect confidentiality
• Explain purpose (ie not to resolve individual cases)
• Use checklist/questionnaire, but keep interview informal and responsive
• Group talks may work in some circumstances
• Also interview staff

Concluding meeting with head

• Courtesy call – thank you for the visit
• Share first impressions
• Raise any urgent problems
• Explain what happens next
Interviewing detainees

- Privacy – can be visible but not within hearing
- Interview as many as possible
  - Broadest possible picture
  - Protect confidentiality
- Explain purpose (i.e., not to resolve individual cases)
- Use checklist/questionnaire, but keep interview informal and responsive
- Group talks may work in some circumstances
- Also interview staff

Concluding meeting with head

- Courtesy call – thank you for the visit
- Share first impressions
- Raise any urgent problems
- Explain what happens next

FOLLOW-UP

Internal report
- Store all material gathered
- Report to authorities
- Publication?
  - Recommendations (Prioritize according to urgency and feasibility)
- Follow-up visits
MODULE 8: MONITORING COMPLIANCE

OBJECTIVES

- To identify the two distinct categories of human rights’ monitoring.

- To establish the nuances of the overall methodology of monitoring and evaluation.

- To recognise the role and feasibility of NHRI involvement in the monitoring and evaluation process.

- To recommend supplementary engagement mechanisms for NHRIs to participate in monitoring compliance in the form of shadow reporting in conjunction with other relevant stakeholders (e.g. civil society organisations).

EXERCISE
In pairs or small groups, formulate a plan to research a shadow report on compliance with one of the state’s human rights treaty obligations.

Preferably, all states present should be party to the treaty selected (e.g. Convention on the Rights of the Child).

RECOMMENDED READING

Additional reading to be added
Facilitator’s Notes: Monitoring compliance

It is suggested that this session comprise a very short presentation, followed by an exercise in which participants (probably in small groups) formulate a plan to research a shadow report on compliance with one of the state’s human rights treaty obligations. If the workshop is a multi-country group, then it would be preferable to select a treaty that all present are party to (Convention on the Rights of the Child or, possibly, Convention on the Rights of Persons with Disabilities). One of the two general Covenants might be too broad a task for this exercise.


In the introductory session on basic human rights fact-finding techniques, we noted that the term monitoring is used in two distinct ways in the human rights context. The word sometimes describes the process of first-hand monitoring (as in prison monitoring or election monitoring). But it is also used to describe the process of determining how far a state is compliant with its human rights obligations, either generally or in relation to specific treaties. This is akin to the use of the word in the phrase “monitoring and evaluation.”

Monitoring in this sense is not a single technique of fact-finding, but an overall methodology that combines a series of different methods. What are the methods that an NHRI might use to determine compliance with human rights obligations?

- **Legal analysis:** This is usually the starting point for compliance monitoring, since international human rights standards, whether contained in treaties, customary law or court rulings, generate legal obligations. The first question is what those legal obligations are and whether they have been translated into domestic legal standards of sufficient precision. So, it will be necessary to examine in detail what domestic statute law says on the relevant issues, but also to examine any cases that may have come before the courts. In some systems – notably common law systems – cases may be a way of translating human rights obligations into law through the doctrine of precedent. In all systems, case law will help to indicate how far statute law has been implemented in practice.

- **Policy analysis:** Many human rights do not rest only, or even mainly, on law for their implementation, but require extensive policy reform. This is most obvious with economic and social rights, but is not exclusive to them. It will be important to identify what developments in policy the government has initiated and how far these have been carried out in practice.

- **Budget analysis:** One of the best ways of measuring a government’s commitment to human rights is to discover how much money it is spending. This applies most obviously to economic and social rights, but applies across the board. (Some civil and political rights, such as having an effective and independent judicial system, are also expensive.) As discussed in the module on ESC rights, budget analysis has become an important tool for human rights researchers.

- **Fact-finding on cases:** The monitoring process requires research not only at the macro level (law, policy and budget), but also at the micro level. In part, this means identifying cases that constitute a violation of the human rights under scrutiny (or
equally illustrations of increased respect for human rights). It will depend on which human rights are being examined how much weight is attached to individual cases. For gross violations of the person, such as torture or killing, any single case is of great importance in itself. For other types of rights, the individual case may be used to illustrate broader trends.

- **Systemic research**: While individual cases are important, they can potentially mislead. It is well established that the cases reported to NHRIs through individual complaint procedures are overwhelmingly about less serious violations of rights. In this sense, cases may understate the seriousness of problems. On the other hand, a small number of high profile serious violations may overstate them. Hence the job of the NHRI in its monitoring role is to conduct research that will give accurate information about the overall scope and dimensions of any given human rights issue.

The process of monitoring compliance is often bound up with producing shadow reports to be submitted to treaty monitoring bodies or the Universal Periodic Review. International and regional human rights bodies depend to a considerable extent on accurate and well-researched information from national actors, NHRIs above all.

Monitoring and shadow reporting can be an immensely time-consuming operation. Often the most effective way to conduct this is to work with civil society organizations and to divide responsibility for different aspects. This can either be combined into a single shadow report (with due acknowledgment to the organizations responsible for each section) or submitted separately. If the latter, then the NHRI will not be obliged to take responsibility for any statements made by NGO partners. However, the ideal outcome is a report (or reports) that presents a coherent and comprehensive account of the state’s performance on the issue under review.
Monitoring compliance with human rights obligations

8/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

Monitoring compliance is not a fact-finding technique but a combination of methods to determine whether a state is meeting its international obligations.

It is often used for shadow reports to treaty bodies.

It can be done in cooperation with civil society groups.
Usual techniques involved in monitoring

- Legal analysis
- Policy analysis
- Budget analysis
- Fact-finding on cases
- Systemic research

Legal analysis

- Relevant international human rights standards
- Does national law comply with those standards?
- What development has there been in national law?
- Cases as:
  - Law-making precedent, or
  - Evidence of how effective the law is in practice
Policy analysis

- What policies exist at national (and local) level?
- Do these adequately reflect human rights obligations?
- What happens in practice?

Budget analysis

- What is allocated to the various priorities identified in the policy analysis?
- Is this money actually disbursed?
- Can spending be disaggregated? (By sex, region, ethnicity etc)
Fact-finding on cases

- Not necessarily individual cases, but case studies
- In gross violations individual cases have special importance
- For all issues, cases can be used to illustrate broader trends.

Systemic research

- Individual cases do not necessarily illustrate the scale of the issue
- Complaints to NHRI often reflect less serious issues
- Additional research may be required to uncover extent of problems
MODULE 9: MONITORING SOCIAL AND ECONOMIC RIGHTS

OBJECTIVES

☐ To introduce participants to monitoring and research in the field of social and economic rights.

☐ To convey the methodological overlap between other fields of human rights fact-finding and social and economic rights.

☐ To provide a synopsis of the normative legal framework to deepen NHRIs’ understanding of state obligations.

☐ To present a non-exhaustive list of monitoring indicators for social and economic rights as a starting point for NHRIs.

EXERCISE

Participants could develop an indicator framework for a particular social or economic rights issue that is of relevance in their countries, apart from those listed in the module.

For instance, participants could choose targets and indicators contained in a Sustainable Development Goal as a template and modify those as necessary.

RECOMMENDED READING

Facilitator's Notes: Monitoring social and economic rights

This module introduces participants to monitoring and research in the field of social and economic rights (and attempts to convey that many of the same principles that apply to other fields of human rights fact-finding are still relevant in this field). An appropriate exercise might be for participants to develop an indicator framework for a particular social or economic rights issue that is of relevance in their country. One possible approach to this would be to take the targets and indicators contained in a particular Sustainable Development Goal as a template, asking participants to modify or add to these as they feel necessary.


It is commonly understood that not only are human rights universal; they are also indivisible. That is to say that human rights are not à la carte. States cannot choose which rights to uphold but have obligations to the entire body of rights. Civil and political rights do not come before economic, social and cultural rights logically, chronologically or hierarchically (or vice versa). This is reflected in the fact that most NHRIs have a broad human rights mandate that covers ESC rights, as well as civil and political rights. Equally, through their complaints function most NHRIs spend a great deal of time dealing with ESC rights at the individual level.

It is important to understand, therefore, that many aspects of research on ESC rights are little different from civil and political rights, especially when the focus is on violation of rights. Hence, skills learned or developed in other modules are equally important here. Some specific techniques, such as national inquiries or surveys, are of particular relevance for ESC rights.

1. The normative framework – respect, protect, fulfill.

As for any other aspect of human rights fact-finding, it is essential for NHRI investigators to understand the legal framework underpinning state obligations. For all rights – but especially in the economic and social field – these are commonly explained as follows:

- **Respect**: The state shall not itself violate the human rights of those within its jurisdiction;
- **Protect**: The state has primary responsibility to ensure that the rights of those within its jurisdiction are not violated by third parties, such as private companies;
- **Fulfill**: Where additional steps or resources are required for full enjoyment of rights, the state is responsible for realizing those rights, either directly in its own capacity or through mobilizing the resources of third parties.

It is worth keeping this in mind when considering the role of the NHRI in monitoring and researching.

The rights-based approach to development proceeds on the assumption that economic and social needs can always be expressed in terms of human rights and that, indeed, this is the preferred approach. However, in monitoring state obligations, there is nevertheless a distinction to be made between whether all people enjoy these rights and whether the state
has failed in its obligations. For this reason, monitoring economic and social rights is not simply a matter of collecting data on incomes, school enrolment or whatever – which should be happening anyway. It is rather about assessing the state’s commitment to its obligations in this field.

2. Official statistics

The NHRI will need to develop a strong relationship with the government statistical office. It will always be preferable to receive data directly from the statisticians rather than relying on government publications. (The experience here may vary widely from country to country; some have excellent, independent publications of official statistics, but others do not.)

A good relationship would also mean that the NHRI could provide advice, if necessary, on what data need to be collected. Manuals on ESC rights often stress the importance of disaggregated data. This means that, for example, we do not only talk about school enrolment for the entire population, but also break it down by sex, by geography and by ethnicity or nationality. However, what the manuals often do not say is that data can only be disaggregated if it was aggregated in the first place. In other words, the numbers have to be collected in the form that you ultimately want to see (by sex, geography etc). Otherwise, the statistical office will not be able magically to disaggregate.

3. Human rights indicators

One of the key tools that have been developed in recent years for monitoring ESC rights is the human rights indicator set. The UN Office of the High Commissioner for Human Rights has developed this set. (It actually covers all rights, but is particularly useful in relation to ESC rights.) The OHCHR indicator set has been subject to some criticism from academics, but the fundamental approach used is helpful in identifying fulfillment of human rights obligations, rather than mere social or economic data. The Sustainable Development Goals have a similar set of indicators attached to them.

The OHCHR indicators are divided into three categories:

- **Structural indicators** address the legal and normative framework both internationally and nationally. What instruments has the state ratified and what laws has it passed? Has it developed plans of action towards key targets?
- **Process indicators** are the steps taken by states to meet these obligations.
- **Outcome indicators** are what actually happens as experienced by the rights holders.

OHCHR gives this example to illustrate how this works:

- **Structure**: adoption of a plan of action for the implementation of compulsory primary education free of charge for all as stipulated in the International Covenant on Economic, Social and Cultural Rights, art. 14.
- **Process**: net primary enrolment ratio, disaggregated by prohibited grounds of discrimination, as applicable.
- **Outcome**: disaggregated literacy rates or average years of schooling.

This indicator framework has a number of advantages. For practical purposes, its chief importance is that it helps NHRI researchers identify what they need to know in order to evaluate a government’s progress in realizing ESC rights.
4. What to monitor?
OHCHR identifies the following as key areas to monitor in relation to ESC rights:

- What is the (national, regional and international) legal framework applicable to a particular issue?
- What are the entitlements of the rights holders and what are the corresponding State obligations? Which (local or municipal, national, federal) government institution(s) or power(s) are responsible for these obligations?
- Which individuals or groups are not able to enjoy their entitlements? Which population group, individuals or groups of individuals are particularly at risk?
- Why and how are they deprived of their entitlements?
- What specific violations can be identified?
- What are the measures taken to remedy the situation? (E.g., is there a policy framework, programme or judicial mechanism to address the situation? Is it implemented?)
- What is the impact of the measures taken? What other measures are required? Do different groups of the population require different or specifically tailored measures to prevent discrimination?

5. Monitoring budgets
As NHRIs know well from their own experience, the measure of a commitment to human rights is not just words but allocation of resources. For many rights, significant budget allocations are required to make them a reality. This is not only true of ESC rights. To have an effective justice system that allows redress against rights violations requires a massive expenditure of resources. However, budget analysis has developed as a skill particularly focused on assessing governments’ commitment to social and economic rights.

As with other data, it will often be important that budget numbers be available in disaggregated form. Failure to fulfil social and economic rights is often related to inequality, so we need to know, for example, not only the total national budget for primary health care, but also the allocation of that budget by region, town and community. Beyond that, we also need to know what was actually disbursed. Budgeting for social and economic rights often falls down in the gap between what is nominally voted and what is actually spent. The reasons for this gap may be various and must be researched and explained.

The following example from South Africa shows in outline how budget analysis works. The study, by IDASA, looked at budgeting for children’s socio-economic rights in five steps.

1. Establish whether there is a need for more spending on each socio-economic right for children and whether this could be funded from other sources (such as the market).
2. Establish the availability of resources for consolidated government budgets (at both national and provincial levels).
3. Budget input analysis:
   - How much is being allocated to programmes to realize children’s socio-economic rights?
   - Is there geographical inequity? Is there discrimination? Does spending target the poorest?
4. Budget output analysis:
   - Is output increasing, costs falling, and quality improving?
   - Is there discrimination in access to service? Is access being increased?
   - What steps is government taking to reduce discrimination and increase access?

5. Evaluate the government’s performance.

Monitoring budgets entails understanding the budget cycle. This will usually mean engaging with key actors, such as ministries responsible for delivering social and economic rights and, on occasions, supporting them in their quest for better resources. “The government” is not a single entity. Dialogue with actors within government will result in better information becoming available for the NHRI’s analysis and will allow the institution to lend weight to actors within government who are sympathetic to human rights aims.

6. Monitoring violations of economic and social rights

Much research on civil and political rights is aimed at documenting and ending violations. For human rights organizations of all types, ESC rights can seem challenging because they require a departure from this familiar methodology. Yet NHRLs can have considerable impact with a “violations-based” approach to economic and social rights. Indeed, as has already been noted, many NHRLs first engage with ESC rights through the complaints process. Members of the public come to the institution because there have been mistakes in their pension payment, their housing is inadequate, or their labour rights have been breached. These are violations of human rights. Systematic documentation of such violations is important because it helps to establish their cause – human error or systemic problems – and hence develop a solution. When such violations reach very serious proportions, systemic research methods such as a national inquiry can be very effective (see separate module).

One particularly effective way for NHRLs to approach economic and social rights is through the lens of equality and non-discrimination. Many NHRLs have an explicit mandate designating them as national equality bodies. Even those that do not have such an explicit mandate are nevertheless bound to uphold the principle of non-discrimination that lies at the core of international human rights instruments. The right not to be discriminated against is a free-standing one that applies in relation to the full range of social and economic issues. It also applies to non-state actors, such as private employers, as well as to the government.

7. Using the Sustainable Development Goals

Particularly in relation to economic and social rights, the Sustainable Development Goals offer an important framework for monitoring state commitments. The content of the SDGs overlaps considerably with the human rights instruments, but the particular significance of these goals is that they represent a current political commitment by states.

The SDGs are divided into 17 goals. Each of these goals is divided into a series of targets that, in turn, are measured by a series of indicators. These indicators are most well-developed in relation to those goals that relate to economic and social rights.

However, human rights researchers will inevitably find that the SDG indicators are still too broad for the purpose of monitoring ESC rights commitments, since they only measure outcome. They will have to be used in conjunction with the OHCHR indicators that also address the normative framework and, most crucially, the process by which governments progressively realize these rights.
The particular usefulness of the SDGs for NHRI is that they constitute a widely supported agenda that reinforces a number of important human rights. The importance of NHRI to the implementation of the SDGs is that they can play an independent role in monitoring states’ progress towards the goals. In particular, NHRI will focus on the principles of equality and non-discrimination that are central to human rights and are enshrined, especially, in SDGs 5 (gender equality), 10 (reduced inequalities), and 16 (peace, justice and strong institutions). This is encapsulated in the slogan “no one left behind.”

8. Working with civil society

The Paris Principles emphasize partnerships of NHRI with civil society as a central working method. This has particular importance in the sphere of economic and social rights generally and the SDGs in particular. One of the main reasons partnerships with civil society organizations are important for NHRI is that they offer a route to closer engagement with ordinary members of the public affected by human rights issues. This engagement is not always so easy for NHRI as official state bodies. So, for example, it will be much more effective for an NHRI to develop a programme of work in support of people with disabilities, if this is done in partnership with disability rights organizations. The additional reason in the sphere of ESC rights is that civil society organizations will have areas of expertise that are likely to be lacking in the NHRI itself. An example would be budget analysis – realistically, it is unlikely that an NHRI will have such expertise in-house, whereas a specialist NGO or a university probably will.

For the purposes of this training, we are talking about partnering with civil society organizations for fact-finding. However, partnerships on specific projects will always be easier and more effective if there is a broader strategic collaboration between the NHRI and civil society bodies. Many NHRI formalize this through a consultative body that meets periodically to discuss the institutions strategic priorities and broad areas of collaboration. This makes it easier to plan partnerships on specific projects. However, it is also important that the NHRI does not allow certain civil society groups to become “favourites,” simply because they are consulted regularly. The expertise required for particular specialized research may be found elsewhere than among regular partners.
Monitoring economic and social rights

9/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

Indivisibility of rights

- ESC rights are as important as civil and political rights
- Essential character of both sets of rights is the same
- NHRIs already deal with many ESC rights through complaints
- Many of the same fact-finding skills apply
- But there are some distinct skills related to research on ESC rights
The normative framework

- **Respect** – the state shall not violate rights
- **Protect** – the state protects against violations by other parties
- **Fulfil** – where additional resources are needed, state is responsible for mobilizing these

The rights-based approach

- Social and economic needs can always be expressed in terms of human rights – and this is the preferred approach.
- Monitoring ESC rights is hence not just about data (e.g., on income, health, education) but about state’s commitment to its obligations.
Official statistics

- Best to gather data directly from official statistical office
- NHRI can give guidance on what data would be useful
- Eg, data must be collected in disaggregated form (by sex, geography, ethnicity etc)

Human rights indicators

Structure: the legal and normative framework

Process: the steps taken to meet legal obligations

Outcome: what is actually experienced by the rights-holders
For example:

Structure: adoption of a plan of action for the implementation of compulsory primary education free of charge for all as stipulated in the International Covenant on Economic, Social and Cultural Rights, art. 14.

Process: net primary enrolment ratio, disaggregated by prohibited grounds of discrimination, as applicable.

Outcome: disaggregated literacy rates or average years of schooling.

What to monitor?

• What is the (national, regional and international) legal framework applicable to a particular issue?

• What are the entitlements of the rights holders and what are the corresponding State obligations? Which (local or municipal, national, federal) government institution(s) or power(s) are responsible for these obligations?
• Which individuals or groups are not able to enjoy their entitlements? Which population group, individuals or groups of individuals are particularly at risk?
• Why and how are they deprived of their entitlements?
• What specific violations can be identified?

• What are the measures taken to remedy the situation? (E.g., is there a policy framework, programme or judicial mechanism to address the situation? Is it implemented?)
• What is the impact of the measures taken? What other measures are required? Do different groups of the population require different or specifically tailored measures to prevent discrimination?

(OHCHR)
Monitoring budgets

• Allocation of resources is the test of commitment to human rights, not rhetoric
• Need to measure *disbursement* of resources, not just allocation
• Budget data needs to be disaggregated, in order to understand inequality
• Need to understand budget cycle and work with actors within government

An example: children’s ESC rights in South Africa

• Establish whether there is a need for more spending on each socio-economic right for children and whether this could be funded from other sources (such as the market).
• Establish the availability of resources for consolidated government budgets (at both national and provincial levels).
• Budget input analysis:
  – How much is being allocated to programmes to realize children’s socio-economic rights?
  – Is there geographical inequity? Is there discrimination? Does spending target the poorest?
• Budget output analysis:
  – Is output increasing, costs falling, and quality improving?
  – Is there discrimination in access to service? Is access being increased?
  – What steps is government taking to reduce discrimination and increase access?
• Evaluate the government’s performance.

Monitoring violations of ESC rights

• Most NHRIs already do this through complaints procedures
• “Violations-based” approach harmonizes with approach to civil and political rights
• Systemic inquiries into broad patterns of violations
• Using equality and non-discrimination as a cross-cutting approach
Using the Sustainable Development Goals

“No one left behind”

• NHRIs can focus on equality and non-discrimination – an underlying aspect of all NHRIs’ work.

• Focus on SDG 5 (gender equality), SDG 10 (reduce inequalities), and SDG 16 (peace, justice and strong institutions).
Advantages of the SDGs

• Comprehensively addresses all important ESC rights
• Strong political commitment from states
• Identifies targets for each goal
• Identifies indicators for each target

Disadvantages of the SDGs

• Goals and targets not always framed in human rights terms
• Hence indicators only address outcomes, *not* structure (normative framework) or process
• Therefore need to develop additional indicators or use OHCHR framework
Civil society partnerships

- Stressed by Paris Principles as key to NHRI work.
- Importance of strategic alliances – eg consultative councils
- But also tactical work tapping into NGO expertise (in exchange for NHRI influence).
Civil society partnerships
• Stressed by Paris Principles as key to NHRI work.
• Importance of strategic alliances – eg consultative councils
• But also tactical work tapping into NGO expertise (in exchange for NHRI influence).

Question for discussion
What are the advantages and obstacles to effective partnerships with civil society?
MODULE 10: PHYSICAL EVIDENCE

OBJECTIVES

☐ To provide a general overview on the importance of physical evidence in an NHRI fact-finding investigation.

☐ To establish the chain of events relating to securing physical evidence during an investigation.

☐ To identify the various kinds of physical evidence that NHRI investigators may encounter.

☐ To offer recommendations on how to handle the aforementioned physical evidence as an NHRI investigator.

EXERCISE

No exercise is necessary, however facilitators may set up mock crime scenes as an outdoor activity.

RECOMMENDED READING

Facilitator's Notes: Physical evidence


1. What is physical evidence?

Physical evidence is anything that is tangible – that can be touched or held – that may have some relevance to the investigation. It could be a sample of earth from the banks of a polluted river. It might be a computer hard drive or the SIM card from a mobile phone. It could be cartridge cases found at the site of a mass grave. It might be a cassette tape or a memory stick. It could be an instrument of torture from a prison. It might be semen recovered during a medical examination, or blood spatter on the wall of a prison cell. It could be a disk with CCTV footage loaded onto it. It might be a fragment of a bone. It might be a “trophy” photograph found in someone’s possession. It could be any number of things that relate to the issue(s) being investigated.

APF, Undertaking Effective Investigations: A Guide for NHRIs

Unlike police investigators, for example, NHRI fact-finders are unlikely to make regular use of physical evidence. However, as the list above suggests, the range of types of such evidence is great, so even, for example, those researching social and economic rights might sometimes use physical evidence (the example of the earth sample in the list above). Normally, if NHRI investigators uncover evidence of a crime, they would report this to the police who would be responsible for the custody and analysis of physical evidence. (However, the NHRI should first secure the scene to make sure that evidence is not removed or tampered with.) There may, however, be situations (such as conflict and lawlessness) where the police cannot or will not investigate. In such a situation, it will fall to the NHRI to do its best to investigate, which will include managing physical evidence.

2. Securing the scene

Whether the NHRI itself is investigating or (more likely) the police, for certain types of physical evidence – such as evidence of a violent crime – the scene will have to be secured by whoever arrives first.

Modern crime scenes are secured on the principle that anyone entering or leaving the scene will inevitably bring and remove something. At the most basic this would be something like dirt or vegetation on the soles of shoes. Modern scene-of-crime investigators therefore wear disposable body suits, including hoods and gloves, to reduce this exchange of materials to the minimum. It is precisely this trace evidence – hair, blood, dirt, fingerprints, track marks or whatever – that is so important to an investigation and which must therefore be disrupted to the absolute minimum. The outer perimeter of the scene should be secured and then no one unauthorized should be allowed to enter. “Authorized” in this context means only those with skills to examine and analyse the evidence.

In principle, the same approach applies whatever the nature of the scene. If it is a suspected mass grave that dates from decades previously, it will still need to be analysed properly.

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And next...

Once the scene has been secured, one of three things will happen:

- The police will arrive, preferably with specialist scene-of-crime officers and necessary forensics experts (such as pathologists, fingerprint specialists, ballistics experts etc).
- Or, in the absence of the police, the NHRI team will itself summon available forensic scientists. In that instance, the NHRI investigators will have to allow themselves to be guided by the experts and conduct their own investigation.
- Or, in the absence of either police or forensic experts, the NHRI investigators will have to make a visual record of the scene (meaning measurements, sketch maps, photographs and videos) and bag up any evidence and take it with them for later analysis.

If the NHRI investigators themselves have to take charge of the inquiry, then "bagging" of evidence will be important. Physical evidence should be put in a plastic bag (handled using plastic gloves – so these will have to be taken on the investigative mission) and sealed. Each seal should have a unique number.

3. Keeping a visual record

We mentioned how important it was to keep a visual record through sketches, maps, photographs and videos. This applies above all if the NHRI is taking charge of the investigation – that is, in situations where the police are unable or unwilling to investigate. But this sort of visual material is a vital record in almost every type of investigation, research or inquiry that an NHRI conducts.

In addition to crime scenes, a visual record will enhance the NHRI’s investigation of:

- Torture or other physical injuries – allowing a medical assessment, even if a medical professional is not present to examine the victim;
- Poor conditions – the authorities in prisons and other closed institutions may not allow photography (though the NHRI should insist, if possible), drawings and sketch plans will provide an immediate and contemporaneous record of what is observed.
- Environmental damage – again, sketch maps are invaluable, while photographic and video evidence can document pollution and other phenomena.
- Monitoring public events – a video record (and photographs and maps) can be an effective way of recording the conduct of participants and law enforcement officials.

Participants can probably think of more examples....

The use of photography and video recording has become much easier with the advent of digital technology. The photographer-investigator no longer has to worry about how many rolls of film to bring. With large capacity memory cards, the number of photographs that can be taken is, for all practical purposes, limitless.

Remember also that digital cameras always date stamp an image (even when that stamp is not visible) and in most modern cameras also have a GPS option that make it possible to identify the location where the image was taken. These settings should always be enabled because they are extremely important for evidentiary purposes.
4. Chain of custody
In police investigations, there should be a clear record of the chain of custody of pieces of physical evidence, in order to minimize the possibility of tampering. NHRI investigators will need to understand how this works – because they will have sometimes to evaluate police investigations and also because, in the exceptional circumstances we have described, they may also have to create a secure chain of custody themselves.

5. Digital evidence
Police investigators worldwide rely increasingly on various types of digital evidence. This may range from online communications (emails, social media etc), through cellphone data (GPS evidence showing the location of persons at any given time), to surveillance material (such as the digital records of closed circuit television cameras). In one respect, this has proved a highly beneficial development. It has been observed to reduce the reliance of the police on confession evidence, which has in turn reduced the use of threats, ill-treatment or even torture to secure statements from witnesses or suspects. On the other hand, the widespread availability of this sort of data raises other types of human rights concern – namely the issue of privacy. One of the reasons for NHRI investigators to understand the gathering and handling of digital evidence is in order to be able to monitor and evaluate police investigations. With reference to human rights law (and national privacy or data protection law), it will be important for the NHRI to work out its position on the privacy issues raised by monitoring digital data.

There may also be circumstances – using its powers to compel the production of evidence – when the NHRI itself uses digital evidence. Clearly, as with other forms of physical evidence, considerable expertise is required to secure and analyse digital data. Many of the same rules apply, notably that digital evidence must be secured and kept in a chain of custody to ensure that it is not tampered with. (It is remarkable how often evidence such as closed-circuit videos “go missing” when police or custodial officials are under investigation.)

6. Documents
NHRI are usually highly accustomed to working with documents. Very often an investigation begins (and sometimes ends) with an exchange of documents between the NHRI and the body under investigation. Documents may also become physical evidence showing what was known, done or recorded at a particular moment. This is true even though most documents are in digital form (in addition to or instead of being printed on paper).

The Asia Pacific-Forum of NHRI suggests a list of criteria for determining the authenticity of documents:

- Is it a document that would normally have been created in these circumstances?
- When was it created?
- Is the document dated and, if so, what level of confidence can be placed on the accuracy of that date?
- Was it created before or after the event(s) under investigation?
- If it is not dated, why not?
• How does the document fit in with other related documents? If it is numbered, is it the right number for the sequence of documents in which it was found?

• How does the document fit in with all the other evidence that has been gathered?

• Are any signatures genuine?

• Does it have the “ring of truth” about it?

In addition, a computer forensic analyst would usually be able to tell when a document was created (which may be important if it is suspected that the document was fabricated later). And a forensic document analyst will be able to perform a similar job in determining the authenticity of a paper document.

The APF then goes on to list some questions that the investigator should ask once it has been established that the document is genuine:

• Who wrote it?

• For what purpose was it written?

• Who was involved in drafting it?

• Who had input into it?

• Whose cause does it help?

• Who had an opportunity to change it?

• Is there bias in the way the document is written?

• Was it written under duress?

• How accurate are any facts included in the document? Does it contain information that is within the direct knowledge of the author or does it report what others have said – in other words, does it include hearsay evidence?

• Are there facts that the author should have known and included in the document but did not?

• What is the overall tone of the wording?

• Are any conclusions supported by the facts?

• Are there grounds to believe that it is a document created to protect certain people within the organization?

The most important thing is to read all documents with the utmost care. The good investigator does not skim through documents when they may be potential evidence, but reads ever line, word and footnote, assessing what is meant and what is missing.

7. Facilitating the experts

Much work with physical evidence has to be conducted by highly trained scientists or other experts. However good an investigator is, they cannot substitute for the education and training that allows someone to be a pathologist, a ballistics expert, a computer analyst or a
document analyst. Any attempt by an amateur to do this work will cause possibly irreparable damage to an investigation. However, the human rights investigator is by no means redundant in the investigation of physical evidence. To start with, it is usually the investigator who actually locates physical evidence before handing it on to the forensic experts for analysis.

However, there is a broader point too. One of the basic principles of investigation is to find multiple sources and to corroborate or triangulate evidence. Despite what may be suggested by some television portrayals of “forensics,” these scientific methods often only serve as corroboration of evidence that is gathered in much more low-tech ways.

For example, the investigation of mass killings and “disappearances” has been revolutionized by the use of forensic anthropology. In recent years, the development of relatively cheap technology to match DNA has taken this to another level. But it is important to understand that anthropological analysis of skeletal remains can only really serve to confirm (or deny) an existing hypothesis about the fate of the victims. This hypothesis will have to be established by investigators working assiduously and systematically to discover what happened to those who died, using other methods at their disposal (notably interviews). Above all, of course, DNA matching is also testing a hypothesis – that the uncovered remains are related to a living survivor. It is up to the investigators to identify that survivor to be tested.
Physical evidence

10/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

What is physical evidence?

• Sample from a polluted river
• Computer hard drive
• SIM card
• Bullets or cartridge cases
• Bone fragment
• Fingerprint
• Etc, etc
Usually if NHRI investigators uncover evidence of a crime, they summon the police. But there be circumstances where they do not or cannot. In any event, they need to understand how to keep evidence secure.

Securing the scene

- Secure the perimeter with tape
- Control who comes and goes
- Body suits (or at least gloves)

in order to avoid transfer of trace evidence.
Next, one of three things...

- The police will arrive, with necessary scene of crime experts, *or*
- In the absence of the police, NHRI will bring in its own forensic scientists, *or*
- In the absence of police and forensic scientists, NHRI investigators must do their best...

In the third case...

- Take photographs and videos and draw sketch maps of the scene.
- Note (on maps) the location of all evidence, including measurements.
- Bag and seal evidence to be removed.
Keeping a visual record

• Sketches
• Maps
• Photographs
• Videos

• Use date stamps and GPS on digital images to verify time and place that evidence is gathered.

What can be photographed?

• Torture or other physical injuries
• Poor conditions
• Environmental damage
• Public events
• And many other things...
Chain of custody

• Need to understand chain of custody in order to monitor police investigations.
• Need to have own chain of custody procedures if physical evidence is stored by the NHRI.

Digital evidence

• Online communications
• Cellular phone data (including GPS)
• Closed circuit TV
• Hard drive contents etc
• Privacy issues
• Need to secure digital evidence, as with physical evidence
Documents

- Is it a document that would normally have been created in these circumstances?
- When was it created?
- Is the document dated and, if so, what level of confidence can be placed on the accuracy of that date?
- Was it created before or after the event(s) under investigation?

- If it is not dated, why not?
- How does the document fit in with other related documents? If it is numbered, is it the right number for the sequence of documents in which it was found?
- How does the document fit in with all the other evidence that has been gathered?
- Are any signatures genuine?
- Does it have the “ring of truth” about it?

(Asia-Pacific Forum of NHRIs)
Supporting the experts

NHRIs cannot have all this expertise in house. It takes years of training to be a forensic scientist and it should not be attempted without that training.

But NHRI investigators are crucial in providing other evidence (especially witness testimony) that can corroborate forensic science.

Zimbabwe: researchers take a DNA sample from a relative of a disappeared person
MODULE 11: ADVANCED RESEARCH TECHNIQUES: SURVEYS & FOCUS GROUPS

OBJECTIVES

- To provide a deeper understanding of advanced research techniques.
- To recognise the merits of borrowing methodological techniques from various disciplines.
- To familiarise participants with the different approaches to fact-finding, both qualitative and quantitative.
- To expose participants to the potential challenges and skillsets required in the conduct of advanced research; namely in the following:
  - Focus group discussions
  - Surveys

EXERCISE

In pairs or small groups, participants could conduct a focus group discussion on particular human rights issues.

Alternatively, they could design a survey questionnaire.

RECOMMENDED READING
Facilitator’s Notes: Advanced research techniques: surveys and focus groups

There are occasions, especially when researching economic and social rights, when NHRI fact-finders may need to borrow techniques from social science. This module introduces two methods, one qualitative, one quantitative. It should be stressed that this is only an introduction and that especially for quantitative survey techniques, researchers will need to refine their skills further before using such methods.

As an exercise in this session, it is suggested that participants, either in plenary or in small groups, conduct a focus group discussion. Alternatively/additionally, they could design a survey questionnaire.

1. Focus groups

Many NHRI s are probably already familiar with the term “focus group,” although it is a popular name that is not always used correctly. Focus groups are a qualitative method. They are essentially a form of group interview. However, because of the dynamics of the group, they tend to be much more open-ended than a normal interview. The key distinguishing factor is the interplay between members of the group. A focus group discussion can tell you not only what people think (which you can discover from a survey) but why they think it.

When to use focus groups

It must be stressed once more that focus groups are qualitative not quantitative. There is no value in saying things like “75% of focus group participants thought…” A focus group is useful for in-depth studies of what the public, or a particular section of it, think about a particular issue. An obvious example of when an NHRI might use focus groups would be to discover what the public knows and thinks about human rights. Focus groups are most used by companies that want to know what the public thinks about products and by political parties that want to know what the public thinks about policies. The sorts of uses in the human rights sphere are likely to be analogous. (It might be useful to have a brainstorming discussion on topics that could be discussed by focus groups.)

You might also use focus groups in circumstances where a survey would be too expensive and unwieldy. Although the NHRI would need to hold several different focus group discussions, this could still be a much more convenient method than a survey.

In addition, focus groups are often reconvened periodically, either in order to find out the same group’s views on different issues or to discover if views on the same issue have changed over time.

Sometimes researchers use focus groups to get more in-depth qualitative information on quantitative survey data that they have already gathered.

How are focus groups selected and how big are they?

Selection of a survey sample should always be random. For focus groups, by contrast, the method is almost the opposite. Rather than selecting participants who are completely unconnected, the aim would be for each group to have something in common. So, for example, if an NHRI were interested in public views about the fairness of media coverage in
an election campaign, they might select focus groups from places of work, parents at a particular school, residents in one street and so on. The aim is that the selection criterion is a cross-cutting one that has nothing to do with the subject under discussion. The intention is also that participants know each other already, or at least have something in common that will make it reasonably easy for them to discuss freely. Alternatively, demographic characteristics such as gender or age can be used to select.

Focus groups usually consist of about 6-12 people, small enough not to be intimidating and to give everyone a chance to speak, but large enough to contain a potential diversity of views.

**The focus group session**

The discussion is led by a moderator, who should have experience of conducting such discussions and (preferably) also a good understanding of the issue under discussion. If the moderator is experienced with focus groups but has no knowledge of the issue, they will have to brief themselves thoroughly on the research aims. If they know the issue but have little experience of moderating, then they will need training and practice.

A focus group usually lasts between two and three hours (certainly no longer). It should be conducted in a relaxed and comfortable atmosphere (with refreshments, for example).

The moderator leads the discussion by asking *open* questions — that is, ones where a variety of different answers are possible. Closed yes/no questions are not suitable in this context (the group will be finished very quickly!). It is also important that questions are not *leading*. The group should not think that there is a “right” or “wrong” answer.

The best strategy is to begin by asking easier, more general questions. Also, depending on the topic, not to start with any questions that may be perceived as more intimate or personal.

The aim is not to ask each participant the same question successively, but rather to open up a discussion in which participants will respond to each other’s answers and take the discussion forward.

The American Statistical Association (ASA) suggests that the moderator opens the discussion in the following way:

- Explaining the purposes of the focus group
- Laying down some basic ground rules to encourage everyone to participate in the discussion
- Reassuring the participants about the voluntary and confidential nature of their participation
- Introducing the moderator and any co-moderators and explaining how and why these group members were invited to participate (e.g., what they may have in common)
- Stating the purpose of note-taking and recording.

The final point needs elaboration. Clearly some record needs to be kept of the discussion. The ASA recommends either audio or video recording, although the drawbacks may be
impracticality or participants feeling inhibited about what they say. Manual note-taking can preserve confidentiality, but risks distorting what is said. One possible strategy is to use a flipchart to take notes. That way, participants can see what is being noted and correct the record if their remarks are misinterpreted. A combination of different methods is ideal.

**Advantages and disadvantages**
The ASA suggests a list of advantages of focus groups:

- A wide range of information can be gathered in a relatively short time span.
- The moderator can explore related but unanticipated topics as they arise in the discussion.
- Focus groups do not require complex sampling techniques.

But there is a corresponding list of disadvantages:

- The sample is neither randomly selected nor representative of a target population, so the results cannot be generalized or treated statistically.
- The quality of the data is influenced by the skills and motivation of the moderator.
- Focus groups lend themselves to a different kind of analysis than would be carried out with survey results. In surveys, the emphasis is on counting and measuring versus coding/classifying-sorting, in a focus group.

2. Surveys

Surveys are a quantitative tool that are not often used by NHRLs, but could be used more, especially when addressing economic and social rights. Surveys are also useful, as we shall see, in helping the NHRI to understand its own relationship with the public.

However, surveys are complicated. They are difficult to design. Writing survey questions requires particular skills. It is hard to obtain a random sample of the population being studied. And analysis of findings requires some statistical knowledge.

**Descriptive and analytic**
There are broadly two types of survey – descriptive and analytic. The descriptive survey simply gathers information about the population being studied. A census is an example of a descriptive survey (though of course one in which everyone, rather than a random sample, responds). A relevant example of a descriptive survey would be a client questionnaire to members of the public who file complaints with an NHRI. Such a questionnaire would normally seek basic information about the complainant – demographic details plus how the complaint was filed, how the person knew about the NHRI etc.

An analytic survey is aimed at discovering why people behave as they do or what they think. This is clearly much more difficult to do. If you add to your client questionnaire a question about how satisfied the complainant is with how their complaint was handled, this is then analytic. (Actually, this is not usually a good question – satisfaction tends to be determined above all by the outcome of the complaint.)
**Gathering data**
Survey data is usually gathered by one of two methods: interviews or self-administered questionnaires.

The obvious advantage of interviews is that the response rate will be much higher. For a small survey, this may be the best way to go, but for a larger one the time spent may be prohibitive.

Self-administered questionnaires are sent to people in some form or other – nowadays very often through the Internet. The advantage is that this is much more straightforward to administer, but response rates may be lower.

As an example, a self-administered questionnaire was sent to a number of NHRIs when the content of this training course was being developed. It was aimed at uncovering what training resources NHRIs had at their disposal and how they perceived their training needs. The response rate was less than 100% but the information gathered was still very useful.

**Survey questions**
It may be helpful to think back to the interviewing module and identify different types of question. Usually surveys ask closed questions. They seek a predefined answer – yes or no is perhaps the most common. A multiple-choice question asks the respondent to identify one out of a group of potential answers. Likert scale questions ask the respondent to rank their response on a scale of five points (or more or less). This allows the researcher to quantify opinions.

Arthur Asa Berger identifies the following characteristics of good survey questions:

- Clear and unambiguous
- Short
- Simple language
- One piece of information per question
- Unbiased
- No leading questions
- Not embarrassing for respondents
- Ask questions that the respondent can answer
- Questions are in a logical order
- Scales for measuring opinion are clear (for example a Likert scale)

It is always a good idea to do a pilot run of a survey questionnaire to see if the respondents see the questions as meeting the above criteria. Also, this helps you discover if you have left anything out. This is surprisingly difficult (and potentially a good workshop exercise).

**Sampling**
For descriptive data, sampling may not be necessary. For a client questionnaire (as for a census) you will ask everyone to respond. For analytical surveys, you will need to identify a sample that stands as representative of the entire population that you are interested in. ("Population" is a technical term that just means the total group that you are concerned with – it will usually not be the whole population of the country.)
Truly random sampling is not straightforward in any circumstance, but may be especially difficult when the population concerned is potentially affected by human rights violations. Ideally, you will have a list of the identities of your entire population. These will then be assigned anonymous identifiers (such as numbers), which can then be selected randomly. The larger the number selected, the more they will represent the whole, although beyond a certain point there are diminishing returns.

Very often, for human rights research, a simple random sample is not adequate in any case. If you are dealing with a mixed or heterogeneous population (for example including minority groups) you may wish to ensure that they are included in your survey in proportion to their weight in the whole population of interest. In that case you will need to make a stratified random sample. This means that you will need to identify the groups by their distinguishing characteristic (say, membership of a minority) and then sample randomly within that.

Another alternative, which is slightly more straightforward but less accurate, is cluster sampling. This entails sampling within certain parts of the population you are interested in – for example, only in certain towns or villages and not others.

**How do we make sense of the findings?**

The assumption here is that NHRI are only likely to conduct relatively small-scale surveys (such as the example of the client questionnaire). Any national level research of this kind would require market research or academic experts. But it will still be important to know if the findings can be trusted. In the case of a descriptive survey, the process is straightforward as described above. For an analytical survey based upon a sample, there are some further things to consider.

A survey based upon a random sample will always have a *margin of error* – this is simply random error to do with how representative the sample was in fact. As noted, a larger sample will mean less error. Roughly, a sample of 350 people has a margin of error of 5%; at 1500 people this reduces to 3%. This error is plus or minus, so a margin of 5% means that there is a total range of 10%. Whether this is a large or small margin depends on the purpose of the survey. If it is, for example, a survey of voting intentions, then it is rather large. For the type of subject that an NHRI might survey – something like public use of education or health facilities – it may be sufficiently accurate.

Remember, surveys based upon samples are about probability, not certainty. They infer a general finding from a specific finding. This is imperfect and tentative. It is, however, likely to be more accurate than any of the alternatives.

**A story: the man who didn’t like sampling**

There was once a man who did not believe in sampling and campaigned against it up and down the country. He emphasized all the dangers... pointing out in particular that sampling was necessarily based on probabilities rather than on certainties, so that you could never really be sure that your conclusions were correct. One day he was due to give a lecture on the evils of sampling in a nearby town. He got up, and went down to breakfast. His egg did not look too good, so he tasted a bit of it, found that it seemed all right, and finished the lot. He put his hand outside the door, felt that it was raining, and decided to take an umbrella. He looked in the rack for a magazine to read in the train, thumbed through one or two, found one that looked interesting, and put it in his pocket. When the train pulled into the station he chose
the carriage that looked the cleanest, and travelled to the nearby town. He went to
the lecture hall, and gave his anti-sampling lecture, which was received with
rapturous applause by an audience of about a hundred people. ‘How did it go?’ his
wife asked him when he got home again. ‘Wonderful, wonderful,’ the man replied,
‘it’s obvious that there’s a very strong feeling in the country against sampling.’

Advanced research techniques

11/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

This module introduces two social science techniques that NHRI researchers can use. For advanced social research, it would be advisable to secure help from academic experts.
FOCUS GROUPS

• Qualitative
• Group discussion
• Open-ended
• *What* people think – but also *why* they think it.
When to use focus groups

• To supplement survey findings with in-depth information
• When surveys are expensive or unwieldy
• When the questions to be asked are complex (eg, what does the public think about human rights)
• Focus groups are often reconvened at regular intervals.
• To be valuable, there should be several different focus groups convened in parallel.

How are they selected? How big are they?

• Selection is not random. Usually groups have something in common (eg, same workplace, place of residence etc).
• Can select by demographic characteristics (eg, sex, age)
• Focus groups are usually 6-12 people.
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• Focus groups are usually 6-12 people.

The focus group session
• Discussion led by moderator
• Usually last 2-3 hours – no longer!
• Asks open questions.
• Not a group interview – don’t ask the same question to everyone.
• Encourage participants to respond to earlier answers.
• Do not ask leading questions.

Keeping a record
A detailed record must be kept by some means
• Video recording
• Audio recording
• Note-taking
• Flip-chart

What are the advantages or disadvantages of each?
Advantages of focus groups

• Wide range of information in a short time
• Moderator can explore new, related topics that arise in discussion
• Do not require complex sampling techniques

Disadvantages of focus groups

• Sample is not random or representative – results cannot be generalized.
• Quality of data influenced by skills of moderator.
• Results cannot be counted – must be coded and classified.
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• Quality of data influenced by skills of moderator.
• Results cannot be counted – must be coded and classified.

SURVEYS

Surveys are complicated

• They are difficult to design.
• Writing survey questions is a skilled task.
• Random sampling is hard.
• Analysing findings requires statistical knowledge.

However, they provide useful data...
Two types of survey

• Descriptive: gathers information about the population being studied (e.g., a census, a client survey).
• Analytic: tries to discover what and why people think what they do.

Gathering data

• Interviews
• Self-administered questionnaires
Two types of survey

- Descriptive: gathers information about the population being studied (e.g., a census, a client survey).

Gathering data

- Interviews
- Self-administered questionnaires

Survey questions

- Clear and unambiguous
- Short
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- One piece of information per question
- Unbiased
- No leading questions
- Not embarrassing for respondents
- Ask questions that the respondent can answer
- Questions are in a logical order
- Scales for measuring opinion are clear (for example a Likert scale)
Sampling

• Random
  – Selected by assigning every member of the population an anonymous identifier. Everyone has an equal chance of being selected.

• Stratified random
  – When you need to ensure that certain groups (eg gender, ethnicity) are represented.

• Cluster
  – Easier, because only portions of the population are polled.

Making sense of the findings

• How accurate are they? Roughly, sample of 350 will give margin of error of 5%
• Precise accuracy depends on purpose
• Probability not certainty
• “The man who didn’t like sampling”
MODULE 12: NHRI RESEARCH ETHICS

OBJECTIVES

☐ To offer a general overview on the broad spectrum of NHRI ethics considerations.

☐ To provide an overview of various ethical codes of conduct from other similar professional bodies, namely;

  o Lawyers
  o Medical Professionals
  o Academics
  o Journalists.

☐ To identify the potential confluences between NHRI ethics and other professional bodies.

☐ To propose a general look upon the OHCHR Code of Conduct as developed for its staff.

EXERCISE
Participants could come up with potentially unique ethical challenges that might face NHRI investigators.

RECOMMENDED READING
OHCHR Code of Conduct
Facilitator's Notes: NHRI research ethics

One of the threads that recur through several of the modules in this training package is the importance of human rights fact-finders adhering to the correct ethical standards in their work. But what exactly are these standards and where can they be found?

Most NHRI s (and other human rights bodies) have failed to develop their own codes of conduct or ethical codes. However, there are a number of other different types of professional bodies that have developed such codes for work that has something in common with fact-finding activities of NHRI s. In this module, we look at some examples of codes of practice from other professions in order to develop some basic ethical principles to guide NHRI fact-finding.

The following professional groups have developed their own codes of ethics:

- Lawyers
- Medical professionals
- Academics
- Journalists

In addition, the Office of the United Nations High Commissioner for Human Rights (OHCHR) also has a code of conduct, which we will discuss.

1. Lawyers

As professionals, all lawyers are bound to abide by certain ethical standards, usually laid down and regulated by a national professional body, such as a law society or bar association. The precise content of these codes may differ, but a consensus on the most important principles can be found in the UN Basic Principles on the Role of Lawyers. These are mainly focused on protecting the independence of lawyers, particularly from interference by the state. It is clearly important that defence lawyers in criminal cases, as well as those representing citizens who bring civil suits against the state, be able to conduct their activities free from state interference. But it is equally important that those who represent the state interest, such as prosecutors, adhere to strict ethical and professional standards.

Among the other principles contained in this document there are three that may be of relevance in thinking about the ethics of human rights investigations:

- Legality: the duty of lawyers at all times is to uphold the rule of law and the principle of legality.
- Best interests of the client: subject to the principle of legality, the lawyer is obliged to act in the best interests of his/her client.
- Lawyer-client confidentiality: this is to be maintained and protected at all times.

2. Medical ethics

The ethical obligations of medical practitioners (as distinct from medical researchers) are famously encapsulated in the Hippocratic Oath, with its obligation to do the utmost within the practitioner’s capacity to heal the sick. This is not of direct relevance to human rights
researchers – unless they happen to be medical practitioners, in which case their Hippocratic obligation may sometimes come to the fore.

A principle of more obvious relevance is “Do No Harm.” This is sometimes (incorrectly) described as being part of the Hippocratic Oath and is of almost equal importance. This may refer to the ethical obligation to refrain from medical research that may harm participants, but it also more broadly requires medical practitioners not to embark on reckless treatment of patients that may do more harm than good.

The “Do No Harm” principle has been adopted and adapted by humanitarian practitioners over the past 20 or 30 years. It is premised on the assumption that just because an intervention is well-intentioned, with the aim of benefitting (for example) the victims of a disaster, this does not preclude it from having harmful consequences. This seems to be an important approach that is equally applicable in the human rights field.

3. Academic research ethics

Academic researchers have developed sophisticated and complex procedures for determining whether their research is ethical. (Some might suggest these have become too complex.) The basic principles underlying academic research with human subjects are as follows:

**Autonomy:** This refers to the right of individuals to decide whether or not they will participate in research activities. Central to this is the notion of informed consent. This means not only that agreement to participate in research is voluntary, but also that it is based upon adequate information so that the individual understands what they are agreeing to take part in and what that participation entails. Informed consent becomes additionally problematic when potential participants are from vulnerable populations. “Vulnerable” in this context means those who lack full autonomy to give informed consent, either because they cannot understand what they would be agreeing to (for example, children or the mentally ill) or through circumstance (for example, prisoners).

**Beneficence:** This refers to the obligation on the researcher to minimize the risks and maximize the benefits to participants. Most obviously, this would preclude medical experiments that would risk the health of participants.

**Justice:** This entails fair selection of participants and refraining from focusing on populations that are vulnerable and could be coerced or deceived into participation. It also requires that those who participate in research should be the first to benefit from it. This would also cover, for example, the view taken by many social scientists researching in the refugee field that they should only engage in research that is intended to benefit refugees.

Another important element of research ethics – though one not usually relevant to human rights fact-finding – requires respect for intellectual property, most obviously by not plagiarizing the work of others.

**Informed consent**

In academic research, the notion of “informed consent” is based on a number of pillars.

- Disclosure: The researcher must explain to the potential participants, in understandable language, what the research is about and what the participant
would be required to do. This is usually in writing (although there may be obvious circumstances in which this is impossible or inappropriate).

- Understanding: There must be clear evidence that the potential participant understands the explanation given.
- Voluntariness: Agreement to participate must be completely voluntary and not a response to either threats of the consequences of non-participation or false promises about the benefits of participation.
- Competence: The potential participant must be competent to give consent, for example in their ability to understand the explanation.
- Consent: Only once the above considerations have been satisfied will consent be given. As in the disclosure, this would normally be expected to be in writing (a signature on a consent form). For similar reasons, there may be occasions when this is inappropriate or impossible.

4. Journalism

Although the comparison between journalism and human rights fact-finding is in many ways an obvious one, it is not often drawn. Yet there are many similarities, especially when the aim of human rights investigations is to verify facts for immediate use. (Other types of investigation, such as a national inquiry, might have more in common with academic research.) Journalists are supposed to adhere to a rigorous ethical code. Such codes are sometimes contained within national media law. National journalists’ unions usually have a code of ethics. At the international level, the International Federation of Journalists (IFJ) both represents the interests of journalists and polices a code of ethics.

The IFJ Code of Conduct contains a number of provisions that are relevant to human rights fact-finders:

- Respect for truth and right of public to truth: this anchors the role of the media within Article 19 of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (as well as Article 10 of the European Convention), emphasizing the right of the public to receive and impart information.
- Only report facts where origin is known: this suggests that proof must be available for any fact that is reported.
- No suppression of information or falsification: facts that do not support an approved editorial position must not be suppressed or falsified.
- Fair methods to obtain information: journalism should not proceed by trickery or deception.
- Protection of confidential sources: when sources of information are at risk, they may be offered anonymity, which must then be guaranteed.

This emphasis on the integrity of the fact-finding process and the protection offered to sources of information is of direct relevance to human rights fact-finders.

5. Code of Conduct

While there is no specific ethical code governing human rights investigations or fact-finding, the Office of the United National High Commissioner for Human Rights (OHCHR) has developed own code of conduct for Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law. This includes
a number of fundamental values that could equally be applied to human rights defenders within national institutions:

- Impartiality and objectivity
- Integrity and professionalism
- Respect culture of people and country
- Discretion – do not reveal information
- Do not endanger safety and privacy
- Oppose corruption and fraud – intellectual property

**Conclusion – some suggestions for a code of conduct for human rights fact-finders**

Not all of these principles from different ethical codes can be applied directly to human rights fact-finding. Taken as whole, however, they point to a series of principles that should underline human rights investigations and research. We suggest nine possible principles:

- **Independence and impartiality:** Evidently this must be a founding principle of any Paris Principles-compliant NHRI. The point here, however, is that independence and impartiality are not only characteristics of the institution as a whole but ethical imperatives for its individual members and officials.

- **Do no harm:** A fact-finder/institution should always assess the potential risk of fact-finding activities and never embark on fact-finding that will actually worsen the situation of victims or those at risk of human rights violations.

- **Protection and safety:** Human rights fact-finders have an obligation to do whatever is within their power to guarantee the safety and security of those who are involved in any way with their investigations.

- **Informed consent:** Those who agree to provide evidence to fact-finders should do so on the basis of a full understanding of the nature of their cooperation, which they should be competent to provide. (This consideration will clearly not apply in situations where an NHRI uses legal powers to require individuals or institutions to testify or provide material evidence.)

- **Confidentiality:** Human rights fact-finders should ensure the confidentiality of information provided and the identity of sources of information, except where the nature of the investigation or the source indicates otherwise.

- **Data protection:** Information gathered in the course of investigations should be held in compliance with data protection standards.

- **Reliance on human rights standards:** The guiding principles for fact-finders in NHRI s are the human rights standards that they are pledged to uphold. These principles apply not only as benchmarks for the behaviour of the authorities and the protection of the rights of the people, but also to the conduct of the fact-finders themselves.

- **Reliance on objective and verifiable facts:** The purpose of fact-finding is... to find facts. This means that conclusions are only reached on the basis of evidence. It also
means, however, that the process of fact-finding is always open-minded and does not seek simply to support a conclusion that has already been decided upon. “Awkward” facts that do not support a preferred conclusion should not be ignored or suppressed.

- **Not influenced by threats or inducements:** Independence is not only about the personal attitudes of the fact-finder. They must also not be influenced by inducements from anyone (inside or outside the institution), whether material or non-material. They must also be prepared to resist threats to their integrity.
The ethics of NHRI fact-finding

12/12 in a training package on human rights fact-finding

Developed for UNDP by Dr Richard Carver, Oxford Brookes University

• No comprehensive ethical guide for human rights fact-finding
• But OHCHR has developed Code of Conduct
• What about other relevant professions?
  – Lawyers
  – Medical professionals
  – Academics
  – Journalists
UN Basic Principles on the Role of Lawyers

- Mainly focus on protecting independence of lawyers
- Legality
- Best interests of client
- Confidentiality of lawyer-client relationship

Medical ethics

- Hippocratic oath
- Do no harm
Academic (and medical) research ethics

- Autonomy
- Beneficence
- Justice
- Intellectual property

The principle of informed consent

- Disclosure
- Understanding
- Voluntariness
- Competence
- Consent
Journalists

- Respect for truth and right of public to truth
- Only report facts where origin is known
- No suppression of information or falsification
- Fair methods to obtain information
- Protection of confidential sources

(IFJ Code of Conduct)

OHCHR Code of Conduct

- Impartiality and objectivity
- Integrity and professionalism
- Respect culture of people and country
- Discretion – do not reveal information
- Do not endanger safety and privacy
- Oppose corruption and fraud – intellectual property

(See also OHCHR Monitoring Manual)
Elements of an NHRI code of research ethics

- Independence and impartiality
- Do no harm
- Protection and safety
- Informed consent
- Confidentiality
- Data protection
- Reliance on human rights standards
- Reliance on objective and verifiable facts
- Not influenced by threats or inducements
SAMPLE INTERVIEW HANDOUT

My name is .... .... I am a schoolteacher. I am .... years old, married with two children. My address is PO Box 312, Greenville.

My troubles began when I was picked up by the National Intelligence Agency. It was 14 May. I recognized two of them as NIA who would hang around the business centre near our village. I think one of them is called Samuel. The other one is known as Captain, but I don’t know if that is his name or rank, or just a nickname. There were about six of them altogether.

They took me to Central Camp, which is a police camp near Greenville. I asked why they were taking me, but they said that I knew. When we got there they took me straight to a small room and Captain and one other man started to interrogate me. At first they beat me with sticks and told me to tell them about the terrorists – you can still see the marks on my back. I said that I knew nothing about terrorists – I was just a schoolteacher.

I think they didn’t know I was a teacher, because as soon as I said that the other man, not Captain, got very angry and said that all the teachers were terrorist supporters. We were teaching the children treason.

Then they took me to another room. There was a big oil drum in one corner, filled with dirty liquid – it had excrement floating in it. They took a sack and soaked it in the water and put it over my head. They held it there and I thought I would choke or suffocate. They repeated this about four or five times. The strange thing was that they were no longer asking me about the terrorists – they just said they were punishing me for being a teacher.

I didn’t think I could last much longer, but then suddenly they stopped and took me to one of the cells at the camp. This was like a small shed or garage, but it was full of people. By chance there was a cousin of my wife/husband there – his name is ....... He said that he could get word to my wife/husband.

The night I spent in that cell was the worst of my life. I couldn’t sleep because of the smell and the heat and insects. I didn’t know if they would come and torture me again.

In the morning the police fetched me out – not the NIA – and took me to an office. They said a lawyer had been making inquiries about me. They recorded my name in a book.

Later that day they took me to court. I was charged with aiding dissidents, but the magistrate let me out on a bond. I was surprised at that. I was still suffering from the torture so I went straight to my doctor who gave me some medicine. I am due to appear in court again next week.