

**MONITORING  
STATE-SPONSORED  
VIOLENCE  
IN  
AFRICA**

**A Practical Guide**

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ARTICLE 19, London and Johannesburg  
**Civil Liberties Organisation, Lagos**  
**Kenya Human Rights Commission, Nairobi**  
**Network of Independent Monitors, Durban**

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## Foreword and Acknowledgements

This guide is a joint enterprise of four human rights organizations:

ARTICLE 19, the International Centre Against Censorship  
Civil Liberties Organisation [CLO] (Nigeria)  
Kenya Human Rights Commission [KHRC]  
Network of Independent Monitors [NIM] (South Africa)

This guide was written by Sally Sealey (representing NIM), Wahome Mutahi (representing KHRC) and Innocent Chukwuma (representing CLO). Richard Carver and Claudia Motswane of ARTICLE 19 helped to coordinate the writing and revision of the guide. A draft version was produced in July 1998, which was then reviewed by the four organizations, including through a series of training workshops. The final publication was edited by Jon Lunn and copy edited and designed by Rotimi Sankore and Liz Schofield, all of ARTICLE 19. Research and publication was funded by Charity Projects (Comic Relief) and the Ford Foundation.

We have drawn heavily on previous publications in the field, which are acknowledged with thanks at the end. We must give special mention to the Forum Asia Handbook on Fact-Finding and Documentation of Human Rights Violations.

The guide is aimed at monitoring state-sponsored violence in Africa and, in particular, what we call "informal repression": covert activities in which the hand of government is hidden or disguised. However, most of the skills can be used in a variety of different situations. Although it is geared to human rights activists in Kenya, Nigeria and South Africa, we hope it will be of use in training monitors throughout Africa and possibly elsewhere. Human rights activists should feel free to simplify or adapt parts of the guide to fit their specific needs, including translation into local languages. However, we would be grateful if you would cite this guide as an original source when you do so.

Any suggestions you may have on how to improve or update the guide should be directed to ARTICLE 19:

PO Box 30942  
Braamfontein 2017  
South Africa  
+27 11 403 1488 (tel)  
+27 11 403 1517 (fax)  
claudia@article19.org.za  
(Attn: Claudia Motswane)

33 Islington High Street  
London N1 9LH  
United Kingdom  
+44 171 278 9292 (tel)  
+44 171 713 1356 (fax)  
africa@article19.org  
(Attn: Jon Lunn)

### INTRODUCTION

The main aim of this guide is to assist in the training of human rights activists to investigate and monitor state-sponsored violence in Africa and, in particular, the increasingly important phenomenon of “informal repression”. This term was first used in South Africa in the late 1980s (see Annex 1) and refers to a growing trend where governments respond to increasing domestic and international scrutiny of their human rights record by resorting to covert and surrogate means of repressing their opponents.

**Example:**

*The apartheid government of South Africa in many instances perfected the ‘art’ of informal repression. The government set up the National Security Management System (a parallel or shadow system of government); vigilante groups, whose state links were thinly disguised; and government-sponsored hit-squads composed of unknown persons but whose political affiliation and intent was clear.*

“Informal repression” has often entailed stimulating ethnic violence, either favouring one faction against another in long-standing and latent rivalries or inciting new conflict between communities that had previously lived together in harmony. Sometimes communities of the same ethnic background have been set against each other on political grounds. In other situations, governments have fomented religious rivalries.

The growth of state-sponsored communal conflict in many parts of Africa has emerged at the same time as a transition from a single-party political system to a multi-party system. This often allows governments to claim that democracy will be accompanied by ethnic conflict. It also helps to ensure that at a local level a single party continues to dominate, whatever the appearance of pluralism in the capital city.

The attraction of “informal repression” for governments is that they can evade direct accountability. If human rights violations can be characterized as “violence” or “tribal clashes”, this conceals their real nature and implies that everyone bears an equal responsibility for resolving them. By presenting this violence as the consequence of “traditional” rivalries, African governments also reinforce the common Western stereotype of a “dark continent” riven with tribal conflict and unready for democracy. This has meant that Western governments — and even some human rights organizations — have been reluctant to investigate or campaign against such abuses.

With the rebirth of democracy in many parts of Africa, the role of civil society in monitoring the violence and upheaval that often accompanies these changes has become crucial. Apart from monitoring elections and the judicial system, for example, a key role of civil society and non-governmental organizations (NGOs) throughout Africa is to monitor and investigate extra-legal, arbitrary and summary executions that might otherwise take place undocumented and undetected.

These executions include:

- political assassinations

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- deaths resulting from torture or ill-treatment in prison or detention
- deaths resulting from enforced “disappearances”
- deaths resulting from the excessive use of force by law-enforcement personnel
- executions without due process
- acts of genocide

In addition to covering general principles of monitoring state-sponsored violence, including “informal repression”, in Africa, the guide also includes three country reports on Nigeria, Kenya and South Africa. Rapidly changing situations in these countries may mean that aspects of these country reports will be out of date by the time this guide is published. Nevertheless, they illustrate the kind of information that human rights organizations need to obtain about the security apparatuses that operate in their country if they are to monitor state-sponsored violence effectively.

## **SECTION 1: WHAT IS MONITORING?**

Monitoring is a process of gathering information relating to an event or situation. A monitor is someone who closely watches an event or situation. He/she writes down comments, makes reports and takes follow-up action as a result of what happened.

People with monitoring skills can play a very useful role in a community, especially during times of social and political conflict and times of transition. Given the hidden or disguised nature of much state-sponsored violence in Africa today, it is vital that local people with a thorough knowledge of the histories, cultures and relations of communities in conflict are empowered to play an active part in the monitoring process.

As a monitor you can be the ‘eyes and ears’ of your community by gathering information and being observant at public events and incidents. While you do not need to be a member of a community organization or human rights organization to undertake a monitoring role, by becoming a member you can help to ensure that the authorities are pressurized to investigate events or incidents you have witnessed. You may also get opportunities for training so that you can perform a monitoring role more effectively.

Why monitor? Here are some reasons:

- out of concern to document the truth
- to prevent human rights abuses
- to assist victims of human rights abuses
- to ensure an election is free and fair
- to help find a solution to violent situations
- to ensure that the authorities properly discharge their responsibilities

### **QUICK GUIDE TO SECTION 1**

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## 1.1 TYPES AND ROLES OF MONITORING

### Different types of monitoring include:

- monitoring community conflict
- monitoring the conduct of police and security forces
- prisons monitoring
- court monitoring
- media monitoring
- election monitoring
- monitoring the implementation and impact of legislation

### Different roles of monitors

The kinds of things monitors are supposed to do depends on the kind of monitoring they are doing. If they are undertaking observation monitoring, their role will be limited to compiling information that will enable them to present a report on an event or situation. If they are playing a more interventionist role as a monitor, they will closely link the process of compiling information to activities that seek to address the causes of a violent event or situation. Experience in countries like South Africa suggests that interventionist monitoring sometimes leads to more and better information being obtained. This may be because individuals or communities are more willing to co-operate with monitors if they are seen as having some commitment to finding a solution to the problems they face.

So the role of a monitor could include one or more of the following:

- watching events and keeping general notes of what happened
- filling in incident sheets to describe what happened in detail (see an example of an incident sheet at the end of this section)
- making verbal reports from time to time to your organization or coordinating structure
- taking statements from injured people and witnesses
- asking questions to get information to clarify events
- referring people for medical or legal help
- visiting clinics, hospitals, mortuaries, police stations or prisons to trace people

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- writing a full report of what happened for your organization or the newspapers
- passing on complaints or observations to national organizations, international organizations (United Nations, African Commission on Human and Peoples' Rights, Amnesty International, Human Rights Watch, ARTICLE 19), or official structures
- passing on information to other service or community organizations
- co-operating with individuals or communities, on the basis of their monitoring work, to address the causes of violence and assist in finding ways to end violence

## 1.2 QUALITIES AND SKILLS OF A GOOD MONITOR

### Qualities of a good monitor include:

- **objectivity:** observing things as they are and not judging them according to your own personal views or expectations
- **impartiality:** not rushing to take sides, especially in a conflict situation (the need for this quality depends on the situation; for example, in an election, there may be monitors from political parties, who will be partial, but will be bound by some kind of code of conduct for party monitors).
- **independence:** having no close connections to competing or conflicting groups (the need for this quality also depends on the situation; sometimes it is impossible and it may equally be unwise to get in 'outsiders' who do not know local conditions).
- **patience:** being willing to work in difficult circumstances and able to handle setbacks well
- **commitment:** being dedicated to protecting and promoting human rights and to your tasks as a monitor
- **courage:** being prepared to carry on monitoring in dangerous conflict situations
- **communication:** Being able to find out information and always being able to listen carefully
- **precision:** being observant and noting small details, while at the same time being precise about the information you receive
- **honesty:** being truthful in the information you gather and the way you pass it on
- **perception/insight:** being able to analyse, link different events and identify trends
- **social and political awareness:** being aware of things like local traditions and customs as well as being aware of political structures and tensions
- **calmness/diplomacy:** being cool under pressure and dealing with all people in a respectful way
- **sensitivity/empathy:** being able to respond to events in a caring way without compromising yourself or your organization
- **confidence:** being able to assert yourself and your role where necessary
- **flexibility:** being able to improvise and take the initiative when called on to do so

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### Skills of a good monitor

The skills listed below will help you become an effective monitor:

- **observing/note-taking:** watching an event for a long time, knowing what to look out for, and making notes of relevant things
- **positioning:** placing yourself in a good place where you will be able to see everything without getting in the way or taking sides
- **listening:** concentrating on everything that is said
- **questioning/interviewing:** asking the right questions and getting the information you need
- **language:** being able to understand the official languages of the country or area in which you are working
- **personal interaction:** knowing how to relate to people and, if necessary, negotiate with them in tense situations
- **related interaction skills:** having some knowledge of skills like mediating, marshalling (crowd control) and first aid if you are called on to help in another capacity (apart from your monitoring role)
- **statement-taking:** writing down detailed accounts of what happened (This will be dealt with in more detail in Section 2).
- **evidence-collecting:** collecting evidence and tracing information that will help to prove that your statements are true, e.g. medical certificates, photographs, personal papers, witnesses
- **report-writing:** writing up a full report of what happened
- **other documenting skills:** having some knowledge of taking photographs, operating video cameras, drawing, typing and computer skills for storing information and doing research
- **essential knowledge/information:** having knowledge of the laws that cover the event you are monitoring as well as a general knowledge of one's rights under the law; knowing the physical environment, street names, distances and location of police stations, hospitals; knowledge of where you can refer people for legal advice and other help
- **strategy/assessment:** identifying, presenting and, where necessary, adapting your role depending on circumstances, for example, knowing when and when not to intervene
- **networking:** being able to work effectively with other organizations and to refer people to them

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**Remember** that you will develop most of these skills from experience. Training workshops will give you a good introduction to these skills, but you will learn more from actually trying out these skills and from the mistakes you make. It is human to make mistakes and you will learn a lot from accompanying an experienced monitor on a few occasions until you feel confident to take more initiative on your own.

## 1.3 PREPARATION CHECKLIST FOR MONITORING

Before going into the field to monitor, it is important to prepare yourself. The following checklist may be useful:

### 1. Knowledge

- What are people's rights under the law, for example, as demonstrators, as voters and as ordinary citizens?
- What are your rights as a monitor, for example, when questioned by police, the military or government officials or in terms of access to police stations, prisons, military bases, government buildings, militarized zones or government 'no-go areas'?
- What procedures are there for making complaints, laying charges or petitioning authorities?
- Where is the nearest police station and what is the name of the station commander?
- What is the background to the event or situation, for example, is there a history of conflict in the area, between groups, organizations or factions?
- What does the area look like? Get a map or, if one is not available, sketch the area, marking names of streets, landmarks, etc.
- What are the name of organizations in the area and the names of contact people? This would include religious bodies.
- What are the names, addresses and telephone numbers of services and resources you can refer to for help or further action, such as clinics, social workers, lawyers, newspapers?

### 2. Equipment

- pen and spare pen to write with
- pencil and rubber for drawing maps, sketching bodily injuries etc.
- notebook or clipboard to write on
- checklists and incident sheet (see the end of this section)
- know-your-rights pamphlets
- copies of important laws/procedures
- contact numbers for lawyers, doctors, police, organizations, etc.
- personal identification
- money
- medication, e.g. painkillers, bandages, disinfectant, etc.
- camera and films, video camera (if available)
- drinks and food
- binoculars (if available)

### 3. Dress

- armband or identification card to identify you as a monitor
- strong, comfortable shoes
- warm, loose clothing (e.g. spare jersey)
- raincoat
- handkerchief or scarf (useful for teargas)
- no activist badges, T-shirts, scarves, etc.
- protective clothing, when available and appropriate

### 4. Planning and teamwork

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- briefing session, for example, to work out strategy and to answer queries of monitors
- role-playing difficult situations, for example, being confronted by the police, military or political groups
- setting up a communication network for your own organization, for example, coordinator, meeting-points, messenger system
- having back-up people on standby to help and do follow-up work
- dividing into pairs to work together
- discussing and developing a code of conduct for monitors (an example can be found at the end of this section)

## 1.4 FOLLOW-UP CHECKLIST FOR MONITORING

This is a suggested checklist for doing follow-up work after monitoring public events and incidents:

- Report back verbally to your coordinator or organization
- Pass on your incident sheets to your coordinator or organization
- Make sure your statements are clear and easy to read, and then pass on to your coordinator/organization/lawyer (remember to date your statements and add your name and contact number).
- Develop photographs and pass on any other evidence, for example, medical certificates, cartridges to your coordinator, organization or lawyer. (Remember to date your photographs and write where they were taken in pencil on the back).
- Do your written report as soon as possible and pass it on to your coordinator/organization

Take necessary action steps, for example:

alert any local organizations that may assist;

go to the police station;

go to the clinic/hospitals;

find witnesses;

follow up with the police/military/government departments by letter/fax or telephone.

- Coordinate with other organizations or structures, such as other political or community groups, other monitoring groups
- Contact and work with the press, for example:
  - pass on information;
  - write a press statement;
  - set up a press conference;
  - give an interview/organize interviews.
- Have a debriefing session — that is, a chance for all monitors to talk about what happened, for example:
  - to share information;
  - to assess how it went and to plan future monitoring;
  - to counsel monitors or arrange counselling for the monitors who have been through a traumatic experience.

## 1.5 INCIDENT SHEET

This is an example of an incident sheet you can use for monitoring public events and conflict situations:

### **MONITOR'S DETAILS :**

NAME OF MONITOR:

ORGANIZATION:

CONTACT ADDRESS:

TELEPHONE NUMBER:

### **INCIDENT DESCRIPTION:**

TIME INCIDENT STARTED/FINISHED:

DATE OF INCIDENT:

LOCATION/PLACE OF INCIDENT (street, town, district, etc.):

PEOPLE/PARTIES/ETHNIC GROUP INVOLVED (e.g. police v. youth):

NUMBER OF PEOPLE INVOLVED:

NUMBER OF PEOPLE INJURED/KILLED:

NUMBER OF PEOPLE HOSPITALIZED:

NUMBER OF PEOPLE ARRESTED:

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**PROPERTY AFFECTED**

	NUMBER	DESCRIPTION	TYPE OF DAMAGE e.g. arson, vandalism
HOUSES			
VEHICLES			
OTHERS			

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**VICTIMS**

NAME	CONTACT DETAILS	AFFILIATION	NATURE OF VIOLATION e.g. arrested, beaten, tortured, killed (name of attacker if known)

**PERPETRATORS**

NAME (if known)	CONTACT DETAILS	AFFILIATION	NATURE OF VIOLATION (name of victim if known)	WEAPONS USED

**VEHICLES USED BY PERPETRATORS:**

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Model/Type:

Year:

Registration Number:

**ADDITIONAL DETAILS WHERE VIOLATIONS ARE BY SECURITY FORCES:**

NAME OF FORCE: i.e. Police, Army, Plain Clothes :

DIVISION/UNITS/BRANCH INVOLVED:

UNIFORM/DESCRIPTION OF CLOTHING:

WEARING IDENTIFICATION ?

NAME , RANK AND FORCE NUMBER OF COMMANDING OFFICER:

WITNESSES TO INCIDENTS:

SUBSEQUENT DEVELOPMENTS (IF ANY): i.e. medical treatment, imprisonment, court appearances etc.

**STATEMENT(S)**

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DEPONENT

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DATE

(Use extra sheets as necessary)

**1.6 CODE OF CONDUCT FOR MONITORS**

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The objective of a code of conduct is to ensure that the activities of monitors are coordinated by the NGOs they represent and conducted with integrity. All monitors undertake, by signing this code, that their activities shall be conducted in accordance with the following principles:

- All monitors shall be nominated by civil society organizations.
- All nominated monitors shall undergo training and assessment by their organization or a training authority accredited to conduct such training.
- If approved, the monitors shall be properly accredited by the body concerned and provided with the necessary identification.
- In the case of election monitoring, monitors shall ensure that their conduct strictly conforms to the Electoral Act, the regulations promulgated thereunder, the Electoral Code of Conduct, the Code of Conduct for Monitors, and the directives of the Electoral Authority or any lawful instructions of any person acting on their behalf.
- All monitors shall maintain strict impartiality in the conduct of their duties. Monitors shall at no time publicly indicate or express any bias or preference for any political party or group.
- Monitors shall refrain from giving any direct assistance to any party or group. In the case of elections, they shall refrain from communicating with voters, with a view to influencing them as to how they vote or establishing how they have voted.
- Monitors must recognize that they are directly accountable to the civil society organizations they represent.
- Monitors shall immediately report any violation to the proper authority. Monitors must ensure that all reports on such incidents be given to their organization to take up.
- When requested, monitors should identify themselves and should at all times have their official identity cards with them.
- Monitors shall not display any party insignia at any time. Monitors shall refrain from carrying, wearing and displaying electoral material or any article of clothing, emblem, flag colours or badge denoting support for a particular party or group.
- Monitors shall refrain from carrying or displaying arms or weapons of any kind during the conduct of their duties and/or while wearing their monitor identification.

## SECTION 2: BASIC SKILLS IN FACT-FINDING

Effective monitoring of state-sponsored violence in Africa presents human rights activists with many challenges. The hidden or disguised nature of much state-sponsored violence in Africa — what we have called “informal repression” — today means that the limitations of superficial or *ad hoc* approaches to monitoring are likely to be quickly exposed. This makes it all the more important that monitors are properly trained and given the opportunity to develop crucial basic skills in fact-finding. This section of the guide sets out what those basic skills are.

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## 2.1 SOURCES OF INFORMATION

Ensuring that you have adequate information on an event or situation is crucial for monitoring to be successful. There are various sources which monitors can use to gather information. Important sources include the following:

**Newspapers** are very useful when trying to gather information on trends and other similar factual information that will assist in proving that an event/incident/assault is not necessarily a one-off event. Sometimes the local newspaper will contain more detailed information on local events or situations.

**Journalists/photographers** are also important sources of information. Very often journalists have more information than what has been printed. Photographers are often the first people on the scene of an incident.

**Local communities** are a great source of information. They may be able also to pinpoint trends, dates, times, etc.

**Non-governmental organizations:** Many NGOs may work in a similar field so it is important to network and many of these organizations employ fieldworkers who may have specialized knowledge of an area. Some NGOs also produce reports based on the information they have collected. This can be a very useful starting point when investigating a particular event or incident in an area.

**Religious bodies:** In many communities the church/mosque/synagogue is a very important meeting point for the community. Often religious leaders are informed of problems and concerns by their communities and will be an important source of information. They may also be able to direct the monitor/investigator to individuals who may have more detailed information.

**Victims:** They are important sources of information — they may be able to identify the perpetrators and may offer valuable proof that an incident took place.

**Government departments:** Valuable background information can be obtained from government departments, but in countries where governments are more likely to cover up issues/events you are trying to investigate, it is best for you to have gathered all your information first. Once you have established strong proof that a particular incident/event/assault has taken place, then you can approach government.

## 2.2 COLLECTING EVIDENCE

Human rights organizations, when investigating alleged human rights violations, examine both the victims' and the governments' version of events. While following a broad approach to collecting evidence, human rights organizations must take great care in assessing the truthfulness and reliability of the evidence obtained. To safeguard their credibility, it is important for them to seek direct evidence and obtain a high level of proof when conducting investigations on alleged human rights violations.

- **Identifying sources of evidence**

Organizations engaged in fact-finding, while pursuing a broad approach in collecting evidence, should as far as possible strive to locate witnesses who have direct knowledge of the violation.

The first step in identifying the sources is to identify whether the case involves a violation of human rights and make a checklist of all possible sources with regard to the matter under investigation. The checklist can be made by analysing various elements of the matter under investigation and the evidence needed to substantiate each element.

**Example:**

*In a case of extra-judicial execution where the victim was reportedly killed by a military patrol or by members of an armed opposition group, find out the following information:*

- *Who is the victim?*
- *Who is the alleged killer?*
- *Circumstances (when and where: date, time, place)*
- *How was the victim killed?*
- *Why was the victim killed?*
- *Who found the body, when, where and in what condition?*

*Based on such analysis, identify the witnesses to events immediately following the abuse. These include: doctors treating injuries; relatives and others who attended the burial or dressed the body for burial; roaming journalists or other investigators who reached the site quickly; others who saw bodies, wounds, damage, passing troops; fellow prisoners who saw the wounds, and others.*

The next step is to identify background witnesses.

**Example:**

*Family members who can give a description of the victim prior to arrests and similar information, local residents who can provide information on geography, the presence of troops or guerrilla groups and their practices in general; authority figures, e.g. members of the clergy, community leaders and others in a position to know what has generally occurred in the area; outsiders who are not aligned with the involved parties, e.g. workers of non-governmental organizations or relief agencies functioning in the area.*

- **Written and documentary evidence**

A diligent fact-finder should make a point of looking for documentary evidence that can help his/her investigation. Evidence can be gathered from legislation, court opinions, ordinances, regulations, press releases, government reports, newspapers, reports by NGOs, letters, affidavits, dispositions and pictures. The relative reliability of evidence from such sources should be borne in mind. Ideally, documents and photographs used as evidence in reaching conclusions should be signed or otherwise authenticated.

- **Evidence gathered through on-site inspections**

If the fact-finder is not familiar with the area, he/she should look for a pre-event description of the site, especially landmarks that do not change, for example, streets, mountains, houses and rivers. This is helpful when witnesses refer to places in connection with certain events under investigation. During an on-site visit it would be useful to prepare a description of the site, post-event.

**Example:**

*Make a list of burnt or damaged property, etc.*

- **Corroborating evidence**

Corroboration is the process of placing side by side otherwise separate and distinct pieces of evidence in order to establish the probability that something happened. Corroboration becomes necessary when informants are unreliable or biased, or when there is only circumstantial evidence on the matter being investigated. In order to be able to arrive at well-founded and credible conclusions, human rights fact-finders should sift through the available information and look for common patterns and corroborative data.

To determine the reliability of information received, they can cross-check their information by looking for corroboration.

**Example:**

*When interviewing refugees, the interviewer may not be able to visit the refugee's country of origin to verify the information received. In such cases data may have to be gathered from a larger number of persons who are from the same geographical area in order to check if any pattern emerges, thereby providing corroboration.*

On-site visits can help corroborate information collected from witnesses.

**Example:**

*The UN Ad Hoc Working Group on Chile was able to establish that the Villa Grimaldi had been used as a place of torture and detention after visiting a room whose blue tiled walls matched the walls in photos of prisoners published in three newspapers and in the description of the room given by a former prisoner. Similarly, physical evidence such as bruises, scars and other physical marks found on reported victims of torture can be obtained to corroborate information received concerning practices of torture.*

- **Circumstantial evidence**

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In other situations, it may be difficult to obtain even minimum direct evidence.

***Example:***

*An abuse or pattern of abuses may not be known because the evidence is hidden by the perpetrators, the witnesses are afraid and access is denied to the area. In such cases circumstantial evidence is relied on to a greater extent than usual.*

Circumstantial evidence can help reconstruct a pattern.

***Example:***

*Testimonies of victims who were abducted and whose arrest was denied but who survived and described how they were held in custody by military/security forces, can help construct a pattern concerning the method of operation of perpetrators. Circumstantial evidence requires that inference be drawn from facts presented by witnesses.*

## 2.3 STATEMENT-TAKING: WHAT QUESTIONS SHOULD YOU ASK?

### What you should think about before you start

A statement is taken from a person or group of people who have experienced or witnessed a particular incident and will record the facts of what has taken place. A statement is normally taken from a witness when that witness can identify a person or another important feature, for example, a car used in an attack. A statement can have legal status and it is essential that all the necessary details are contained in a statement. Inaccuracies in a statement could jeopardize any legal action arising from an incident. In cases where witnesses have crucial information that needs to be recorded, it may be justified for monitors to have a witness to the statement-taking.

Before you start writing, give the person a chance to tell you what happened so that you can get an overall picture. Explain why you are taking the statement and ask the person to tell you everything that happened right from the beginning. Ask him/her to tell you everything slowly so that you can write everything down. You should write down every detail. It is better to write too much than too little. If the person is not sure of the date or time or any other detail it is important to write down words like “I think” and then write down what the person has said.

#### *Example:*

*“I think there were between six and ten policemen assaulting me.”*

Remember to write the statement in the words of the person talking to you as if you were telling a story.

#### *Example:*

*“The tall policeman said to me: ‘What are you doing in the street so late?’”*

### Below are some of the questions which you should ask:

#### 1 Personal Details

- What is your full name, age, sex, work and home addresses and telephone numbers?
- Make sure you have a contact number — even a relative or friend is okay.
- Are you married? When did you get married? Was it a church or customary marriage? How many children do you have? What is their sex, and how old are they?
- If the person is under 21, get full details of the mother and father (and if you can, find out how they were married, e.g. customary marriage).

#### 2 Date

- On what day did the incident etc. take place? Give the day, month and year.

#### 3 Time

- At what time did the incident take place? If you don’t get the exact time, use words like “at about”, “a little bit past” or “in the early afternoon”.

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- 4 Place**
  - Where did the incident take place? You can even draw a map to make it clear for people who do not know the area.
  
- 5 Surrounding events**
  - What were you doing just prior to and at the time of the incident?
  - Where were you going to or coming from?
  - What else was happening around you?
  - Was there any other police action or incidents in the area at the time?
  - What did you have on you at the time of the incident?
  - Were you wearing a political T-shirt; did you have any pamphlets with you?
  
- 6 Details of the incident**

Record in detail exactly what happened. For example, in the case of assault or torture:

  - In what way were you assaulted/tortured? Kicking, slapping, punching, electric shocks, suffocation, etc.
  - Where exactly on your body were you hit?
  - How many times were you beaten, shocked, etc.?
  - What weapons did they use? Batons, handguns, shotguns, pangas?
  - Did the people who assaulted you say anything before, during or after the assault? Write down whatever words the person can remember.
  - Did you resist or fight back in any way? If yes, ask for the details.
  
- 7 Identity of perpetrator**
  - Who assaulted you or was involved in the incident? Give as much detail as possible.
  - Which units (police or military) did they belong to?
  - What uniforms were they wearing? What rank were they? What weapons were they carrying?
  - What vehicles were they driving? Ask the colour and name. If not known ask the shape as well as the registration numbers or any other number on the vehicle. Would you be able to recognize the people who assaulted you?
  
- 8 Witnesses**
  - Did any other people in the community see the incident or you being assaulted?
  - Get the full names and addresses of any witnesses. You will need to take full statements from the witnesses as well.
  - Did any other member of the security forces witness the incident?
  
- 9 Seizure of property**
  - Did the security forces or vigilantes take anything from you? (For example, personal possessions, pamphlets.) List these things and find out if a receipt was given.
  
- 10 Injuries**
  - What injuries did you sustain from the assault? Ask to see the injuries. Note all injuries in full detail and mark them on diagrams.

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- Even if there are no visible marks from the assault, make detailed notes of where the person says they were beaten. There are also a number of medical tests that can be done which can determine blunt trauma from blood samples.
- Ask whether the person has taken pictures of the injuries. If not, arrange for photographs.
- When you take photographs, write on a big piece of paper the person's name and the date on which you are taking the photograph. Ask the injured person to hold the paper next to the injury when you take the photograph. You do this to identify the person.
- Ask the person whether he/she has received any medical treatment? Find out where and when the person was treated. Ask for the name of the doctor. Also get the hospital or clinic card number.
- Ask if the person has a medical certificate. If not, assist the person to get one. If the person was helped by someone in the community get that person's details as you may need to get a statement from that person as well.
- Is there any other evidence which could help to prove that you were assaulted and injured? For example, torn clothes, bullets, broken furniture/window panes. Photographs of damaged property would also be useful.
- Are you still having pain and will you need more treatment?
- Have your injuries stopped you from working and for how long were you away from work?

### **What you should do when you have finished writing the statement**

When you have finished the statement, write down the date on which you have just taken the statement. Then explain to the person giving the statement what the next step could be and ask them what they want to do.

#### ***Example:***

*“Have you got a lawyer already?” If the answer is yes, get the lawyer's name. If the answer is no, ask: “Do you want a lawyer? Do you want to claim against the perpetrators to get compensation for your injuries?”*

*“Have you reported the case to the police station?” If yes, ask “What happened?” If no, ask: “Do you want to report it? Would you like a lawyer or someone else to help you do this? Have you been intimidated or harassed in any way since the assault?” If yes, ask for the details. “Do you want a lawyer to follow this up?”*

Before you send the statement to a lawyer, you should also write down your name, address and contact telephone number in case the lawyer or individual dealing with the case needs to check something with you later.

## 2.4 INTERVIEWING TECHNIQUES

Interviewing is the most common method used for collecting information and therefore it is important that those engaged in fact-finding develop skills in conducting interviews. While each interview situation will vary, standard interview techniques can be applied to obtain the maximum amount of information, to clarify points which may be vague or confusing, and to test the accuracy of the testimony given. Interviews require planning and preparation. A badly conducted interview will affect the quality of the data gathered, in addition to alienating victims and witnesses.

### Tips for conducting interviews

It is useful to think of an interview as a three-step process and plan accordingly. The normal stages in interviewing are:

- **Pre-interview**
- **Interview proper or during interview**
- **Post-interview**

- **Pre-interview**

Ensure that the venue, conditions and the timing are suitable for conducting the interview. Create an environment where the person being interviewed will feel comfortable and safe. Become familiar with the case and the interviewee, but do not form preconceived conclusions.

Individual interviews are always preferred to group interviews, and every effort should be made to speak in private with a witness.

Make sure that you understand the elements of the law that you will need to understand in order to conduct the interview.

If detailed questions are not prepared, a fact-finder can use a simple checklist consisting of: How? Where? When? Who? What? Why?

- **The Interview**

Provide the necessary introductions and identification, such as organizational affiliations. Explain clearly the purpose of the interview and the consequences, if any, of providing information. Seek permission if you intend using the name of the interviewee in any report you intend to write. Also, explain how the information will be used.

Establish trust and a rapport with the interviewee, show respect and proper courtesy. Do not be judgemental. Be aware that the response of an interviewee is conditioned by his/her past experiences; therefore do not expect interviewees to respond in a predictable manner.

There must be an appropriate balance between showing sensitivity to the emotional needs of the individual and obtaining the basic information required. Be reminded that interviews are not conducted out of mere curiosity but for the important purpose of establishing facts.

Take notes or record the interview. Sometimes this may intimidate a witness, so ask permission to take notes and explain why you need to do so. In some instances a fact-finder

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may not be in a position to take notes; in this case he/she should make it a point to find time to record the main points of the conversation(s) immediately after the interview.

Learn the art of being a good listener. Avoid dominating the interview. Be sensitive to non-verbal communication; observe the demeanour of the interviewee. Allow moments of silence.

Let the witness tell his/her story in his/her own way; but make sure that the narration does not get totally out of hand. Asking the victim to narrate the story in a chronological order may help him/her to structure the story and reduce the possibility of an interviewer getting confused by numerous details.

Do not refer to or use the names of other witnesses or ask the interviewee to contradict or support the views of other witnesses. The privacy of each interviewee should be respected.

Avoid asking leading questions that will already suggest the answer to the witness.

### **Example:**

*Ask, "How were you treated by the prison guards?", as opposed to, "Were you tortured?" In some situations a witness out of deference to the interviewer may always agree and say "yes" to questions. It is therefore advisable to keep to a minimum the number of questions that call for "yes" or "no" answers.*

Do not promise rewards or results. Do not create false hopes. Explain that his/her testimony will help other similar victims. Do not create the impression that the success of the fact-finding activity depends on the testimony of the interviewee; explain that you will be interviewing several persons and several testimonies will be used for illustrating the problem. Explain possible follow-up actions that will be undertaken in connection with the problem.

When a witness refers to a village or place, ask how far it is (how many minutes by walking, kilometres, etc.) from the larger town and do not assume that it will be possible to locate the village/place on the map later.

Seek the help of the interviewee for leads or other witnesses or sources of information. Find out how the witness can be contacted again if necessary.

Remember to note down basic information concerning the interview itself such as: time and date of the interview; location of interview; duration of the interview; name and other basic identifying information about the witness, including age, sex, ethnic origin, religion, and political or other affiliations; name of the translator; language translated to and from; and how the witness was contacted (through another witness, local relief agency, etc.). Number the interviews conducted.

### **• Post-interview**

The monitor should read the notes in a quiet place to check whether all the points have been covered. Make a list of other witnesses suggested by the interviewee. If the witness had referred to documents and other published material, make a separate note of the ones that need to be obtained before leaving the area of investigation. If more than one fact-finder was involved and each of them conducted interviews independently, a preliminary cross-checking of notes should be made between them.

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If a witness during the interview refers to a place or object, look for that place or object for purposes of corroboration. If possible, prepare maps or sketches and type up your notes.

### **Elements involved in interviewing**

- **Questions**

If possible, prepare a questionnaire to suit the violation that is being probed. Writing a questionnaire, even if never used, will help clarify the elements involved in a violation and ensure that relevant information will be sought from the interviewee.

Care should be exercised in the choice of words. Avoid emotionally charged words. Use familiar everyday language and avoid jargon. Try to use language that will be clearly understood. Avoid fast and hectic questioning. A slower pace of questioning is more productive than a volley of questions. The interviewer should not act like a prosecutor. Do not express opinions while interviewing. Some people being interviewed may conclude that too many questions are being asked because the interviewer does not believe them. If this happens, it should be explained that such clarifications are necessary to complete the report.

Maintain anonymity of the source while using the statement of one witness to cross-examine another witness.

Some witnesses may conclude that too many questions are asked because the interviewer does not believe them. If this is the case, it should be explained that such clarifications are necessary to produce a credible and complete report. Take into account local and cultural patterns of speech.

**Example:**

*Exaggeration may be a common trait in an area, and a statement that “thousands died” may not be correct but the overall testimony may be true. It is important not to let one part of the testimony automatically invalidate another unrelated part of the testimony.*

- **Language**

Wherever possible, the interview should be conducted in the language most preferred by the person being interviewed. If this is not possible, make sure an interpreter is present if required. An interpreter should be a neutral person and should only be a means of communication. It is important to talk to the interpreter in advance to make clear his/her role and explain the purpose of the interview. Decide with the interpreter whether the interpretation will be consecutive or simultaneous. Both have their advantages and disadvantages.

An interpreter may sometimes get involved in the case and start asking questions he/she is interested in or they may get involved themselves in an argument with the interviewee. In such situations, intervene and ask for a translation of the exchange that took place. Interpreters should not give their own explanations to the fact-finder or to the victim.

While verbal communication is happening through the interpreter, maintain eye contact with the interviewee and be responsive to his/her body language. Be careful what you say to the interpreter in front of the witness. There is no guarantee that the interviewee does not understand what was told to the interpreter.

- **Equipment**

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There is no one rule concerning use of equipment such as tape recorders, cameras and video cameras. Depending on the place to be visited, a fact-finding team should decide on the type of equipment to be used during the visit. However, if the fact-finding team decide to use sophisticated equipment, they should anticipate the difficulties they may face and prepare contingency plans for dealing with such difficulties. Permission should be obtained from witnesses before using equipment such as a tape recorder, camera or video recorder to record testimony.

If a tape recorder is used while interviewing, don't depend on it completely — also make notes. Using a tape recorder may pose more security risks than taking notes. Also, transcribing the testimony may be difficult and time-consuming.

If a camera or video camera is used, record the time, place and circumstances of the photograph or the video footage. Include in the photograph where possible a scale (yardstick) to show the size of objects. When videotaping testimony, place a working clock within the frame of the pictures to demonstrate that the video has not been edited.

## SECTION 3: COMMON ISSUES FOR FACT-FINDERS

Collecting credible first-hand information on state-sponsored violence — including “informal repression” in Africa — is demanding and at times will involve risks. It requires persistence, tact, courage and dedication. This section of the manual describes some common issues that should be addressed by the organizations for which fact-finders are working:

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### 3.1 LACK OF FREE ACCESS TO AREAS

Success of on-site fact-finding depends on free access to an area, and most often fact-finders are faced with a situation in which the government (or the armed opposition group) imposes restrictions on visiting an area for the purpose of fact-finding. Alternatively, travel to an area might be dangerous because of an ongoing armed conflict.

In some instances only escorted access to an area may be permitted by the concerned government. This may be with an “agent” who attempts to sit in on every interview, thus inhibiting the witnesses. A fact-finder should make clear to government agents the basic rule that interviews are done without any such interference. However, the “agent”, acting on strict orders from superiors, may insist on being present during interviews. It is therefore important to obtain authorization from the higher authorities to be able to interview victims without any interference. If such assurances are not forthcoming from repressive governments or armed opposition groups, the human rights organization should consider postponing the visit.

Fact-finders should avoid travelling with government officials or an armed opposition group. This creates an appearance of partiality even if the interview is done without their presence. Travelling with government officials or armed opposition groups may make it impossible to convince witnesses in the area to talk to the fact-finder. This would also affect the credibility of the report. Whether there is an absolute need to travel with the government or armed opposition should be considered. Travel with relief or religious agencies should be explored.

Generally, international human rights organizations postpone a visit if free access to conduct fact-finding in an area is not permitted. They rely, instead, on written testimony or interview witnesses outside the country. Some international organizations also undertake visits without giving prior information to the concerned government.

Domestic human rights organizations address the problem by various means such as involving local contacts and/or seeking the help of relatives, lawyers and journalists. They may also mount campaigns to pressurize government to guarantee freedom of movement to fact-finders. More important is to obtain assurance from the government that no reprisals will be made against fact-finders or witnesses. Another tactic followed by local organizations is to organize a high-profile fact-finding mission to the area with personalities and representatives of respected organizations as delegates to persuade the government to withdraw the restrictions.

### 3.2 THREATS TO SAFETY OR SECURITY

Human rights workers often experience harassment and can be victims of the very same violations which they document. It is therefore of the utmost importance that the safety and security of the people involved in the fact-finding is taken into account by their organizations.

Compared to domestic human rights organizations, some of the prestigious international organizations are more successful in obtaining from the concerned government assurances for the safety and security of their fact-finders. However, even if such assurances are given, there is no guarantee that these will be observed in practice. Consequently, organizations engaged in fact-finding, especially domestic human rights organizations, should prepare their fact-finders to follow some safety measures while collecting information in the field.

Organizations engaged in fact-finding should train their fact-finders (or brief their delegations) to take simple security measures, such as avoiding travelling alone if there is a risk of being exposed to common crime, getting lost, getting arrested, or getting caught in the crossfire in an armed conflict situation. Organizations should also insist on knowing where the fact-finder is going and when he/she plans to return. A plan of action should be in place if the fact-finder does not return as scheduled. Furthermore, they should brief their fact-finders to make contact with colleagues at appointed times. Knowledge of first aid would also be useful.

Special safety precautions must be followed by those engaged in fact-finding in internal armed-conflict situations.

**Example:**

*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.*

A fact-finder should be careful about whom he/she is travelling with during a fact-finding visit and whether to trust them and their judgment completely. Fact-finders should evaluate the trustworthiness of the guide prior to embarking on the trip and should not depart with anyone they do not trust.

Fact-finders entering armed-conflict situations may have to take measures such as not smoking or using a flashlight at night, as army troops or guerrillas usually take shots at such targets. They must learn how to take cover in the event of gunfire.

In some situations witnesses may face reprisals after giving testimony. They may be detained, tortured or even killed for testifying to a human rights fact-finding mission. Therefore, fact-finders should always bear in mind the security and welfare of the people who provide information.

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Fact-finders should obtain the consent of witnesses to the interview and seek the help of reliable local contacts to encourage witnesses to co-operate. If requested, fact-finders should assure anonymity of witnesses or confidentiality of testimony. It will be helpful to clarify from the witness the extent of confidentiality he/she wants the fact-finder to maintain.

***Example:***

*Should the fact-finder withhold the name but give details of the case including name of village, town, province? Moreover, fact-finders should take the testimony of witnesses privately and avoid public hearings which would render futile assurances of anonymity or confidentiality. The fact-finders should also be aware that there is a danger that “anonymous testimonies may mask sloppy fact-finding and inaccuracies”.*

### 3.3 UNRELIABLE OR ‘MISSING’ INFORMATION

In some situations, particularly 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 organization does not properly verify such information, the organization may risk disseminating only the version of one party to the conflict. Therefore, fact-finders should be provided with 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 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 do not become identified with one of the groups involved in the conflict.

In some instances relatives of victims may feel that it is useless or dangerous for them to provide information and may not be willing, or may be too upset to do so. In such situations a fact-finder may not have much choice but to wait.

In some other situations, particularly in armed-conflict situations, part of the interview may touch sensitive subjects such as the presence of military forces in the vicinity of the attack. Witnesses may not be willing to talk about such things or may give false or incomplete information because they are afraid of appearing to know more about military affairs than they do and they feel safer feigning ignorance. Fact-finders should bear in mind that they are dealing with people and communities who have survived because they have learned how to co-exist with both governments and armed opposition groups. Depending on the length of the conflict, many have co-existed for years. Co-existence means knowing how to shade the truth in a self-protective manner when dealing with either side or with outsiders. Therefore, do not expect such survivors to automatically open up and disclose sensitive details.

In the case of refugees and displaced persons, some witnesses may not give complete information because they think that what they say may affect their access to material relief and refugee status.

In some instances, because they are not aware of their human rights, victims may not report violations that are committed against them.

**Example:**

*Victims of ill-treatment in police custody may regard infliction of physical injury and/or psychological trauma as a routine procedure that is followed by law enforcement agencies, and do not find it unusual enough to report. Similarly, women victims of domestic violence may suffer in silence in the wrong belief that it is a private matter and not a violation of their rights.*

### 3.4 PRESSURE TO TAKE SIDES

There may be occasions when monitors feel a degree of involvement in a conflict or have strong views about what the root causes of a conflict are. In addition, members of a community or victims may ask them to take sides. Conflict resolution skills are not essential for monitors but may come in useful when they find themselves in such circumstances. Below are some ways of trying to deal with them effectively.

**Before going on mission, monitors should ask themselves these questions and answer them honestly as possible:**

- What specifically concerns me/us about this conflict?
- What assumptions, suspicions and values do I/we have?
- How does this affect me/us?
- Why is this important to me/us?
- How will these considerations affect my/our fact-finding?
- What viable and appropriate courses of action are available to address the situation?

**In their initial contact with those from whom they wish to obtain information, they should:**

- state their commitment to understanding the causes of the conflict so that they can facilitate your fact-finding
- acknowledge the causes of the conflict - but remember that their immediate objective as a fact-finder is not to help in resolving the conflict but to create an environment that will assist them in their task
- ensure that they understand the reasons why the monitors are there and seek to agree with them in advance clear ground rules for conducting fact-finding activities

### **3.5 INTERVIEWING RESPONDENTS WITH PARTICULAR CHARACTERISTICS**

#### **Interviewing Victims**

Victims of human rights violations are usually the best source of information. There are, however, several factors that need to be considered when interviewing them. Victims may be in a traumatized condition because of their experience and may not be in a proper state of mind to give information. If they agree to be interviewed, the interviewers should take care not to contribute to the pain of the interviewee. Because the victims are in distress, they may also be confused about the facts; do not dismiss what they have to say, and be patient.

Victims, particularly of torture and arbitrary detention, may still be in the custody of the authorities. Gaining access to them may be difficult. Even if access is obtained, the victims may be too afraid to say anything, so they should not be pushed too much. Establish rapport to gain their co-operation when they are released from custody.

#### **Interviewing Authorities and Suspected Perpetrators**

When a fact-finding team is visiting an area, sometimes it may be necessary to meet with government officials before interviewing other individuals. In any case, government officials should be interviewed at the end of the visit to seek clarification on allegations made by various witnesses during the visit.

At times, fact-finders may have access to an official spokesperson (of the government or armed opposition group). Remain polite even if the spokesperson's version of the subject under investigation may sound incredible, and probe for inconsistencies without being confrontational. Listen with an open mind to obtain evidence both for and against an alleged violation.

Where possible, human rights organizations should make use of official investigations or inquiries ordered by the government to state their findings and also gather more information through such investigations.

Interviewing authorities or known perpetrators of violations requires tact and needs planning and preparation. One method of mentally preparing for such interviews is to imagine the possible scenario and role-play the interview.

#### **Interviewing Women Victims**

It is important to keep in mind the overall context of the curtailment and violation of women's rights. In particular, denial of women's rights and oppression of women are deep-rooted and linked to socio-economic and political factors. Therefore, fact-finders, in particular men, should be aware of discriminatory values and behaviour patterns that exist in the society and should avoid stereotyping women victims.

Because of the social stigma that is attached to rape and other forms of violence, a woman victim of such abuses should always be asked if she is willing to be interviewed. Obtaining her consent to testify must be preceded by adequate explanations. It is essential that women interview female rape victims.

### **Interviewing Child Victims**

Information-gathering from children is a gradual process. Usually not all the necessary information can be gathered in one session.

Be aware that the perception of a child is very different from that of an adult. Be prepared to accept the child's view of the world, and do not impose yours on the child.

Information may not come solely from the child or even through verbal interactions with him/her. Besides the family members, information-gathering involves other sources surrounding the child and her/his family, including the child's community or school, other agencies that have rendered service, observations or neighbours.

### **Interviewing Refugees**

While interviewing refugees, be sensitive to the stress of those who have been displaced. Understand that it is not easy for them to be away from their homes, without material resources and possibly away from their families also. The fact-finder should also sympathize with the displaced person's feeling of overriding uncertainty and lack of control over his/her destiny.

Determine whether respondents are at risk of being sent back to their country of origin from the country where they have sought asylum, or of being imprisoned or exposed to other human rights violations.

Find out why they fled from their country. This will lead into a discussion of the details of abuses which respondents may have suffered.

Since the place where the refugees are living is important for planning and follow-up action, find out if they are in a refugee camp. Is the camp under the authority of the host government? Are they in prison or at liberty? Are they homeless or living with family/friends or in a sanctuary such as a church or a temple?

It is more difficult to corroborate information provided by refugees because interviewers may not be able to visit the former's country of origin. Therefore, information should be double-checked and, if possible, a large number of refugees from the same area should be interviewed to establish independently whether or not human rights violations have occurred.

### **Interviewing Indigenous Groups and Rural Populations**

The way of life of indigenous groups, including language and methods of communication, is significantly different from non-indigenous populations. Therefore, human rights workers who do not belong to the indigenous groups themselves should be aware of and respect these differences.

Villagers may have a different concept of time and often have their own method of recording events. Be careful and ask clarifications on statements made by rural people concerning time and date of an event.

Generally, the poor and other vulnerable sections may lack confidence and may be reluctant to share information or their opinions. In such cases help could be sought from local organizations that are working in the area to reassure witnesses who are afraid of giving information.



### 3.6 WHAT IS SUFFICIENT PROOF?

Before engaging in monitoring state-sponsored violence, human rights organizations should decide the level of proof they want to achieve. The standard of proof guides them in determining the quantity and quality of evidence which has to be gathered in order to reach certain conclusions.

In the course of gathering facts, human rights organizations should determine if they have obtained sufficient proof to arrive at reasonably founded conclusions. Otherwise, fact-finding can become a never-ending process.

In the normal rules of evidence followed by courts, there are differing proof requirements for different levels of liability. For example, in Anglo-Saxon criminal law, the guilt of the defendant must be proved “beyond a reasonable doubt” at adversarial hearings held before an impartial court. In most cases, human rights organizations will probably not be able to attain this level, in part because they do not have the power to compel testimony or production of documents, or to impose sentences for withholding evidence. However, where it is possible, human rights organizations should strive to attain the level of “beyond reasonable doubt” in their investigations. Another level of proof is a balance of probabilities, which is used in civil trials (not involving loss of liberty of the defendant).

#### **Level of proof**

The level of proof used by human rights organizations should depend on the action that is planned after the fact-finding activity.

#### **Example:**

*A letter of concern sent to the authorities may only need credible second-hand reports of human rights violations. On the other hand, a major report meant for publication would require more substantial evidence on the violations.*

If the government normally contests every fact in a human rights report, the level of proof must be high. It is useful to engage governments in this dialogue and persuade them to undertake their own fact-finding and to disclose the results of their fact-finding.

The level of proof to be obtained may also depend on the readership of the report.

#### **Example:**

*Some of the UN agencies require a higher level of proof before taking action on allegations of torture.*

A fact-finder may discover pieces of evidence of varying weight and persuasiveness, but some consistency and care should be exercised in formulating the findings. The report should state the standard of proof employed by the fact-finder.

A fact-finder should disclose in the report how firm the level of evidence is in general terms. In most reports incidents that are not 100 per cent established can be included, as long as the level of probability is disclosed.

**Example:**

*If there is not enough evidence to “definitely conclude”, the case can still be presented as “very likely”, “probable”, “eyewitnesses stated that” or in other phrases of a similar vein.*

When human rights organizations make reports on sudden crisis situations in which there may not be enough time to verify all the facts and make a comprehensive report, it is not a good idea to use less than a minimum level of proof to make statements concerning the situation. Reports (emergency bulletins) made in such situations should be written in a qualified way so that if a mistake is made, the organization is not bound by it forever.

**Example:**

*Qualifying terms such as “witnesses say that” and “we are unable to verify at the moment” may be used in writing reports on such situations.*

There should be some consistency in the level of proof adopted from report to report unless there is a good reason to change it.

**Example:**

*If a particular form of punishment is described as torture in one report, it should not be changed without giving reasons in later reports.*

There have been some attempts to categorize levels of proof.

**Example:**

*The United Nations Truth Commission in El Salvador had three levels of proof. First was “overwhelming proof”, which meant highly convincing proof. The second was “substantial proof”, which was solid proof in support of the conclusion. Finally, “sufficient proof”, which was proof in support rather than in contradiction of the conclusion. The Truth Commission also worked on the basis that no source or witness by itself was sufficient to establish the truth on any vital fact.*

It should be noted that, for human rights organizations, adoption of such rules may impede arriving at conclusions in cases where they have some evidence to believe that human rights violations are occurring but not enough to prove them.

### **Admissions against interest**

Most often, governments tend to totally deny findings made by human rights organizations concerning human rights violations. However, by persistently publishing credible reports, these organizations very often succeed in forcing governments to, at least indirectly, acknowledge the findings.

**Example:**

*A human rights organization may publish a report with numerous cases of disappearances, and the government may respond by admitting that only a few cases have occurred.*

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The organization may accept the government's admission against its own interest as a fact or at least as a minimum figure for the number of cases of disappeared.

Whenever possible, government officials should be interviewed, and such interviews may provide information and clues that are useful to the investigation. In cases where a government refuses to meet human rights organizations or remains silent despite publication of credible reports by the latter, its silence cannot automatically be construed as an admission of guilt. However, the government's refusal to meet with human rights groups can be held up as an indication of lack of commitment to human rights. The fact that the government was given a chance to present its side to the fact-finders can be used to show, at the very least, that the fact-finding undertaken was fair.

### **Burden of proof**

When a human rights organization discloses that human rights violations have occurred, it is incumbent upon the government to show that this was not the case, or that government agents were not responsible for such violations. The burden of proof rests on the government.

Burden of proof (or onus) is another way of stating whose turn it is to move forward with the evidence, whether the organization engaged in fact-finding should do it or whether the government should do it. Obviously, human rights organizations always want the onus to be on the government. But they must show sufficient evidence in the first place to shift the burden to the government to account for its actions. A primary purpose of human rights investigations is to find the truth or the nearest thing to it, and present it in such a way as to shift the burden of proof to the government — to oblige the government to respond and to take some action on it. At each step, the evidence has to be enough to shift the burden back to the government. What is "enough" varies.

### **3.7 LACK OF TRAINING OR RESOURCES**

This is a problem often faced by human rights organizations at the national level. It may not be necessary for each and every domestic human rights organization to undertake individually fact-finding and documentation of human rights violations. It might be more effective if several human rights organizations pooled their resources to jointly undertake fact-finding missions and other related activities. Such joint efforts should be based on a clear understanding of the scope and purpose of the fact-finding activity. Efforts should also be made by national-level human rights organizations to develop coordination and exchanges at the regional level so as to learn from human rights organizations in the region who may have similar experiences in fact-finding.

## **SECTION 4: SPECIAL FACT-FINDING SITUATIONS AND TECHNIQUES**

This section of the manual briefly discusses a number of more specialized fact-finding situations and techniques that monitors of state-sponsored violence — including “informal repression” — in Africa may find themselves covering or needing to employ. Monitors who have already had “basic skills” training (see Section 2) and who have had some experience in the field are likely to be best equipped for further training on these more specialized situations and techniques.

### **QUICK GUIDE TO SECTION 4**

<b>4.1 FACT-FINDING FROM VICTIMS OF TORTURE .....</b>	<b>43</b>
<b>4.2 FACT-FINDING IN ARMED CONFLICT SITUATIONS .....</b>	<b>45</b>
<b>4.3 FORENSIC INVESTIGATION: AUTOPSY AND DISINTERMENT .....</b>	<b>46</b>
<b>4.4 TRIAL OBSERVATION.....</b>	<b>47</b>
<b>4.5 ORGANIZING ON-SITE VISITS OR MISSIONS .....</b>	<b>49</b>

## 4.1 FACT-FINDING FROM VICTIMS OF TORTURE

Collecting information from victims who have undergone torture and survived is very difficult because it is almost impossible to understand fully the depth of the trauma which they have undergone. However, international human rights organizations have accumulated enough experience in obtaining information from torture victims, and this can be used by domestic human rights organizations in their work with torture victims.

**Example:**

*The Danish Medical Group of Amnesty International has developed a protocol for the interview and examination of torture victims. Similarly, a group of Canadian doctors has developed a protocol which is used for taking a history of abuse or torture in connection with interviewing asylum seekers in Canada.*

**Fact-finding organizations should bear in mind the following points while working with torture victims:**

- Fact-finding missions investigating allegations of torture should ordinarily include at least one medical delegate. Among the medical specialists, it is most appropriate to have a forensic pathologist. These doctors are likely to have the greatest exposure to the kinds of physical injuries which the victim may describe. Physicians, especially those trained in detecting evidence of torture, are necessary to detect the distinctive physical and psychological symptoms characteristic of torture victims which will corroborate their allegations of torture.
- Ordinarily, the medical fact-finding team does not attempt to determine if there has been torture, but only whether the information obtained during the examination and interview are consistent or inconsistent with the ill-treatment alleged by the individual. Rarely can medical evidence conclusively prove the truth of torture allegations, especially since the passage of time obscures physical symptoms. Nevertheless, if the description of physical symptoms immediately after torture and any longer term physical symptoms, including scars, agree with the known pattern of symptoms for the types of torture alleged, then the fact-finder may consider the findings consistent with allegations.
- The process of interviewing torture victims about their experiences presents delicate problems of obtaining accurate information. The torture victims are fearful of having to undergo torture once again. The fact-finding interview may sufficiently mimic the torturer's interrogation as to raise conscious and unconscious fear in the torture victim.
- Torture victims often exhibit fear of doctors and of those wearing medical garb (such as white coats), because of the association the victims make with those who committed torture or medical personnel who co-operated with the torturers. Consequently, doctors should avoid wearing medical uniforms when they talk to victims of torture.
- There is a possibility that a torture victim may not be accustomed to talking to strangers about the very intimate and often embarrassing details involved in torture. The fact-finder should take time to gain the trust of the victim, with early questions leading delicately towards the sensitive parts of the interview. Extra sensitivity should be shown to women victims when gathering information about sexual abuse.

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### **The following basic information should be obtained from a torture victim:**

- the individual's name, age, profession, family status and other personal details (if requested, anonymity should be provided to the victim)
- the individual's state of health before the arrest, including past illnesses, previous injuries, previous experience of torture and medical history
- the time, place, date and circumstances of the individual's arrest
- the nature of the treatment which the individual suffered, with precise reference to dates, duration, implements used, the identity of the torturer, etc.
- the condition of the confinement, including: size of the cell and the number of occupants; whether or not there was solitary confinement; the amount and nature of the food; the lighting; furnishings; sanitary conditions and the medical care available
- how the individual felt at the time the ill-treatment occurred, the parts of the body affected and any physical symptoms which the prisoner noted
- the feelings and other symptoms which the individual noted at various intervals after the ill-treatment, for example, one week afterwards, one month afterwards, at the time of the examination
- any medical examination or other contacts with doctors that the individual may have had while in detention or prior to the present interview
- any medical treatment or other treatment the victim may have already received
- individuals who may have seen the individual soon after the ill-treatment and who may be able to corroborate the victim's story
- any complaints the individual may have presented to the authorities and any investigations undertaken
- length of confinement and the circumstances of the individual's release

### **The medical examination should include:**

- the individual's pulse
- blood pressure
- height
- weight
- any significant changes in weight experienced
- any breakages of teeth, bones etc.
- condition (including tenderness, swelling and flexibility) of individual's muscles and joints
- bruises and scars
- a general assessment of the intellectual functioning and orientation of the individual
- voice modulation which may reveal stress
- any complaints about hallucinations, sleep disruption, nightmares, fear etc.
- emotional appearance, including crying, tears, trembling lips, depression, etc.

For information on post-mortem detection of torture, consult Annex 2.

## 4.2 FACT-FINDING IN ARMED CONFLICT SITUATIONS

Traditionally, it is the International Committee of the Red Cross (ICRC) that has taken the leading role in encouraging the application of humanitarian law in situations of international armed conflict and in non-international armed conflict. However, in the last decade, an increasing number of international human rights organizations and some national human rights organizations have begun to apply principles of humanitarian law while monitoring human rights conditions prevailing in situations of armed conflict. Despite a growing interest shown by human rights organizations in monitoring armed conflict situations, particularly non-international armed conflict situations, it still remains a new field.

The application of humanitarian law is dependent on the characterization of the armed conflict. A distinction should be made between international armed conflicts, wars of liberation and non-international armed conflicts as defined under Common Article 3 of the Geneva Conventions. Also, an understanding is required of the characteristics of non-international armed conflicts under Additional Protocol II of the Geneva Convention.

The factors to be taken into account in applying Common Article 3 include whether insurgents possess an organized military force acting within a determinate territory and have the means to respect humanitarian law. An alternative criterion is whether the legal government is obliged to seek recourse to the regular military forces against insurgents organized as a military force and in possession of a part of the national territory.

Human rights organizations may not be able to collect the sort of detailed information required to determine the nature of an armed conflict. However, these organizations can seek the help of experts in the field of humanitarian law to help determine the nature of conflict. Moreover, in most cases articles and reports on the conflict will have been written, and the concerned human rights organization can refer to them in order to determine the nature of the conflict.

Human rights organizations should not be deterred by this complexity. Rather, they should find out what the important criteria are under the various possible definitions and collect the relevant information.

### 4.3 FORENSIC INVESTIGATION: AUTOPSY AND DISINTERMENT

Forensic investigation requires specialized expertise and cannot be undertaken without adequate training and knowledge. Domestic human rights organizations should not play the role of an amateur forensic scientist and should confine their role to providing support to the experts involved in such investigation. However, there may be situations where experts may not be available to conduct forensic investigations or the experts may be hostile to human rights organizations.

Domestic human rights organizations can play an important role by collecting credible information concerning cases that require autopsy and disinterment, and by conducting investigations and campaigning for a proper official inquiry into such cases.

The official inquiry should be guided by the principles of competence, thoroughness, promptness and impartiality. However, where government involvement is suspected and an objective and impartial investigation may not be possible, or where the official inquiry is inadequate, human rights organizations should call for the establishment of an independent commission of inquiry. Thus, knowledge of basic principles concerning forensic investigations is vital to assess whether an official inquiry was properly conducted or not. Moreover, human rights organizations with expertise in forensics can help an independent commission of inquiry to ensure that the investigation is conducted in a competent manner.

In countries where human rights organizations have not developed expertise in the field of forensics, efforts should be made to establish a group consisting of experts and human rights organizations and to train them to deal with forensic investigations. At the minimum, domestic human rights organizations should familiarize themselves with the laws prevailing in their countries concerning autopsy and disinterment and ensure that these are in accordance with internationally established norms.

**Example:**

*The Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol) provides guidelines for independent legal inquiries into deaths which occur under particularly suspicious circumstances. This model protocol is not binding but provides methods for carrying out the standards enumerated by the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.*

## 4.4 TRIAL OBSERVATION

Sending trial observers may not strictly fall under fact-finding. However, a trial observer also collects information and uses most of the techniques of fact-finding for the purpose of commenting on the fairness of the trial.

Normally, trial observation is undertaken by international organizations who send observers to various parts of the world as part of their human rights monitoring activity. However, trial observation can be done by local organizations to ensure the fairness of proceedings, not only against persons charged for political reasons, but also in cases filed for redress of human rights violations or vindication from charge of such violations. Monitoring of human rights trials is important in assessing the independence of the judiciary and the effectiveness of domestic remedies for violations of human rights, and in determining the existence of impunity. Human rights organizations also monitor such trials to augment collection of information on specific violations.

Trial observation at the local level can be either low-profile or high-profile. Most of the principles of fact-finding can be applied to trial observation.

Human rights organizations should bear in mind that the purpose of trial observation is not to make an assessment of the accused's guilt or innocence, but rather to ensure that the trial is fair.

**The following are some clarifications concerning the purpose of trial observation, selection of trials to be observed and selection of trial observers.**

### **Purpose of trial observation**

Usually, the purpose is to:

- prepare an independent, impartial and objective report on the fairness of the trial taking into account its legal, economic and political context;
- help assure the defendant of a fair trial through the influence of the observer;
- give the defence counsel, the defendant and the defendant's supporters a sense of international concern;
- express the sponsor's concern about the fairness of the proceedings without prejudging whether the trial is fair or not.

Different trials may require a distinct emphasis on any of these four principal purposes. Also, the purpose may conflict in some circumstances. Accordingly, the observer must be free to exercise judgement in conducting the mission as the situation requires.

The observer should conduct himself or herself with dignity, impartiality, independence and humanitarian concern, keeping in mind the sensitive nature of trials and the objectives of the sponsoring organization.

**Selection of trials to be observed**

Trials should be selected for observation in the light of the purposes outlined above, as well as the political or human rights significance of the proceedings, the media attention given to the trial, the possible role of unjust laws and the political or cultural importance of the defendant.

**Selection of trial observers**

The principal factors to consider when choosing a trial observer include:  
prestige and reputation for impartiality;  
knowledge of the legal system within which the trial will occur;  
knowledge of the language in which the trial will be held;  
availability at short notice;  
experience as a trial observer;  
knowledge of international human rights standards.

## 4.5 ORGANIZING ON-SITE VISITS OR MISSIONS

In addition to the day-to-day collection of information by researchers or field workers/staff engaged for that purpose, special visits or missions can be organized to an area to conduct investigations or fact-finding. Several persons representing different groups concerned with a particular violation or situation often participate in such a visit. It generally combines collection of information from victims and other witnesses and from published reports and research documents.

Fact-finding missions can be broadly classified as local, national or international, depending on the composition of their membership, and as high-profile or low-profile missions. High-profile missions are widely publicized, and their members usually meet with important government authorities. In low-profile missions investigation is done by skilled persons without any publicity. It is often undertaken in cases where authorities deny access to an area and most often undertaken as a preliminary step towards mounting a high-profile mission.

Sending a fact-finding mission needs advance planning and preparation. Some of the elements involved in sending a trial observer can also be used for planning a fact-finding mission. The following are some additional points which need to be taken into account when organizing a mission.

- **Pre-mission**

Organizations that are engaged in fact-finding should carefully weigh the advantages and disadvantages of making on-site visits to collect information.

The success of an on-site investigation depends on free access and the freedom to interview victims or other witnesses without interference. Such access may not always be available. Governments often shift prisoners, cordon off potential witnesses, prevent access to prisons or deny access to accurate information during the necessarily short periods of the visits. Therefore, in some cases, on-site investigations may be less reliable than collecting information over a long period of time outside the areas of human rights violations. For domestic human rights organizations, it may be more advantageous to collect information over a period of time without attracting much attention rather than organizing an on-site mission and inviting retaliation from the government.

On the other hand, the advantage of sending an on-site mission is that it will facilitate gathering first-hand information from victims, relatives or other witnesses. It will also help in the collection of material evidence such as bullets and articles of clothing and in obtaining pictures or drawing sketches of the site under investigation. Moreover, sending a fact-finding mission may help in generating solidarity for victims and may also persuade the government to take steps to deal with some of the allegations in response to the findings of a well-organized and credible mission.

### **Defining the mandate and standards**

All missions should have explicit terms of reference. The terms of reference should specify the type of alleged violations to be investigated, the time period for the mission's conduct, the geographical area to be covered and the surrounding circumstances to be examined. The terms of reference should provide a reasonably clear objective for the fact-finding endeavour. In order to make sure that all aspects are covered by a mission, it may be helpful to include an omnibus clause such as "to examine other relevant human rights concerns". The terms of reference should not even remotely suggest any prejudgement or bias.

The terms of reference should also state standards (both national and international) that would be applied in evaluating findings.

It may not be appropriate to publicize the terms of reference in advance to the media to avoid generating a real or stage managed demonstration for or against the delegation's arrival.

Terms of reference which are set out in advance would help reduce conflicts among members of the mission concerning the scope of the investigation and also minimize collection of irrelevant information.

### **Selection and briefing of mission members**

The sponsors of a mission should carefully select the mission delegates. Some of the aspects to be considered while selecting delegate(s) are: how the delegate(s) might be received and the impact of their presence on the mission; their reputation; expertise; impartiality; human rights experience; knowledge of political and legal system of the area to be investigated; and language abilities.

Where possible, members of a mission should be contacted much in advance of the visit and properly briefed. The briefing material should include press reports on the issue to be investigated and material providing historical, social, economic and political background information on the area to be visited.

The delegation should also be briefed about security and other problems they may face during the mission and what precautions should be taken to deal with them.

### **Finalizing procedures for ensuring reliability of evidence**

The organization sponsoring the mission should provide guidelines to the mission for ensuring reliability of evidence gathered during the visit. This could include guidelines concerning careful questioning of witnesses, corroboration and burden of proof.

### **Administrative arrangements**

The sponsors of the mission should inform the victims or witnesses about the mission's visit. Where appropriate they should inform local authorities and schedule meetings with the delegation. Arrangements should also be made for board and lodging of the delegation. However, in some situations, members of a mission may have to make their own board and lodging arrangements.

Where it is necessary, the sponsoring organization should identify a reliable translator and make arrangements to obtain his/her services for the mission.

If foreign nationals are participating in a mission and a visa is required for them to enter the country, arrangements for obtaining visas should be made. Depending on the circumstances, the organization should decide whether to disclose the purpose of the visit when applying for the visa. The advantages and disadvantages of not disclosing the actual purpose should be weighed carefully before taking any decision on the matter.

The sponsors should also provide adequate funds to organize the mission. The delegation should be briefed in advance if they have to bear some of the expenses of the mission. The duration of the mission would depend on the purpose and scope of the investigation.

### **Meeting of the delegation**

When a delegation consists of a large group, it is essential for all the members to meet prior to the visit to discuss the terms of reference of the mission and clarify the purpose of the mission. The practical difficulties in convening such a meeting may be one of the drawbacks of a mission consisting of a large group.

Where it is possible to organize a large delegation, the different tasks of the mission should be identified and shared between different members.

#### ***Example:***

*Tasks such as coordinating the mission, negotiating with the authorities and dealing with the press can be delegated to different persons. Tasks can also be divided according to the expertise of the different members.*

#### ***Example:***

*A medical doctor can interview torture victims and a child psychologist can deal with child victims.*

- **The actual visit**

During the visit the delegation, whenever possible, should meet every day to plan as well as assess the progress made.

The delegation should keep an exact record of their activities during the mission, i.e. the date, time and place of interview and persons interviewed. Care should be taken to ensure that these records do not fall into the hands of authorities to avoid any repercussions for those who meet with the delegation.

No public statement should be made on the findings during the mission. However, in some situations, a public statement may be needed at the beginning to explain the purpose of the mission and at the end of the visit to report on the findings and the next steps to be taken by the mission.

- **Post-mission**

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The members of the mission should make an overall assessment of the mission and plan the format of the report. Responsibilities should be clearly identified for the preparation of the report and deadlines should be set. Where necessary, press conferences or other media events should be organized.

## **SECTION 5: REPORT-WRITING**

Reports are written to describe what monitors have investigated and discovered. They can be an important basis for any advocacy or campaigning work which community or human rights organizations may decide to undertake. This is as true in the context of state-sponsored violence, including “informal repression”, as it is for all human rights abuses. Reports should transfer ideas from writers to readers clearly and painlessly. Too often, however, reports do otherwise and produce little but confusion and frustration. There are specific skills in report-writing which monitors can only acquire through training and experience. This section provides some tips for successful report-writing.

### **QUICK GUIDE TO SECTION 5**

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## 5.1 ISSUES TO CONSIDER

Report-writers have to bear in mind who the report is aimed at. They need to ask themselves:

### **Who am I writing for?**

It is important to pinpoint your probable readership by asking yourself:

- How many people are likely to use the report?
- How much do the readers know about the subject?

### **What do I want to tell them?**

It is important to make a list of points you wish to convey. You need to tread a middle path between over-simplification and too much technical detail. You should ensure that the report provides essential information about human rights abuses that you have investigated or observed.

### **Why should they know this?**

Whatever the reason for the report, it is highly unlikely that all your readers will want a blow-by-blow account of all your research/fact-finding. You need to decide whether you wish to educate your readers or persuade them to take some definite action. Usually, reports by human rights organizations contain recommendations for action by government. Sometimes there are also recommendations for action by key foreign governments and by international governmental organizations such as the United Nations.

### **When and where will the report be used?**

The answers to these questions will guide you on the amount of detail and background information you should give. Because a report is a working document which you may wish to make public at a specific moment — perhaps in connection with a particular event or meeting — it is essential that it should be ready on time. It is more important to overlook minor imperfections and get the report ready on time than to have a perfect report that is too late to influence a situation.

Once you have satisfied yourself that you have a note of all facts that may be relevant to your report, you can start writing, bearing in mind all the points that have been mentioned above.

When you start writing, you should also bear in mind the following:

- During the investigation/fact-finding a lot of information was gathered. It is now important
- to select the relevant information which will satisfy your aim (the point/purpose of your report).
- Once you have selected the information you, need to group like with like. This is very important so that a reader can concentrate point by point instead of having to focus on many things at once.
- Signposting or headings are also very useful in planning which information needs to go where. The purpose of these signposts is to give readers a guide through your report. They should be informative and not merely indicative.

The last stage to consider when planning your report is the order in which you put the information. When you consider the order in which to present your material remember that

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the order in which you found things out is usually not the order in which you should present your findings. The chronological is a safety-net order into which you let your data fall if there is no better way.

## 5.2 IMPORTANT ELEMENTS IN A REPORT

Most reports should contain some or all of the following elements:

### **Title**

A good title is short and sums up the message of the report.

### **Circulation list**

This is a much neglected aspect of report writing. A circulation list helps to determine who will be the recipients of the report.

### **Contents list**

A contents list sets out on a separate page near the beginning of a report the chapter headings and helps the reader to find their way through the report. A very short report does not really need a contents list but a report over six pages is often improved by having one. Beyond this size a contents list is essential.

### **Abstract**

An abstract is generally restricted to 200–250 words. In a lengthy report, of 10,000 words or more, the abstract may be virtually a précis of the summary. For many readers the abstract will be their first contact with your report so it needs to contain all the facts of your report.

### **Summary**

The summary is a précis of the report. If the report is long and detailed, a summary is necessary, but brevity is valuable here and a maximum of 500 words is the ideal to aim at. Summarize the whole document clearly, devoting one paragraph to each main facet. Include the gist of your conclusions and recommendations.

### **Introduction**

Write the introduction with the aim of the report clearly in mind. Remember that you have to introduce your readers not only to the report itself but also the problems that led to the commissioning of the report in the first place. This may justify a brief descriptive or analytical account of the background to the report.

### **Literature survey**

This should be as concise as possible. Mention only the leading names. Other references can be put in an appendix.

### **Work description**

This is where you present the main body of your material. Above all, this a factual section. This is where readers should find detailed answers to their questions. In most cases they would like to know what you have done and what you found out and how this fits in with current ideas on the subject.

### **Conclusions**

Most reports deserve a conclusions section, and so do the readers. Give your conclusions in complete, concise paragraphs; put the most important one first. Be careful to distinguish conclusions from recommendations.

### **Recommendations**

Recommendations should be brief and, like conclusions, be presented with the most important recommendations first.

### **References**

When you only have a few references put them at the foot of the page with reference numbers in the text. If you have numerous references it is best to number them and detail the references at the end of the report.

### **Glossary**

Readers may not all be well-versed in the subject and a glossary will be required to explain the meaning of special terms.

### **Appendices**

Do not regard the appendix section as a waste-paper basket. Use it for supporting details, which only a few of your readers need. The appendix section is an ideal place for statements, tables, maps, etc.

### **Illustrations and Tables**

Illustrations must clarify the text; they do not replace words but should summarize facts in a visual form and help the reader to remember them.

## **SECTION 6: HOW NATIONAL AND INTERNATIONAL HUMAN RIGHTS MECHANISMS CAN BE USED TO CAMPAIGN AGAINST STATE-SPONSORED VIOLENCE**

This section describes the national and international human rights mechanisms that can be used to campaign against state-sponsored violence in Africa, including the growing phenomenon of “informal repression”, and provides some tips for international campaigning.

### **QUICK GUIDE TO SECTION 6**

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## 6.1 INTERNATIONAL CAMPAIGNING

As we saw earlier, the phenomenon of “informal repression” emerged in many contexts as a way of evading scrutiny from donor governments who were becoming increasingly interested in human rights issues, especially at a time when African governments were being compelled to democratize. Therefore, one of the first targets for campaigning on this issue should be donor governments. Human rights groups need to present them with firm evidence of government complicity in “informal repression”.

Most donor governments now operate a degree of aid conditionality. The threat or reality of sanctions is often an effective way of bringing pressure to bear, although different human rights groups may have different policies on sanctions.

US embassies have an obligation to produce an annual human rights report for publication. “Like-minded” embassies — for example, the Scandinavians, Dutch and Canadians — usually make human rights a priority issue. Since 1990 the UK and France have also developed policies favouring human rights and “good governance”.

The European Union (EU) is obliged to take human rights considerations into account in its trade and aid relations with African-Caribbean-Pacific (ACP) countries under the terms of the Lomé Convention. The European Parliament is the most vigorous part of the EU machinery in pursuing human rights issues and some EU delegations in African countries have “good governance” officers.

Actions by any of these governments will inevitably be dictated in part by their own political considerations. But they may be influenced by well-documented reports of human rights abuses. In addition to the sanctions weapon (a big stick which they will not use readily) there are other forms of influence they may use: “quiet diplomacy”, human rights training, visits by parliamentary or other delegations to bring attention to problems, a visible embassy presence in troubled areas, financial or other support for human rights groups.

All the above possibilities can be pursued in the first instance by national human rights groups in contact with embassies and delegations in their own countries.

## 6.2 INTERNATIONAL MECHANISMS

Formal mechanisms have been established under human rights treaties to process complaints and to look at patterns of human rights abuse.

**The UN Commission for Human Rights** is an important mechanism, meeting annually. It considers reports and resolutions.

The Sub-commission on the Prevention of Discrimination and Protection of Minorities also has specific sub-mechanisms for dealing with human rights abuses.

The UN Commission appoints Special Rapporteurs on themes and countries and working groups. Of relevance to “informal repression” are:

- the Special Rapporteur on Summary and Arbitrary Executions (Bacre Waly Ndiaye);
- the Special Rapporteur on Torture (Nigel Rodley);
- the Special Rapporteur on Freedom of Opinion and Expression (Abid Hussain);
- the Working Group on Enforced and Involuntary Disappearances;
- the Working Group on Arbitrary Detentions.

The UN Commission can also consider complaints relating to persistent and gross patterns of abuse under the 1503 procedure. The disadvantage of this approach is that it is confidential. The advantage is that it does put significant pressure on governments and allows for the possibility of further intergovernmental action.

International human rights non-governmental organizations (NGOs) such as Amnesty International, the International Committee of Jurists and ARTICLE 19 have consultative status with the UN Economic and Social Council and therefore have rights to attend the UN Commission. They can put forward the concerns of African human rights NGOs. In some cases they are ready to accredit members of African groups to their delegations.

**The Human Rights Committee** was established under the International Covenant on Civil and Political Rights (ICCPR). It monitors states’ adherence to the ICCPR. It will consider submissions (indeed, it welcomes them) from national and international human rights NGOs when it is considering country reports. If a country has ratified the First Optional Protocol to the ICCPR, then the Human Rights Committee can consider individual complaints if domestic remedies have been exhausted. The Human Rights Committee is composed of individual experts, not government representatives, and is thus usually tougher on offending governments than the UN Commission. But its enforcement powers are purely moral.

**The African Commission on Human and Peoples’ Rights (ACHPR)** was established under the African Charter on Human and Peoples’ Rights. It can consider complaints about broad patterns of abuse or about individual cases if domestic remedies have been exhausted. It is still relatively new and without a strong track record. But, as with all these mechanisms, it should be used by NGOs in order to make it function more effectively.

**The Commonwealth Ministerial Action Group (CMAG)** was established by the Commonwealth in 1995 to monitor and act in relation to member states deemed to be in

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serious violation of the Harare Principles. It has focused mainly until now on Nigeria, Sierra Leone and The Gambia, but at the 1997 Commonwealth Summit it was given the power to extend its remit to other Commonwealth countries where there are serious violations of the Harare Principles. It has not yet done so. So far, CMAG has been largely ineffective, but it is a useful hook for NGOs to hang their concerns on.

### **Urgent cases**

The specialist mechanisms of the UN Commission for Human Rights — the Sub-commission, Special Rapporteurs and Working Groups — can be fairly effective in urgent cases. However, their staffing, which is supplied through the Office of the UN High Commissioner for Human Rights in Geneva, Switzerland, is weak. Further, they are often dependent on NGO submissions to trigger action.

Amnesty International has an urgent action network. Its worldwide membership makes this network a powerful tool for action. The International Freedom of Expression Exchange (IFEX), of which ARTICLE 19 is a member, has an effective electronic alert network. Other international human rights organizations which are capable of responding rapidly to urgent cases are: Human Rights Watch; SOS Torture; International Pen; the Committee for the Protection of Journalists; Reporters sans frontières; the Human Rights Defenders Observatory.

### **The media**

Dissemination of human rights reports in the international media can be an effective way of putting pressure on governments. It may be most effective if human rights groups can encourage and assist locally based or visiting international reporters to carry out their own investigations. External broadcasting services like the BBC World Service and Radio France International are often ready to interview human rights groups. This can be a very effective way of getting the message across.

### **Networking**

International campaigning should not just take place in Europe/North America or at international forums. It should — and does — also take place within Africa. Exchange of information at workshops and conferences in Africa is important in this regard. African human rights groups can campaign against abuses in other African countries, as we saw, for example, with the South Africa–Nigeria Democracy Support Group in South Africa. Organization of African Unity and African Commission meetings are another opportunity to network.

## 6.3 NATIONAL HUMAN RIGHTS MECHANISMS

Over the past decade, an increasing number of African governments have established national human rights mechanisms as a way of responding to criticisms that they are not properly monitoring, investigating or promoting human rights. This has been a very positive step. Too often, however, these mechanisms have been poorly resourced and toothless. Their value and effectiveness has been greatest in countries where the government is genuinely committed to human rights. The following examples from Nigeria, Kenya and South Africa illustrate the different contexts within which these mechanisms have been established.

### Nigeria

- **National Human Rights Commission**

The preamble of the National Human Rights Commission Decree No. 22, 1995, states that the role of the National Human rights Commission is :

*To facilitate Nigeria's implementation of its various treaty obligations, including the Universal Declaration on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples' Rights. To assist the Federal Military Government to attain its desires of creating and enabling environment for extrajudicial recognition, promotion and enforcement of all rights recognized and enshrined in the Constitution of the Federal Republic of Nigeria 1979 as amended and under other laws of the land ...*

The National Human Rights Commission was established in July 1996. It is based in Abuja, the federal capital of Nigeria. The Commission has an eighteen-member national Governing Council headed by Justice P K Nwokedi, retired Supreme Court Justice in Nigeria. The Governing Council meets quarterly to examine petitions filed to them, among other things. However, the daily running of the Commission is handled by an Executive Secretary, Mohammed Tabiu.

The Commission welcomes petitions on human rights violations against government agencies. Such petitions should be addressed to:

The Executive Secretary  
National Human Rights Commission  
PMB 444, Garki  
Abuja  
Tel/Fax: 09-5234915

The Executive Secretary prepares the list of all complaints or petitions received in the period between the last meeting and forwards same to the Complaints Committee of the Commission, which determines the admissibility or otherwise of the complaint. Where a complaint is admissible, the Committee decides the appropriate action to be taken on the matter.

The Council of the Commission reserves the right to ratify the recommendation of the Complaints Committee. The petition or complaint is then forwarded to the head of the body

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or organization alleged to have committed a breach for his or her comment, who has 21 days from the date of receipt in which to reply. An investigation may be ordered by the Commission, after which the Governing Council now makes a recommendation to resolve the issue and forward same to the Head of State or agencies responsible for the alleged violation. Such a recommendation may include an appropriate sanction against an offending officer and it shall aim at reconciliation, redress, reparation, compensation, restoration or any other remedy for a right denied or deprived.

The National Human Rights Commission has so far had a non-litigious approach towards redressing human rights violations in Nigeria. As a product of the era of military rule in Nigeria, it has lacked independence from government. However, since 1998 it has sought a better relationship with independent human rights organizations in Nigeria, for example, holding joint workshops and seminars with them. With the arrival of civilian rule in Nigeria in May 1999, there is a real opportunity to enhance the credibility and effectiveness of the National Human Rights Commission. Human rights groups are campaigning for the National Human Rights Commission to be made statutorily independent of government.

### Kenya

- **Standing Presidential Commission on Human Rights**

The Standing Presidential Committee on Human Rights was appointed by the President of the Republic of Kenya, Daniel Arap Moi, under Section 23(1) of the Constitution of Kenya on 21 June 1996 and launched on 5 July 1996 with the following terms of reference:

- i) to investigate the complaints of alleged violation of the fundamental rights and freedoms as set out in the Constitution;
- ii) to investigate complaints of alleged injustice, abuse of power and unfair treatment of any person by a public officer in exercise of his official duties;
- iii) to educate the public as to human rights and freedoms by such means as the Committee deems fit, including publications, lectures and symposia.

The Committee does not investigate any matter which is pending before a Court of Law or involving relations or dealings between the Kenyan Government and any government or international body.

The Committee can be contacted as follows:

The Chairman  
PO Box 74359  
Nairobi  
Tel: 712664  
Fax: 716160

The 11-person Committee is viewed as a creature of the Kenyan Government by the local human rights community. Its role has been extremely limited in practice. The government has continued to establish *ad hoc* judicial commissions of inquiry to investigate major instances of alleged human rights violations – for example, the Akiwumi Commission of Inquiry established in 1998 to investigate all outbreaks of violence in Kenya since 1991.

## South Africa

- **The Human Rights Commission:**

The Human Rights Commission is one of several public institutions that have been set up to strengthen respect for human rights and democracy in a post-apartheid South Africa. These institutions are statutorily independent, and subject only to the Constitution and the law. This is a crucial precondition for ensuring their credibility and effectiveness. The Human Rights Commission has the power to investigate allegations of human rights abuse and, more broadly, to engage in activities which promote human rights. It has the power to take steps to secure appropriate redress where human rights are found to have been violated.

Communications should be addressed to:

Dr DB Pityana  
Chairperson  
Human Rights Commission  
Private Bag X2700  
Houghton  
Johannesburg 2198  
Telephone: (011) 484-8300  
Fax: (011) 484-8403

- **The Public Protector**

The Public Protector is a high-level official independent of government and any political party. She/he is appointed by Parliament under the Constitution, receives complaints from aggrieved persons against government agencies or officials, and has the power to investigate, recommend corrective action and issue reports. Anyone can complain to the public protector, who will investigate the complaint.

The following can be investigated by the Public Protector: government at any level; any person performing a public duty (this includes anyone performing any official duty which affects any, or all, of the people of South Africa — for example an employee of the state such as a policeman or electoral officer); corporations or companies where the state is involved; statutory councils.

The Public Protector can investigate: improper prejudice suffered by the complainant or another person, for example as a result of abuse of power; unfair, capricious, discourteous or other improper conduct; undue delay; the violation of a human right; maladministration; dishonesty or improper dealings with respect to public money; improper enrichment; receipt of improper advantage.

The office of the Public Protector can be contacted at:  
Private Bag X677  
Pretoria 0001  
Telephone (012) 322-2916

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Fax: (012) 322-5093

- **The Gender Commission**

The Gender Commission has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.

Communications should be addressed to:

The Chairperson  
Gender Commission  
Fedsure Forum  
2nd Floor  
South Towers  
corner Van Der Walt and Pretorius Street  
Pretoria 0002  
Telephone: (012) 322-4482  
Fax: (012) 322-4486

- **The Internal Complaints Directorate (ICD)**

The ICD deals with public complaints against members of the South African Police. The ICD falls under the auspices of the Police Act. It is mandated to investigate every death in custody, including deaths during police operations. The ICD can be contacted at the following numbers:

Director: Neville Melville  
Telephone: (012) 305 8370

## SECTION 7: COUNTRY REPORTS

This section consists of three country reports on Nigeria, Kenya and South Africa. Rapidly changing situations in these countries may mean that aspects of these country reports may be out of date by the time this manual is published. Nevertheless, they illustrate the kind of background information that human rights organizations need to collect — in particular, in relation to security apparatuses operating in their country — if they are to monitor state-sponsored violence effectively.

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## 7.1 NIGERIA

Human rights organizations in Nigeria involved in the research, monitoring and writing of reports on human rights violations by state agents were originally unfamiliar with the term “informal repression”. Nevertheless, the growing phenomenon of state-sponsored or -sanctioned repression in Nigeria, using informal paramilitary organizations, vigilantes, or professional thugs has meant that many of the human rights groups consulted during the process of drawing up this manual felt that the time was right for greater attention to be paid to the phenomenon.

### **Different Types of Internal Security Forces**

Since the return to civilian rule in Nigeria in May 1999, no major reorganization of internal security forces has taken place. Various parallel security outfits continue to prowl the country committing human rights abuses. In Bayelsa state in the crisis-ridden oil-producing Niger Delta, military operations by special security squads continue to take place. Disproportionate use of force and indiscriminate killings of civilians remain common. Some of the parallel security outfits have changed their name. For example, “Operation Sweep” in Lagos has now become the “Rapid Response Squad”. Although the military elements in some of these squads have been withdrawn, they still carry on in the fashion characteristic of the military period.

Debate is currently raging in Nigeria as to how best the police force can be restructured and reformed. While some argue that there should be a state police force in each of Nigeria’s 31 states instead of the existing national police force, others favour state commands which would exist side by side with the national force. Yet others prefer regional police commands to state commands. The debate has been made more urgent by the spate of violent crime since the return to civilian rule. Other questions have also been raised: should the police simply be better armed and motivated? What is the implication of a better armed police force in the absence of proper training in human rights for law-enforcement officials? What should be the basic educational requirement to become a police officer?

Many paramilitary organizations exercise internal security powers in Nigeria. Apart from the known ones such as the Nigerian Police Force (NPF), Nigerian Prisons Service (NPS) and State Security Service (SSS), intelligence units of the armed forces and the navy also exercise these powers. There is also the National Drug Law Enforcement Agency (NDLEA), the Department of Customs and Excise and the Immigration Service. In addition, a range of anti-robbery squads were established at state-level during the last years of military rule, for example, “Operation Sweep” in Lagos State. Following the return to civilian rule in Nigeria in May 1999, a major reorganization of internal security forces may follow.

- **Nigerian Police Force (NPF)**

Section 4 of the Police Act, 1943, stipulates the specific functions of the Nigerian police as:

Prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws

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and regulations with which they are directly charged and shall perform such military duties within or without Nigeria as may be required by them ...

Apart from the general image of the police as an occupation force in Nigeria, two units have acquired special notoriety and deserve special identification. These are the criminal investigation unit known as Federal Intelligence and Investigation Bureau (FIIB) at the federal level and State Intelligence and Investigation Bureau (SIIB), at the state level. The other is the riot squad known as the Mobile Police.

- **State Security Service (SSS)** — secret political police

The SSS is a secret police force set up by the former military government of General Ibrahim Babangida in 1986 under the National Security Agencies Decree (No. 19 of 1986). Section 6(1) of the decree charges the SSS with the “prevention and detection within Nigeria of any crime against the internal security”.

- **Directorate of Military Intelligence (DMI)** — initially set up for military intelligence work, but increasingly engaged in harassment, detention, and torture of members of civil society.

### Description of their uniforms

- NPF (regular police) — black shirt, black trousers with black beret and boots.
- Mobile Police — black shirt, green military khaki trousers, black jackboots and green beret. To differentiate themselves from soldiers, mobile police officers wear an emblem, a feather perching on a wooden baton which is woven in cloth and worn on the sleeves.
- SSS, DMI, SIIB — all wear plain clothes during operations but can be identified as follows: clean shaven, safari suits, hidden walkie-talkies and pistols which often bulge from their sides.

- **Ranks and badges/physical description**

There are nineteen different ranks and badges attainable in the NPF, ranging from Constable to Inspector General.

RANKS	BADGES
CONSTABLE	No insignia
CORPORAL	Two chevrons worn point down
SERGEANT	Three chevrons worn point down
SERGEANT MAJOR	The device of the federation (Nigerian coat of arms) woven into cloth and worn on sleeves
CADET INSPECTOR	Two horizontal bars surmounting a white hand on a shoulder strap
INSPECTOR ON TRIAL	Two horizontal bars arranged vertically
INSPECTOR CONFIRMED	Three horizontal bars arranged vertically
CHIEF INSPECTOR	Four horizontal bars arranged vertically

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CADET ASSISTANT SUPERINTENDENT	One star surmounting a white hand on the shoulder strap
ASSISTANT SUPERINTENDENT (ASP) ON PROBATION AND TRIAL	One star
ASSISTANT SUPERINTENDENT (ASP) CONFIRMED	Two stars arranged vertically
DEPUTY SUPERINTENDENT (DSP)	Three stars arranged vertically
SUPERINTENDENT	The device of the Federation
CHIEF-SUPERINTENDENT (CSP)	The device of the Federation on one star
ASSISTANT COMMISSIONER	Crossed tipstoffs surrounded by a laurel wreath
COMMISSIONER	The device of the Federation and crossed tipstoffs surrounded by a laurel wreath
ASSISTANT INSPECTOR GENERAL (AIG)	The device of the Federation and crossed tipstoffs surrounded by a laurel wreath
DEPUTY INSPECTOR GENERAL (DIG)	The device of the Federation, one star and crossed tipstoffs surrounded by a laurel wreath
INSPECTOR GENERAL	The device of the Federation, two stars and crossed tipstoffs surrounded by a laurel wreath

### Types of Vehicles

NPF use Peugeot 504 saloon and wagon cars, painted deep blue, which bear the inscription “Anti Crime Patrol”, for investigation and arrest of individual suspects. The number plates start with two letters “PF” representing the Police Force, followed by four numbers and ending with letters which represent which state or department owns the vehicle.

#### **Example:**

*A vehicle with the registration PF234HQ indicates that the vehicle belongs to headquarters. The registration PF4065LA indicates that the vehicle belongs to Lagos State Police Command. LA stands for Lagos State.*

In major operations involving more than two suspects, NPF use pick-up vans with either opened roofs or side openings. These vehicles bear special police numbers which begin with NPF. The anti-crime intelligence units of the police have also been known to use unmarked vehicles and in some cases taxis.

The Mobile Police usually move in groups in specially built Mercedes Benz 407 and 911 lorries or pick-up vans, often painted deep blue. They also use steyr trucks in their fleets. They have open bodies with iron roofs held by square pipe pillars and angular rods. This enables the men to hold out their assault rifles and sub-machine guns menacingly towards members of the public while the vehicles are moving. Some of the trucks have manually convertible tarpaulin roofs which are removed when they are carrying out operations or raids. The vehicles are also fitted with rows of steel benches bolted to the walls of the trucks.

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Other types of vehicles used by the mobile police are Peugeot 504 wagon cars and pick-up vans when patrolling as members of the various joint task forces on crime involving the army and the air force. In Lagos State the task force goes around with the code name “Operation Sweep”. Their vehicles are mostly Peugeot 504 wagon cars and pick-up vans painted black with the inscription “Operation Sweep”.

The mobile police also use armoured tanks, painted in police colours, during protest marches and student crises. These armoured vehicles are often parked strategically in major cities along with gun-toting members of the mobile police.

The SSS and DMI operatives often move around in unmarked locally assembled Peugeot 504 saloon cars. These vehicles can be identified by the fact that they are usually very new in contrast to those used by the NPF. They also use Peugeot J5 16-seater buses for arrests. The buses are usually white and can be identified by the “well-fed” and clean-shaven looks of the occupants. Students and human rights activists have reported that they go around with two sets of number plates, which they change at will to make identification very difficult.

### **Weapons**

The NPF and the Mobile Police use old Mark-IV rifles and sometimes AK47s in their operations. Senior officers carry old pistols kept in holsters clipped to their belts. The SSS and DMI carry sophisticated pistols and shotguns. They also carry Uzi sub-machine guns in major operations.

### **Places of Detention**

Police stations in Nigeria are identified by signposts bearing police colours and flag, with the inscription ‘Police Station’. The older stations have a peculiar architectural design (usually concrete rectangular bungalows or one-storey colonial style buildings) with built-in cells for holding suspects and detainees. However, due to the accommodation crisis facing the NPF, all kinds of makeshift buildings are now used as police stations. Sometimes the detention cells are either open-roof backyards of buildings or carved out of staircases with flat iron sheets. Police stations, therefore, can only really be identified by signposts or the number of impounded vehicles rotting away in their compounds.

The SSS stations can only be identified if you have either been detained or know someone who has been detained. Several court rulings have declared their detention cells unknown under Nigerian Law. Yet the military government has continued to permit the detention of people in SSS cells all over Nigeria. Sometimes places that are least suspected as detention cells have turned out to be notorious detention facilities.

### **Example:**

*A section of the annex of the Federal Ministry of Information in Ikoyi area of Lagos, has played host to many SSS detainees in Nigeria. It is known as Interncentre — interrogation centre.*

There are only two places of detention known to Nigerian law for keeping civilian suspects:

- POLICE CELLS, which are located in every police station, and prisons. The law says that no person can be detained in a police station for more than 48 hours without being

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charged, except in the case of capital offences. However, in reality, people are not only detained for more than 48 hours without trial but also kept in places unknown to Nigerian law.

- DMI and SSS run secret detention centres that are not accessible to the public.

### **Rights of arrested persons**

The 1999 Nigerian Constitution provides that

*any person who is arrested or detained shall have the right to remain silent or avoid answering questions until after consultation with a legal practitioner or any other person of his choice, ... shall be informed in writing within 24 hours (and in a language that he/she understands) of the facts and grounds for his/her arrest or detention, ... shall be brought before a court of law within reasonable time.*

If a citizen is unlawfully detained the Constitution further provides for compensation and a public apology from the appropriate authority or person. These provisions have never been observed in practice in the past.

### **Repressive laws**

Periods of military rule in Nigeria are always accompanied by repressive military decrees. On capturing power by force, the military promulgates a basic Constitution (suspension and modification) Decree. The purpose and effect of this law are to suspend some and modify other provisions of the existing Constitution. What is saved or preserved in the existing Constitution remains in force at the will of the Federal Military Government, and as a supplement to any other decree that is subsequently issued by that body.

For instance, Decree No. 1, 1984 provided in Section 1 (1), “the provisions of the Constitution of the Federal Republic of Nigeria mentioned in Schedule 1 to this decree are hereby suspended.” Section 1(2) further provided, “subject to this and any other decree, the provisions of the said Constitution that are not suspended by subsection (1) above shall have effect subject to the modification specified in the Decree”. Accordingly, in Schedule 2, part B of the Decree, section I(1) of the 1979 Constitution was modified thus: “the Constitution as amended by this or any other decree is supreme and its provisions shall have binding force on all authorities and persons throughout the Federation”.

Other examples of repressive decrees that were promulgated in Nigeria during the period of military rule between 1983 and 1999:

#### **(a) Decree No. 2, 1984** (as severally amended and abrogated in May 1999)

The decree empowers the Chief of General Staff (the Deputy Head of State) and the Inspector General of Police to detain without trial for a renewable period of three months any person(s) considered to constitute a threat to “national security” or who has contributed to the economic adversity of the nation. Many human rights and pro-democracy activists in Nigeria were detained under the Decree. The Decree forbids judicial enquiry into actions carried out in pursuance of it. Section 4 (1) of Decree 2 states:

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*No suit or other legal proceedings shall lie against any person(s) (members of the security forces) for any thing done or intended to be done in the pursuance of this decree.*

### **(b) Decree No. 13, 1984**

Decree No. 13 suspended the fundamental rights section of the Nigerian Constitution, 1979. Section 1 (2) (B) of the Decree stipulates:

*The question whether any provision of Chapter IV of the Constitution has been, is being or would be contravened by anything done or proposed to be done in the pursuance of any Decree or an edict shall not be probed in any court of law and accordingly, no provision of the Constitution shall apply in respect of any such question.*

### **(c) Decree No. 17, 1984**

This Decree empowered the Head of State or other appropriate persons delegated on their behalf to dismiss public servants without due process. All that is required is for the Head of State to be satisfied that a public officer's continued stay in public service is "not in the public interest." Persons not satisfied with their dismissal under the decree cannot seek judicial review. In 1990, three university teachers active in their union (Academic Staff Union of Nigerian Universities), then in trade dispute with the Federal Military Government were compulsorily retired under Decree No. 17.

### **(d) Decree No. 9, 1991**

This decree banned the regular courts from hearing any law suits relating to matters before military courts.

With the return to civilian rule in Nigeria in May 1999 and the promulgation of the 1999 Constitution, some commentators argue that the barrage of repressive decrees which sustained military rule are all automatically null and void. Most human rights activists believe that, for avoidance of doubt, formal abrogation by parliament is required. It should be added that, aside from the case of military decrees, there are ordinary laws — many archaic and dating from the colonial period — that also violate human rights and that need to be addressed as part of a programme of comprehensive human rights reform in Nigeria.

### **Sources of Information**

The major source of information on human rights violations, including informal repression, for most organizations is the print media. While there are an increasing number of private radio and television stations, the vast majority are publicly owned and subject to government control.

Victims, relatives of victims, direct witnesses or community leaders often bring human rights violations to the attention of human rights organizations.

Church leaders, particularly Roman Catholic priests.

### **Methods of Torture that have been used by Security Agents in Nigeria**

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- Hanging. This involves tying the hands and legs of a suspect separately with ropes. The two ropes are brought together and tied to a ceiling fan hook. The suspect is suspended horizontally in the air with his face up. She/he will be left there for hours and threatened to confess or he will be shot. Sometimes live bullets are fired on the wall to give the impression that if she/he does not confess he will be shot. Most confessional statements involving ordinary criminal suspects have been extracted this way in Nigeria in the past.
- Shooting in the limbs.
- Cigarette burns.
- Insertion of broomsticks or pins into the genitals of male suspects and the neck of a soft drink bottle into that of female suspects.
- Beating with horsewhips, electric cables and shock batons which administer temporary electric shocks.
- Mock executions.
- Removal of victims' finger nails and cuticles with pliers.
- Denial of food and medication and feeding at irregular hours.

Medical tests to prove torture are also standard worldwide. The most important thing is for human rights activists not to take on the role of professional doctors and forensic scientists but to gather information to assist these professionals in doing their work. (See Annex 2 at the end of this section.)

### Complaints Procedure for Assault in Nigeria

- If a person is assaulted, the procedure is to lodge a complaint at the nearest police station.
- The complaint need not, unless a particular law requires it, be in writing.
- It can be made by the complainant himself, her/his lawyer, or anyone he/she may authorize in writing.
- It should be heard in private.
- Once laid, for the police to commence with their investigation, the docket/file should contain a statement of the offence and all the particulars. There is no special form.

If the police believed that the complaint was laid before they had reasonable information, they would appoint an Investigating Police Officer (IPO) to handle the case. He would visit the *locus in quo* — the scene of the crime or incident — to decide whether the complaint laid was genuine. In theory, this should be followed by an arrest of the accused and his arraignment before a court for criminal assault under Section 355 of the Criminal Procedures Act.

In practice, however, this may not happen, either because the accused is a police officer or a person in authority in government. This makes it difficult for the police to arraign him or her in court. The remedy left for the complainant is to invoke his right of private prosecution against any public officer or laws of administration of justice. This is provided for by the Constitution but is a long and tortuous process.

The complainant, his lawyer or any organization representing him should write to the Inspector General of Police or the Commissioner heading the particular State Police Command, asking him or compelling him to prosecute the accused based on the complaint laid. He can also write to the Attorney-General as the Chief Law Officer of the Federation of

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Nigeria to institute a criminal proceeding on behalf of the Federation against the accused. If the police and Attorney-General fail to institute an action against the accused, the complainant or whoever is representing him can bring a civil proceeding against the accused.

### Steps to Follow in Criminal and Political Cases

The steps outlined above are relevant in all simple criminal offences. However, in capital offences such as murder, treason and treasonable felony, the complainant or an aggrieved person can go to court to seek an order of mandamus that will direct and compel the police or the Attorney-General to exercise their public/statutory duties. Where this fails, an action can be filed against the Attorney-General in court compelling him to give the aggrieved person or his lawyer the directive to exercise his right of private prosecution.

Attempts by human rights lawyers and organizations in Nigeria to secure justice for victims of human rights violation through this process have been resisted under military rule. A well-known example is the murder in 1986 of a journalist, Dele Giwa, by people suspected to be operatives of the Directorate of Military Intelligence (DMI) in Nigeria. A human rights lawyer, Chief Gani Fawehinmi, pursued the matter through a “writ mandamus” until he was able to get a ruling of a Lagos High Court granting him the powers to privately prosecute the then director of DMI, Colonel Tunde Akogun, for the murder. The next day, the Military Governor of Lagos State passed an edict withdrawing the rights of private prosecution in Lagos State.

### Sketching the Crime Scene and Gathering Evidence

Again this is best left to the professionals, but there are instances where the investigator/fact-finder may have to sketch a scene of an incident. It is important to put as much detail as possible on the sketch if no camera is available. Gathering evidence should be left to the professionals but, if this is not possible, all evidence should be handled in such a way that it will not be damaged at all. Small items should be picked up with a pen or pencil — avoid hand contact. Investigators should carry with them small containers to preserve evidence, e.g. the small containers film is kept in or small packets like those used in banks for coins.

### Human Rights Organizations that can Offer Assistance

- *Environmental Rights Action (ERA)*, 214 Uselu-Lagos Road, Ugbowo, PO Box 10577, Benin City (e-mail: [eraction@infoweb.abs.net](mailto:eraction@infoweb.abs.net))
- *Institute of Human Rights and Humanitarian Law (IHRHL)*, 52 Mbonu Street, 2<sup>nd</sup> Floor, Suite 5, Port Harcourt (e-mail: [ihrhl@alpha.linkserve.com](mailto:ihrhl@alpha.linkserve.com))
- *Community Action for Popular Participation (CAPP)*, NUJ Secretariat, Area 11, Garki, Abuja (e-mail: [capp.b@abuja.rcl.nig.com](mailto:capp.b@abuja.rcl.nig.com))
- *Human Rights Monitor (HRM)*, 1A Junction Road, PO Box 1584, Kaduna (e-mail: [hrm@infoweb.abs.net](mailto:hrm@infoweb.abs.net))
- *Constitutional Rights Project (CRP)* 5 Abiona Close, off Falolu Road, Surulere, Lagos (e-mail: [crplagos@crp.org.ng](mailto:crplagos@crp.org.ng))

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- *Civil Liberties Organisation (CLO), 1A Hussey Street, Jibowu-Yaba, Lagos (e-mail: [clo@gacom.net](mailto:clo@gacom.net))*
- *Media Rights Agenda (MRA), 44 Alhaja Kofoworola Street, off Obafemi Awolowo Way, Ikeja, Lagos (e-mail: [mra@mediarightsagenda.org](mailto:mra@mediarightsagenda.org))*
- *Centre for Law Enforcement Education (CLEEN), 1 Afolabi Aina Street, off Allen Avenue, Ikeja, Lagos (e-mail: [cleen@alpha.linkserve.com](mailto:cleen@alpha.linkserve.com))*

## 7.2 KENYA

Kenya's human rights record is stained by repression and failures of accountability. Restrictions on fundamental human rights and freedoms are permitted under laws which should be repealed because they breach international human rights standards to which the Kenyan government is ostensibly committed as a signatory to both the ICCPR and the ACHPR.

In theory, Kenya is a democratic state in which Kenyans are free to exercise their human rights, including freedom of expression and association. In practice, many critics of the government have been harassed and intimidated. Political prisoners have been subjected to sustained torture and police routinely beat criminal suspects. Peaceful protestors have been violently attacked by the police and unarmed criminal suspects have been shot dead when they posed no threat to life.

During the 1990s, the Kenyan government has increasingly resorted to strategies of "informal repression" to harass and intimidate political opponents. There have been periodic outbreaks of state-sponsored ethnic violence in Kenya — for example, in the Rift Valley during 1997–8.

### Different Types of Internal Security Forces

- **REGULAR KENYAN POLICE** — Responsible for general duties, i.e. patrols, office work. They are not specialized like the CID. They are uniformed and operate under the command of the Commissioner of Police.
- **ADMINISTRATION POLICE** — Previously a paramilitary force attached to the civilian administration units but now assuming the role of regular police. They arrest people but do not prosecute. They hand suspects to the police for prosecution.
- **CRIMINAL INVESTIGATION DEPARTMENT (CID)** — They are responsible for the investigation and prosecution of ordinary crime and are under the Commissioner of Police. There is also a Director of CID. The "Flying Squad" is part of the CID but they are specialized in dealing with violent robbery. They also include:
  - The anti-corruption unit**
  - The vehicle theft unit**
- **SPECIAL BRANCH** — They are charged with internal security intelligence issues, i.e. they are the political police. Although they fall under the Commissioner of Police, there is a Director of Intelligence. They are the intelligence-gathering arm of the police force.
- **MOBILE POLICE** — They are members of the police force who provide rapid responses in cases of armed robbery.
- **POLICE RESERVISTS** — They are recruited from the ordinary citizenry and are given basic training in the handling of arms. They are supposed to assist the ordinary police in combating crime in their communities. They do not have a uniform and cannot prosecute.
- **ANTI-RIOT POLICE** — They fall under the police but have special training in crowd control.

### Description of Their Uniforms

- **REGULAR KENYAN POLICE** — blue pullover, khaki shorts, for the rank and file and blue and beige suits for the Superintendents and Assistant Commissioners

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- ADMINISTRATION POLICE — green trousers, brown shirts, black berets and camouflage jackets
- CRIMINAL INVESTIGATION DEPARTMENT — plain clothes
- SPECIAL BRANCH — plain clothes
- FLYING SQUAD — plain clothes
- MOBILE POLICE — uniformed like the regular police
- POLICE RESERVISTS — no uniform

### Types of Vehicles

- REGULAR KENYAN POLICE — use marked cars which say POLICE; these include Land Rovers and Jeeps which are blue in colour
- ADMINISTRATIVE POLICE —
- CRIMINAL INVESTIGATION UNIT — use unmarked vehicles. Often they use relatively new Land Rovers or Peugeot 504 station wagons.
- SPECIAL BRANCH — use unmarked vehicles (relatively new Land Rovers and Jeeps)
- MOBILE POLICE — use white marked Land Rovers.
- FLYING SQUAD — use unmarked vehicles.

### Weapons

- REGULAR KENYAN POLICE — rifles
- ADMINISTRATION POLICE — G-3 rifles and AK47s
- CRIMINAL INVESTIGATION UNIT — small side arms, pistols/revolvers, but when summoned for an operation, they are armed with automatic firearms such as AK47s, Uzi machine guns and G-3s
- FLYING SQUAD — small side arms, .38 Specials, but when summoned for an operation they use automatic firearms like AK47s, Uzi machine guns and G-3s
- MOBILE POLICE — small side arms, like .38 specials and automatic weapons like AK47s, G-3s and Uzis for special operations
- SPECIAL BRANCH — small side arms, pistols/revolvers
- ANTI-RIOT POLICE — automatic weapons, teargas launchers and truncheons

### Places of Detention

Police stations are normally identified by signposts and their telephone numbers are listed. However, the CID and Special Branch sometimes hold suspects in their own headquarters. These places are not accessible to the public.

### What to Expect When Laying a Charge

In cases of assault, a P-3 form has to be filled in by a doctor. This form can only be obtained at a police station. Often victims find it difficult to get this form and are kept waiting for days by which time their injuries are no longer visible. There are also cases where the P-3 forms are lost by the investigating officers.

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### **Rights of a Suspect**

On paper, a suspect is allowed to make a telephone call to alert members of their family or to consult a lawyer. In practice, it rarely happens and one depends mostly on the goodwill of the officers involved. A suspect is also entitled to visits from the family or a lawyer but, once again, this depends on the whims of the police officers.

These rights are clearly stated in the Constitution and the Police Act. They include: the right to demand a search warrant, being produced in court within a specified period of time, 24 hours, protection from torture, provision of medical attention.

### **Steps to Follow in a Criminal Case**

- Ensure that the case is recorded in the Occurrence Book (OB).
- Record your personal items, e.g. money, watch etc.
- If it is an assault case, demand a P-3 form.
- Record a statement. If a policeman takes the statement make sure that you read it before signing it.
- Insist on being charged before a magistrate.

### **Steps to Follow in a Political Case**

- On arrest, demand an arrest warrant.
- Do not make any voluntary statements.
- Insist on being allowed to contact a lawyer or a human rights/legal group.
- Take an inventory of any items removed from your premises.
- Refuse to be interrogated in the absence of a lawyer.
- Avoid provocative language in dealing with the police.

### **Repressive Laws**

The following are some examples:

- The Preservation of Public Security Act, which allows indefinite detention without trial and restrictions on freedom of movement.
- The Public Order Act, which is used to restrict freedom of association by requiring public meetings to be licensed in advance.
- The Defamation Act and sections of the Penal Code dealing with “false news”, which are used to arbitrarily restrict the right to freedom of expression.
- The Societies Act, which restricts freedom of association and inhibits organizations, including trade unions and political parties, from gaining registration.
- The Chiefs Authority Act, which gives local administration chiefs wide powers to restrict freedom of movement and other basic rights.
- The Administration Police Act, which gives chiefs and sub-chiefs direct control over a section of the police force.

### **Sources of Information**

- print and electronic media

- victims
- religious organizations
- other human rights/legal organizations
- professionals such as doctors and lawyers
- political parties/activists

### **Different Methods of Torture**

Torture is relatively standard within security forces worldwide see (Annex 2).

### **Sketching the Crime Scene and Gathering Evidence**

This is best left to the professionals, but there are instances where the investigator/fact-finder may have to sketch a scene of an incident. It is important to put as much detail as possible on the sketch if no camera is available. Gathering evidence should be left to the professionals but, if this is not possible, all evidence should be handled in such a way that it will not be damaged at all. Small items should be picked up with a pen or pencil — avoid hand contact. Investigators should carry with them small containers to preserve evidence, e.g. the small containers film is kept in or small packets like those used in banks for coins.

### **Human Rights Organizations that can Offer Assistance**

- *Centre for Governance and Development*  
*PO Box 18379*  
*Nairobi*
- *Centre for Law and Research International (CLARION)*  
*PO Box 38863*  
*Nairobi*
- *Citizens Coalition for Constitutional Change*  
*PO Box 65646*  
*Nairobi*
- *Coalition on Violence Against Women*  
*PO Box 7631*  
*Nairobi*
- *Education Centre for Women in Democracy (ECWD)*  
*PO Box 62714*  
*Nairobi*
- *Institute for Education in Democracy (IED)*  
*PO Box 43874*  
*Nairobi*
- *International Federation of Women Lawyers (FIDA),  
Kenyan Section*  
*PO Box 46324*  
*Nairobi*
- *International Commission of Jurists, Kenyan Section*  
*PO Box 59743*  
*Nairobi*

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- *Kenyan Human Rights Commission (KHRC)*  
*PO Box 55235*  
*Nairobi*
- *Kituo cha Sheria*  
*PO Box 7483*  
*Nairobi*
- *Legal Resources Foundation*  
*PO Box 61671*  
*Nairobi*
- *Mazingira Institute*  
*PO Box 14550*  
*Nairobi*
- *The Media Institute*  
*PO Box 62651*  
*Nairobi*
- *Nairobi Law Monthly*  
*PO Box 53234*  
*Nairobi*
- *Public Law Institute*  
*PO Box 52011*  
*Nairobi*
- *Release Political Prisoners*  
*PO Box 50613*  
*Nairobi*

## 7.3 SOUTH AFRICA

During the late 1980s and early 1990s, strategies of “informal repression” were an important part of the repertoire of the white minority government as it sought to weaken and divide anti-apartheid forces. Political violence was particularly endemic in KwaZulu/Natal. Although apartheid rule finally ended in 1994, its legacy lives on. At least 500 people were killed in political violence in KwaZulu/Natal in 1997. Some appeared to have been extrajudicially executed. During 1998 and 1999, killings have continued. Reports of torture and ill-treatment in police custody also continue. In the fight against the ever-increasing levels of crime, suspects are increasingly tortured to gain confessions. Most of the repressive laws initiated by the apartheid regime have been repealed. However, due to the current outcry against crime, there are concerns that more repressive legislation may be planned. In particular, certain groups are lobbying for the outright denial of bail and the reinstatement of the death penalty. Little attention has been given to the root of the problem, which is poor investigation techniques and consequently a low conviction rate. The latter creates a perception that the justice system is incapable of solving the crime problem, which in turn has led to increased vigilante action.

### Different Types of Internal Security Forces

**The South African Police Service (SAPS)** has both proactive and reactive components. The proactive component focuses on crime prevention and includes the following:

- (a) **Crime Prevention Unit** — mainly uniformed and conduct crime prevention activity
- (b) **Crime Intelligence Service (CIS)** — do not wear a uniform, and gather intelligence on crime (former security branch)

The reactive component includes all the detective units. There are detectives based at all police stations. Detectives do not wear uniform.

In addition, certain specialized units have been established to investigate particular forms of crime:

- (f) **Murder and Robbery Unit** This unit does not investigate every murder and robbery that occurs, only those where the victim was shot with a firearm and which stem from an armed robbery. Murders that are related to ‘faction’ fighting or murders with a political motive are specifically excluded. The unit also investigates attacks on elderly people with aggravating circumstances and murders of SAPS members on or off duty where the motive is to kill a member of the service because of his/her association with the SAPS. The unit also investigates all armed robberies where a firearm is used.
- (b) **Commercial Crime Unit** investigates fraud, including syndicate fraud.
- (c) **South African Narcotics Bureau** investigates all drug-related crime.
- (d) **Vehicle Theft Unit** investigates theft of vehicles particularly by syndicates.
- (e) **Child Protection Unit** investigates all forms of abuse against minors.
- (b) **Unrest and Violent Crime Units** investigate public violence, whether political or not, and all crime pertaining to political violence. This can include taxi wars, train violence, arson and intimidation, etc.

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- (c) **Firearms Units** investigate the origin of all illegal weapons, explosives and accessories which bring about a charge of illegal possession. They also trace illegal weapons to determine their origin.
- (d) **Public Order Policing Unit (POPU)**: this unit is called into riot situations and also used for crowd control.
- (e) **Diamond and Gold Unit** investigates the illegal possession of, and dealing in, uncut diamonds and unwrought precious metals.
- (f) **Truck Theft Unit**: the Truck Theft Unit is responsible for the investigation of all truck thefts on rail and the recovery of consignments of goods stolen in transit within South Africa. This unit also investigates a large number of thefts of material like copper, aluminium and metal bearings on Spoornet, Telkom, and Escom properties.
- (g) **Truck Hijacking Unit** investigates all cases involving the hijacking or robbing of trucks of three tons and higher carrying cargo.
- (h) **Car Hijacking Unit** investigates the hijacking of vehicles.
- (i) **Stocktheft Unit** investigates the theft of livestock as well as the monitoring of abattoirs, auctioneers and butcheries.

### Description of Uniforms

- Ordinary SAPS members based in the station: dark blue trousers, light blue shirts, black shoes, peaked caps. They could also wear the field-dress, which is dark blue shirts, dark blue trousers, caps and dark blue or brown boots. All police personnel in uniform should have a name tag. Their ranks are displayed either on their arm or shoulders.
- Detective branches and specialized units: plain clothes.
- Internal Stability Division unit: dark blue trousers and shirts, dark blue caps, dark blue or brown boots, dark blue bullet proof vests.

### Types of Vehicle

- The SAPS use various vehicles. The proactive units use yellow Toyota vans with canopies which have the SAPS badge on the doors and the number plates begin with the letter B, e.g. BHL716B. They also use minibuses, in particular Ford Huskies. Unless they have a police number plate they are hard to identify. Special armoured vehicles, Toyotas painted yellow, called Scouts, are also used. They also use vehicles called Nyalas which are painted yellow with a blue stripe. They also have the police number plates and often a big number like Y27 painted on the side. Casspirs are also used, these are armoured vehicles also painted in yellow with a blue stripe and with police number plates as well as a big number painted on the side.
- The specialized units use private vehicles: Toyota Corollas, Ford Meteors. Some have the police number plates but many do not. They also make use of minibuses, in particular Ford Huskies or Toyota Hiace. Often, however, these can be identified by their tinted windows.
- Internal Stability Unit: these vehicles are painted green. The most commonly used vehicles are the Nyala and Casspir (described above).

### Weapons

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- The ordinary SAPS members carry standard issue Z88 pistols. If involved in special duties or patrols, they could be issued with a shotgun, R5 or R4 rifles.
- Specialized units: standard issue are Z88 pistols as well as R4 and R5 rifles and, in some cases, Uzi sub-machine guns.
- Public Order Policing Unit : standard issue are Z88 pistols, shotguns as well as R4 and R5 rifles and in some cases Uzi sub-machine guns.

### Places of Detention

There are two main types of detention facility in South Africa. Firstly, most police stations have a set of cells to detain suspects and secondly, prisons. Most specialized units, despite having their own buildings etc., do not have cell facilities and are supposed to keep all suspects in recognized cells once questioning has been completed. This does not always occur.

Police stations can be recognized by the South African flag flying outside as well as the police crest/badge on the outside wall. Many police stations also have large signs on the outside walls of the station depicting their name.

A major problem, however, are the specialized units. Very often they are not in a recognized police building. Some, for example, are based on smallholdings which are not easily recognizable as official stations. The Germiston Crime Investigation Unit is based in a disused Bank of Athens building. There is nothing to identify this building as a police station.

### Rights of an Arrested Person

The rights of an arrested person are enshrined in the South African Constitution Act 108 of 1996. Chapter Two, the Bill of Rights, Sub-section 12(1) guarantees:

Everyone has the right to freedom and security of the person, which includes the right

- a) not to be deprived of freedom arbitrarily or without just cause;
- b) not to be detained without trial;
- c) to be free from all forms of violence from either public or private sources;
- d) not to be tortured in any way; and
- e) not to be treated or punished in a cruel, inhuman or degrading way.

Sub-section 35(1), regarding the rights of arrested, detained and accused persons, states:

Everyone who is arrested for allegedly committing an offence has the right:

- (a) to remain silent
- (b) to be informed promptly,
  - (i) of the right to remain silent; and
  - (iv) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than:

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- (i) 48 hours after the arrest; or
- (xi) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours on a day which is not an ordinary court day;
- (a) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

Sub-section 35(2) states:

Everyone who is detained, including every sentenced prisoner, has the right:

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (e) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (f) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's,
  - (i) spouse or partner;
  - (ii) next of kin;
  - (iii) chosen religious counsellor; and
  - (iv) chosen medical practitioner.

Sub-section 35(3) states:

Every accused person has a right to a fair trial, which includes the right:

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent, and not to testify during proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (a) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;

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- (b) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
- (c) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (d) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing; and
- (e) of appeal to, or review by, a higher court.

Sub-section 35(4) states:

Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

Sub-section 35(5) states:

Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### **Sources of Information**

- the print media
- victims, relatives of victims, direct witnesses or community leaders often brought human rights violations to their attention
- church leaders
- other non-governmental organizations working in the field
- government departments

### **Methods of Torture Used by SAPS**

Because of the willingness of the courts to accept confessions, police are given an effective incentive to extract statements by any means necessary. To achieve this end the police use any one of a number of torture techniques ranging from the physical to the psychological, from the crude to the sophisticated, and from invasive to non-invasive procedures. They include:

- Beatings and verbal abuse
- Rape and indecent assault
- Blindfolding and gagging
- Partial suffocation
- Teargassing
- Electric shocks
- Suspension
- Improper handcuffing
- Prolonged interrogation
- Sleep deprivation
- Food deprivation
- Forcing suspects to stand

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- Withholding or compromising medical treatment
- Humiliation
- ‘Good cop, bad cop’ interrogation
- Mock executions or other life-threatening traumas
- Witnessing the torture of others
- Solitary confinement

Medical tests to prove torture are also standard worldwide.

### **Complaints Procedure for an Assault Case**

Should a person be assaulted by a member of the police or other security forces a J88 form has to be filled in. One of the major problems faced by victims of police assault and torture is that the methods are becoming more sophisticated. Often the torture or assault is conducted in such a manner that no marks are left. However, there are now medical tests that can determine whether electric shocks were administered as well as tests to determine blunt trauma.

When laying an assault charge a statement will be taken and the victim will be given a J88 form. This form can be filled in by any medical doctor and not just by a district surgeon. Once the charge has been laid the victim/complainant should be given a case number which will have the number of the case as well as the month and year it was reported, e.g. CAS or CR 123/1/1998. The victims should also be given the name of the investigating officer. Often this is not available immediately but they should telephone the station and give them the case number and they will be told which detective has been assigned to their case. Once the case has been investigated an arrest could be made. In the case of it being an assault by security force or police members the docket will first go to the Attorney-General for a decision. This is apparently to avoid the possibility of false charges being laid against police or security force members. Once a decision has been made, arrests could follow. However, in the case of members of the SAPS or security force members they normally are brought to court and released in many cases on their own recognizance. In some instances they are also suspended.

In the case of an assault by police or security force members the victim can also institute a civil claim against the relevant government department. The victim has one year from the date of the assault/torture to institute action.

### **Steps to Follow in Criminal and Political Cases**

The steps to follow in reporting both criminal and political cases are practically the same as when reporting an assault case. The complainant in a matter goes to the nearest police station and lays a charge. A docket is opened and the complainant’s statement is taken. A charge is formulated and entered into the docket. The docket is then registered and given a case number. This case number is given to the complainant. As in an assault case the complainant may only get the name of the investigating officer later. It is important to stay in touch with the investigating officer. They have enormous case loads and they do not always concentrate on your particular case so it is important to keep telephoning and asking about any progress in your case. Once the investigation is complete, the docket is forwarded to the Attorney-General for a decision. The procedure that is followed from there on is the same as the one followed in an assault case.

### **Sketching the Crime Scene and Gathering Evidence**

Again this is best left to the professionals, but there are instances where the investigator/fact-finder may have to sketch the scene of an incident. It is important to put as much detail as possible on the sketch if no camera is available. Gathering evidence should be left to the professionals but, if this is not possible, all evidence should be handled in such a way that it will not be damaged at all. Small items should be picked up with a pen or pencil — avoid hand contact. Investigators should carry with them small containers to preserve evidence, e.g. the small containers film is kept in or small packets like those used in banks for coins.

### **Human Rights Organizations that can Offer Assistance**

They include:

- *Human Rights Committee (telephone number: 031 260 1587)*
- *Lawyers for Human Rights (011 320 2943)*
- *University of the Witwatersrand Law Clinic (011 716 5373)*
- *University of Natal Community Law Clinic (031 260 1562)*
- *Legal Resources Centre (031 301 7572)*
- *Centre for the Study of Violence and Reconciliation (011 403 5650)*
- *KZN Programme for Survivors of Violence (031 305 3497)*
- *Network of Independent Monitors (NIM) (031 307 2813)*
- *Community Law Centre (031 202 7190)*
- *Independent Socio-Medical Legal Unit (031 260 1556)*
- *The Human Rights Commission (011 484 8300)*
- *The Gender Commission (012 322 4482)*
- *The Public Protector (012 322 2916)*
- *Independent Electoral Commission (031 306 0190)*
- *Independent Complaints Directorate (031 305 8370)*

## ANNEX 1

### **EXTRACTS FROM *ANATOMY OF REPRESSION* (HUMAN RIGHTS COMMISSION, INFORMATION MANUAL M-1, DECEMBER 1989)**

REPRESSION is the response of the apartheid regime and its supporters to resistance against the policies of apartheid; resistance by the people of South Africa, resistance by South Africa's neighbours, resistance by the international community.

REPRESSION takes many forms, from the blunt controls of legislation to the more subtle controls of what has come to be known as "low intensity conflict". The apartheid regime has become a pioneer in repression, not only adapting the techniques of other past and present-day regimes, but refining them to a pitch of perfection and even evolving new techniques which have served as a model for others to follow...

This manual sets out to list and categorise all these forms of repression and briefly to outline their history and current status. It is also intended to serve as a yardstick against which future levels of repression may be measured.

#### **1. FORMAL REPRESSION**

FORMAL REPRESSION includes those forms of repression with which the apartheid regime has empowered itself by means of legislation placed by it on the statute books of the South Africa parliament...

[It also involves] repression of:

- persons (detention without trial; banning and restriction; political trials; political executions; other actions);
- organisations (banning; restriction);
- Gatherings (banning; restriction);
- Publications (banning; suspension; restriction);
- Political actions (banning).

#### **2. INFORMAL REPRESSION**

INFORMAL REPRESSION includes those forms of repression which lie outside the direct controls of formal security legislation and which are exercised by state structures at one end of the scale and by persons unknown at the other end of the scale. In order of descending overt links with the State, we have the National Management System (a parallel or shadow system of government); vigilante groups, whose state links are often but thinly disguised; and hit squads composed of unknown persons but whose political affiliation and intent is clear.

- National Management Systems (NMS)

The NMS was until recently named the National Security Management System, but the word "security" has been dropped from the title, presumably to play down the real purpose of the

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System. The NMS, which has no constitutional status, was set up in 1986 by army generals and police chiefs and is designed to coordinate the counter-revolutionary warfare strategy of “eliminating” or “taking out” political activists while simultaneously “winning hearts and minds” (WHAM) of the masses by token township upgrading.

At the top of the System is the State Security Council (SSC) which effectively is a secretive super-cabinet, whilst at regional, district and local level are the Joint Management Centres (JMCs), about 500 in number. The JMCs, with representation from the Security Police, Military Intelligence and National Intelligence Service (NIS), are responsible, inter alia, for gathering information in all localities about political activists and their organisations and identifying their places of abode and work, their movements and links. This and related information is fed upwards through various committees to the SSC. The SSC in turn digests this information from all areas and forms an overall security profile, on which it continually reviews security policy and sends down decisions and instructions to the JMCs.

The instruments for carrying out instructions on the “security” side of the overall strategy at local level are the riot police, security police, army personnel, municipal police and kitkonstabels (“instant police”), all coordinated by the JMC for the area, and using powers of detention, banning, restricting, spying, monitoring and harassment. There are strong suspicions that such instructions also find their way to vigilantes and hit squads.

### · Vigilantes

Vigilante groups have their origins in the support systems which have grown up around the apartheid-created structures of homeland authorities and of black local authorities. As such they are squarely situated in the camp of apartheid supporters and collaborators. Like the NMS they began to emerge in 1985/6, and like the NMS they form an important component of the strategy of counter-revolutionary warfare patterned on the models of Algeria, El Salvador, the Philippines and other countries, and involving the tactics of “low intensity conflict” (LIC). Low-intensity refers to the level of profile rather than the degree of violence, and relates to the attempts to transfer the responsibility of violent action against anti-apartheid groups away from the South African police and army to elements ostensibly within the black community and thereby promote the idea of “black on black violence”.

Easily demonstrable links exist between vigilante groups and homelands police, municipal police of black councils and “kitkonstabels”. Sometimes common facilities are used, and often the vigilantes serve as a recruiting source for these police structures, earning them the description of “vigilantes in uniform”. Links with the South African Police (SAP) are less obvious, but numerous claims have been made of free rein and even sponsorship being given to vigilantes by the SAP as a factor which has stimulated the growth of such groupings. Typical of these claims was the manner in which the vigilante group known as the “witdoeke” accomplished in a few weeks what the state had failed to do in 10 years, namely the destruction of the Crossroads and KTC squatter camps housing 70,000 people.

Situations which invite vigilante intervention, always of extreme brutality, are, in the case of the homelands, resistance by communities to enforced incorporation or to the creation of new homelands; and in the case of urban communities, opposition to black municipal councils through promoting civic association as alternative structures with popular support. Such vigilante intervention is lethal in intent and has as its express purpose the elimination of leadership and rank-and-file members of opposition organisations.

- Internal refugees

The hunting down and rooting out of political activists by state security structures and by vigilantes in specific areas has created a phenomenon known as “internal refugees”. These are people who have been identified and singled out for elimination in one way or another and no longer find it safe to live within their communities. They live a life on the run, away from their homes and in constant fear of discovery. Sometimes whole communities are uprooted in this way and forced into a twilight existence. The internal refugee population has at times numbered in the thousands.

- Hit squads

Acts of violence by unknown persons against the opponents of apartheid are not new, but the sheer volume and sophistication of such acts during the last five years is a clear indication of the widespread existence and activity of well-organised units or hit squads. A high degree of expertise is evident, with skills in the use of explosives, weapons, incendiary materials, chemicals, lock-picking devices, etc. Abundant resources include equipment, materials and access to information not generally available to the public. Funding does not seem to be a problem. Speculation as to the base for such an operation inevitably leads to state security structures, particularly the security police which would also explain the virtually complete absence of success on the part of the police in solving these numerous mysteries. Apparent evidence of such security force involvement has been surfacing recently.

— Hit squads seem to have as their purpose the elimination or intimidation of political activists, and/or the disruption or crippling of their organisations.

— Actions against individuals range from straightforward assassination to harassment of all kinds including death threats, attacks on homes (bricks, shots, petrol bombs, teargas canisters, dead cats etc.) and attacks on vehicles (petrol bombs, bricks, paint, tampering with tyres and brakes). Limited records kept over the last five years show at least five disappearances, 45 assassinations (11 during 1989), 160 attempted assassinations (28 in 1989) and 68 incidents of harassment (38 in 1989)

— Actions against anti-apartheid organisations frequently involve the bombing or fire-bombing of offices or whole buildings in which they are housed. Another widely used technique for crippling organisations is to burgle their offices and remove records, computers, equipment, etc. Partial records show 79 attacks and 29 burglaries in the last five years (13 and nine during 1989 respectively). In addition, nine places of worship have been attacked and four graves desecrated.

— Disinformation in the form of bogus newsletters, smear pamphlets and so on often display a high level of sophistication and inside knowledge, such as would be gained from the interrogation of detainees or through informers.

### 3. TARGET REPRESSION

A number of well-defined groupings of the population have become the targeted victims of apartheid repression ... . These groups cover almost every aspect and sphere of our society, with some notable exceptions, such as the business community. The sheer comprehensiveness of this list seems to suggest a government which is at war with its people, and a population which questions the legitimacy and authority of its government.

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[Note: Those targeted, according to the Human Rights Commission, include: the United Democratic Front and affiliates; youth and students; trade unions; churches; the media; community groups; educational groups; professionals; sporting figures; actors, writers and poets]

### **4. FINANCIAL REPRESSION**

One of the expressions of the international community's rejection of apartheid policy is the providing of funds for the victims of apartheid. Not surprisingly, the apartheid regime has responded with measures designed to repress foreign funding of this nature. Two pieces of legislation with this purpose in mind are currently in effect: Affected Organisations Act, No. 31 of 1974; Disclosure of Foreign Funding Act, No. 26 of 1989 ... .

### **5. EXTERNAL REPRESSION**

It is well known that the tentacles of apartheid repression extend well beyond the borders of South Africa. Its effects are felt well in neighbouring and nearby states and have resulted in the destabilisation of the entire South African Region.... The South African government has used, and continues to use, a variety of methods to repress and destabilise its neighbours.

- Armed action: ranging from sporadic commando raids to full-scale invasion and occupation
- The suspected use of under-cover hit squads to abduct and assassinate opponents
- The encouragement of surrogates or "contra" forces, through training, logistical support and intelligence
- Political pressures to promote the installation of governments well-disposed towards apartheid South Africa
- Economic pressures to create and maintain a dependency on the South African transport, harbour, customs and financial systems

## ANNEX 2

### POST-MORTEM DETECTION OF TORTURE

#### Torture technique

#### Physical findings

##### Beating

- |   |   |
|---|---|
| 1. General  | Scars. Bruises. Lacerations. Multiple fractures at various stages of healing, especially in unusual locations, which have not been medically treated. |
| 2. To the soles of the feet (“falanga”, “falaka” bastinado”), or fractures of the bones of the feet.                | Haemorrhage in the soft tissues of the soles of the feet and ankles . Aseptic necrosis..  |
| 3. With the palms on both ears simultaneously (“el telefono”)   | Ruptured or scarred tympanic membranes. Injuries to external ear.   |
| 4. On the abdomen, while lying on a table with upper half of the body unsupported (“operating table “el quirofano”) | Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.  |
| 5. To the head.   | Cerebral cortical atrophy. Scars. Skull fractures. Bruises. Haetomas.   |

##### Suspension

- |  |   |
|--|---|
| 6. By the wrists (la bandera)  | Bruises or scars about the wrists. Joint Injuries.  |
| 7. By the arm or neck  | Bruises or scars at the site of binding. Prominent lividity in the lower extremities.                 |
| 8. By the ankles (“murceilago”)  | Bruises or scars about the ankles. Joint Injuries.  |
| 9. Head down , from a horizontal pole placed under the knees with the wrists bound to the ankles (“parrots perch”, “Jack”, “pau de arara”) | Bruises or scars on the anterior forearms and the backs of the knees. Marks on the wrists and ankles. |

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### Near Suffocation

- |  |   |
|--|---|
| 10. Forced immersion of head in water often contaminated (“wet submarine”, “pileta”, “Latina”) | Faecial material or other debris in the mouth, pharynx, tracheas, oesophagus or lungs. Intrathoracic petechiae. |
| 11. Tying of plastic bag over the head. (“dry submarine”)                                      | Intro-thoracic petechiae  |

### Sexual Abuse

- |                  |  |
|------------------|--|
| 12. Sexual abuse | Sexually transmitted diseases. Pregnancy. Injuries to breasts, external genitalia, vagina, anus or rectum. |
|------------------|--|

### Forced Posture

- |   |  |
|---|--|
| 13. Prolonged Standing (“el planton”)                     | Dependent edema. Petechiae in lower extremities. |
| 14. Forced straddling of bar (“saw horse” “el caballete”) | Perineal or scrotal haematomas                   |

### Electric Shock

- |  |   |
|--|---|
| 15. Cattle prod                                      | Burns: appearance depends on age of injury. Immediately; red spots, vesicles, and/or black exudate. Within a few weeks; circular reddish, macular scars. At several months; small white reddish or brown spot resembling telangiectasias. |
| 16. Wires connected to source of electricity.<br>And |   |
| 17. Heated metal skewer inserted into the anus       | Peri-anal or rectal burns   |

### Miscellaneous

- |   |  |
|---|--|
| 18. Dehydration                                       | Vitreous humor electrolyte abnormalities |
| 19. Animal bites (spiders, insects, rats, mice, dogs) | Bite marks                               |

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