

HANDBOOK ON
FACT-FINDING AND
DOCUMENTATION
OF
HUMAN RIGHTS
VIOLATIONS

EDITED BY

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ASIAN FORUM FOR HUMAN
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(FORUM - ASIA)

HANDBOOK ON FACT-FINDING AND DOCUMENTATION OF HUMAN RIGHTS VIOLATIONS

BASED ON A WORKSHOP
TO DEVELOP A HANDBOOK ON
FACT-FINDING AND
DOCUMENTATION OF
HUMAN RIGHTS VIOLATIONS

1-6 OCTOBER, 1993
CHIANGMAI, THAILAND

ORGANISED BY
ASIAN FORUM FOR HUMAN
RIGHTS AND DEVELOPMENT
(FORUM - ASIA)
AND UNION FOR CIVIL
LIBERTY - THAILAND

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ISBN 971-91436-0-6

Printed in the Philippines
1994

Editorial and production services: Rosalinda M. Galang
Book design, illustrations and desktop composition:
J. Ding Fernandez

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THIS HANDBOOK ON FACT-FINDING and Documentation of Human Rights Violations is based on the proceedings of a Workshop on the subject held in Chiangmai, Thailand, 1-6 October 1993. This Workshop was jointly organised by the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Union for Civil Liberty, Thailand.

The purpose of the Workshop was to provide a forum for those engaged in fact-finding and documentation of human rights violations to share their knowledge and experience, and based on that sharing to develop a Handbook on the subject for use by human rights activists.

The Workshop was attended by representatives of human rights organisations from the South and South-East Asian regions. In addition, Amnesty International, Human Rights Watch, Al-Haq in the West Bank and Asociacion Pro Derechos Humanos (APRODEH) in Peru were also represented at the Workshop. Thus, it was a mix of representatives of local NGOs from the region, representatives of two leading international organisations and persons with experience in fact-finding in difficult situations such as in Peru and the West Bank.

At the Workshop, discussions on various aspects pertaining to fact-finding and documentation of human rights violations were conducted, and participants adopted several reports based on these discussions. To facilitate discussion at the Workshop, a Working Paper was prepared and presented by Mr. Manuel Guzman, Task Force Detainees of the Philippines, and Mr. Babes Ignacio, Paralegal Training Services Centre, Philippines.

The first draft of the Handbook was prepared by editing and compiling the reports adopted at the Workshop. This draft was circulated to all the participants and also to a selected number of experts for their comments and suggestions.

This final version was compiled and edited by Mr. D.J. Ravindran, Consultant, FORUM-ASIA, Mr. Manuel Guzman and Mr. Babes Ignacio.

We are grateful to all those who commented on the first draft and in particular to the following: Mr. Khaled Batrawi, Al-Haq; Ms. Ann Blyberg, International Human Rights Internship Programme; Ms. Donna Guest, Amnesty International; Dr. Ben Molino, Medical Action Group, Philippines; Ms. Emma Playfair and Mr. Chidi Odinakalu, Interights; Ms. Jemera Rone, Human Rights Watch; and Prof. David Weissbrodt, Briggs & Morgan Professor of Law, University of Minnesota.

We are also grateful to Prof. David Weissbrodt and Ms. Hadewig Van Remoortere for preparing the Resource List contained in the Handbook.

We are thankful to the following people who assisted in organising the Workshop in Chiangmai: Ms. Wanida Karunan, Ms. Chalida Tajorensuk, Mr. M.S. Shivakumar, Mr. Pradit Ruangdit, Ms. Oraphon Hongrojanapak and Ms. Thanyakpom Purasen.

The Workshop and the publication of this Handbook would not have been possible without the support of the following agencies: the Anglican Church of Canada, the Ford Foundation, the International Centre for Human Rights and Democratic Development, Canada, and the Swedish International Development Authority (SIDA).

We hope that this Handbook is helpful to human rights organisations in undertaking systematic fact-finding and documentation of human rights violations and thereby strengthening their role in protection of human rights.

Songphom Tajorensuk
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NOTE FROM THE EDITING TEAM

THE AUDIENCE AND THE PURPOSE

THIS HANDBOOK was prepared for the use of local human rights organisations engaged in fact-finding and documentation of human rights violations. In the last decade local human rights organisations that are engaged in collection and documentation of information on human rights violations have increased in number, and this is a modest attempt to provide assistance to such groups.

The purpose of this Handbook is not to provide standards to regulate the manner in which human rights organisations should engage in fact-finding but to provide some practical suggestions to enable them to systematise their collection and documentation of information on human rights violations.

A SUMMARY OF THE HANDBOOK

THE HANDBOOK BEGINS with an Overview chapter clarifying the purpose of fact-finding and methods that are normally used by organisations engaged in fact-finding and documentation of human rights violations. This Overview chapter also includes discussions on the various elements involved in fact-finding such as the need for developing a perspective on fact-finding, defining the policy or mandate and ensuring reliability of evidence.

The second chapter deals with how to identify the sources, what level of proof is desirable and how to ensure the reliability of the information collected.

The third chapter deals with some of the problems involved in fact-finding and what strategies are normally used by groups to overcome these problems.

After dealing with general aspects involved in fact-finding, the fourth chapter deals with how to plan and conduct interviews--the most common method for collecting information from victims and other witnesses. This chapter also includes a section on interviewing respondents with particular characteristics.

The fifth chapter deals with special situations and special methods in fact-finding. The special situations include fact-finding from victims of torture and fact-finding in armed-conflict situations. The special methods deal with, among others, forensic investigation, trial observation and organisation of on-site visits or missions.

The final chapter provides some basic information on documentation of information by discussing recording tools, including standard formats and tools for storage and retrieval.

This Handbook also includes a Resource List of organisations engaged in various aspects of fact-finding and documentation and a basic bibliography on the subject.

THE CONCLUSION

THIS HANDBOOK IS A modest attempt to identify some of the basic elements involved in fact-finding and documentation of human rights violations. It is not an exhaustive manual and may not cover all types of situations in which fact-finding is undertaken. Therefore, human rights organisations should adapt the Handbook to suit the situations in which they are working. It is hoped that local human rights organisations would build on what has been discussed in this Handbook. In this respect, it is only a beginning of a process of strengthening the experience of organisations engaged in fact-finding and documentation of human rights violations.

This Handbook itself would not have been possible without the rich experiences of human rights organisations engaged in fact-finding which were shared at the Chiangmai Workshop, in particular, the experiences of the Task Force Detainees of the Philippines, and the comments received from the participants and other experts. ❁

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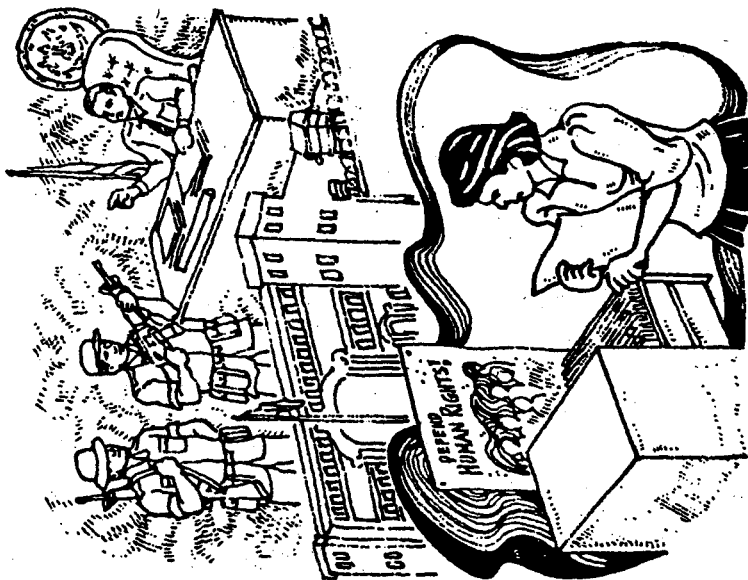
Chapter

AN OVERVIEW: PURPOSE, METHODS AND BASIC ELEMENTS OF FACT-FINDING

A LARGE NUMBER of human rights organisations in different parts of the world are engaged in monitoring human rights practices of governments, which involves two interrelated aspects—collection and documentation of information.

Information is collected by human rights organisations to determine the truth as accurately and completely as possible concerning alleged human rights violations for the purpose of monitoring human rights practices of governments. In some cases, information is also collected on alleged human rights violations committed by armed opposition groups. Human rights organisations collect first-hand information to verify the facts for themselves and to make credible reports on alleged violations of human rights.

Documentation is the process of systematically recording and organising the information for easy retrieval and dissemination. The word documentation is normally understood as collection of existing documents. However, human rights organisations use it also to mean recording of facts, including collection of documents, and establishing a system for easy retrieval and dissemination.



A. SOME PURPOSES OF FACT-FINDING

1. PROVIDING IMMEDIATE ASSISTANCE TO VICTIMS

In instances such as arrests, detention, disappearances, torture and similar situations, the victims or their relatives may seek assistance from human rights workers. Assistance can take the form of searching for the victim in various police stations, military camps or other detention centres to ascertain the safety of the detainee and providing various kinds of legal aid, such as filing a petition for *habeas corpus*. In these situations establishment and verification of the facts surrounding the alleged violation are of vital importance in enabling concerned groups to provide immediate assistance to victims.

2. RELIEF AND REHABILITATION OF VICTIMS

Aside from immediate legal assistance, victims may also need other forms of assistance such as medical assistance, psycho-social therapy, material assistance and others. In such instances information collected by human rights organisations would be of help to organisations engaged in relief and rehabilitation to meet the needs of victims.

3. LEGAL ACTION

Fact-finding is also essential to establish a factual basis for obtaining redress for victims of human rights violations or seeking justice with regard to perpetrators through legal actions at the national and international level. In many instances legal action may need to be taken at the national level either to defend victims or to file actions against suspected perpetrators of violations. Similarly, legal interventions are also made at the international and regional level by filing complaints under relevant mechanisms established by the United Nations or under other multilateral treaties.

4. MONITORING GOVERNMENT'S COMPLIANCE WITH HUMAN RIGHTS TREATY OBLIGATIONS

Fact-finding is undertaken to monitor and ensure that the laws and practices of a country are consistent with international standards and that governments comply with their treaty obligations under international human rights standards.

5. CAMPAIGNING AND PUBLICITY

Fact-finding is undertaken for the purpose of mounting campaigns and publicity to create awareness among the public and to mobilize them to put pressure on the authorities not only to stop violations but also to prevent further violations. Campaigns and publicity may focus on specific victim(s) to help them obtain justice as well as immediate relief.

6. ESTABLISHING HISTORICAL RECORDS

Documentation of information on human rights violations serves the purpose of establishing historical records. Establishing such historical records is especially important where a country has undergone a period of severe repression. In such situations fact-finding is undertaken to establish the truth concerning the magnitude of violations committed during that period and also for immediate purposes such as accounting of missing persons and others.

B. FORMS OF FACT-FINDING

THE PURPOSE FOR WHICH fact-finding is undertaken and the scope of an investigation have a bearing on the type of fact-finding activity. For example, a one-to-one interview with a victim or witness may be sufficient for collecting information in order to file a case in a court of law. On the other hand, fact-finding concerning reported extra-judicial executions may include more complex forensic investigation. Fact-finding concerning the rights of detainees might require prison visits and/or trial observation. A delegation may need to be sent for an on-site visit to an area

or country to collect information concerning allegations of serious violations. Similarly, a research study may be required for evaluating the compliance of a government with its obligations under international human rights treaties.

Fact-finding can take the form of :

1. Conducting investigation in the field for a limited period of time through skilled fact-finders, including staff members of an organisation;
2. Placing trained field workers in an area for a longer period of time to collect and document information on violations;
3. Sending a low-profile fact-finding delegation (mission) consisting of persons from the locality;
4. Sending a high-level delegation of well-known personalities in the country;
5. Sending an international delegation (mission) composed mainly of foreign nationals;
6. Trial observation;
7. Prison visits;
8. Election observation;
9. Organising non-governmental tribunals and commissions of inquiry;
10. Forensic investigation (disinterment, autopsy); and
11. Conducting research studies, including surveys for the purpose of collecting data on economic, social and cultural rights.

C. ELEMENTS OF MOST FACT-FINDING EFFORTS

1. NEED TO DEVELOP A PERSPECTIVE ON FACT-FINDING

The following points are proposed for consideration by domestic human rights organisations to enable them to develop

a perspective on fact-finding.

- a. Fact-finding must be thorough, accurate and impartial. It must not only be impartial and accurate but must be perceived as such. The results of fact-finding must be credible and reliable. In short, abundant caution should be followed to ensure the credibility of information collected and disseminated.
- b. Fact-finding must be conducted with a precise focus and must use clear criteria. It is important to define the scope of investigation and to establish the criteria for determining the reliability of the information. However, flexibility is important in order to pursue all leads and to unearth the truth as far as possible.
- c. Fact-finders should be open-minded when reviewing evidence both for and against any alleged violation. Reports based on fact-finding which is conducted without being and appearing open-minded about the facts to be investigated will carry little weight and may even endanger witnesses for no good purpose.

- d. It is crucial to remember that the first and foremost duty of human rights workers is to the victims of human rights violations. As such, some important ethical considerations have to be borne in mind when conducting fact-finding. For example, it is important to always bear in mind the security and the welfare of the people who provide information. While the dissemination of



information is essential in human rights work, it should not be a cause of further harm to the sources of information. The people affected should always be consulted on matters that may affect them in the conduct of the fact-finding, such as the disclosure of information, undertaking of follow-up actions and others.

- e. Fact-finding should be done with utmost respect and empathy for the victims. Efforts should be made to understand their experience and not simply gather data.
- f. Fact-finders should bear in mind that fact-finding can be a considerable intrusion into people's lives and may make too many demands on them. While some welcome the interest shown in their problems and may be committed to promoting human rights principles, it should not be assumed that this is the case for everyone.
- g. Cultural sensitivities should be taken into account in fact-finding and should be respected.

2. DEFINING THE POLICY OR MANDATE

Human rights organisations that are engaged or interested in fact-finding should define their policy or mandate concerning their fact-finding activities. The policy or mandate of the organisation will determine the scope of their fact-finding activities. For example, an organisation that is concerned with the situation of women or indigenous people would focus its efforts on documenting alleged violations of rights of these specific groups. On the other hand, an organisation's mandate may be confined to monitoring allegations of gross violations such as torture or disappearances. Alternatively, an organisation may set as its first priority the collection of information on protection of certain rights such as freedom of association or freedom of religion.

To develop their mandate or policy, organisations may consider factors such as seriousness of violations, chances of effective intervention and availability of resources, including expertise.

Organisations engaged in fact-finding or interested in undertaking fact-finding should allocate sufficient resources and staff for that purpose. Those staff members who are engaged in or coordinating fact-finding should be given regular training on techniques of fact-finding and documentation of human rights violations.

3. APPLICATION OF STANDARDS

The difference between investigative journalism and human rights fact-finding is that a journalist when reporting on his/her findings may not use strict standards to evaluate whether or not there has been a human rights violation. Human rights organisations, on the other hand, evaluate the information collected by applying human rights standards or norms to establish if there has been a human rights violation.

Organisations engaged in fact-finding or interested in fact-finding should have a clear understanding of the standards that can be used for defining human rights violations and for evaluating information gathered through fact-finding.

There are several possible standards against which a human rights organisation might judge a government's human rights practice. Those standards include laws of the country, in so far as they are consistent with the international standards, international and regional human rights treaties to which the nation is a party, and other prevailing international human rights and humanitarian norms.

It is therefore important for those engaged in human rights fact-finding to acquire basic knowledge of norms established under the Constitution and other laws of the country and international human rights and humanitarian standards. However, it is not suggested that fact-finders should use these standards in a strict judicial manner. These standards should be used as tools to determine the scope of the investigation and to establish whether a human rights violation has occurred in an area or country. Application of standards also helps domestic organisations to monitor the compliance of their

respective governments with obligations under legally binding human rights instruments.

4. ENSURING THE RELIABILITY OF EVIDENCE

Human rights organisations engaged in fact-finding or interested in conducting fact-finding should develop guidelines for collecting and weighing the evidence. It is not suggested that a single standard be used for collecting and assessing information, but organisations should clearly define and disclose the standard applied for significant conclusions they arrive at.

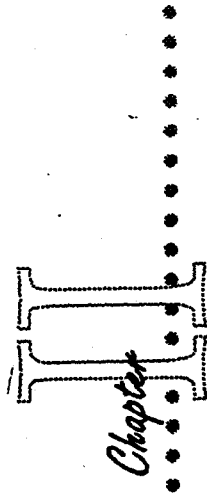
5. THE SOCIAL, ECONOMIC AND POLITICAL FACTORS THAT CONTRIBUTE TO VIOLATIONS OF HUMAN RIGHTS

Human rights organisations that are engaged in fact-finding should try to understand the social, economic and political factors that may contribute to violations of human rights. For example, some violations may arise as a result of existing social structures and cultural practices/traditions involving discrimination based on class, nationality, race, caste/ethnicity, religion, age and gender. In some situations economic and other policies pursued by governments, including use of repressive laws and other measures to implement such policies, may lead to infringement of rights. In other situations internal armed conflicts and/or other group conflicts which are a manifestation of social, economic and political tensions prevailing in a society may contribute to violations of human rights.

By understanding the social, economic and political context, fact-finders will be able to collect more focused information concerning the cause(s), victim(s) and the perpetrator(s) of an alleged violation. It will also facilitate development of suitable strategies to protect human rights once credible information has been collected.

6. DEVELOPING LOCAL CONTACTS

Human rights organisations should develop a pro-active approach to fact-finding and pursue strategies to ensure access to information. One strategy can be to develop local contacts and give them basic training on collecting information regarding alleged human rights violations in the area(s) where they reside. Local contacts would provide information on new cases as well as keep human rights organisations informed about developments with regard to old cases. They can help to encourage victims or their relatives to report on alleged human rights violations to the human rights organisation working in that area. They act as a bridge between fact-finders and the local community. The training provided to local contacts should include a basic orientation course on human rights concepts. ❁



SOURCES OF INFORMATION, LEVEL OF PROOF AND CORROBORATION

A. THE APPROACH TO BE ADOPTED IN ADMITTING EVIDENCE

HUMAN RIGHTS ORGANISATIONS, while investigating alleged human rights violations, examine both the victims' and the government's version of events. However, they do not conduct their investigations by establishing formal adversarial procedures where parties present opposing views. On the other hand, human rights fact-finders collect and evaluate all available information to arrive at their findings. Therefore, they follow all evidentiary leads and cannot exclude evidence that is available.



While following a broad approach to collecting evidence, human rights organisations must take great care in assessing the veracity and reliability of the evidence obtained. To safeguard their credibility, it is important for them to seek direct evidence and obtain a higher level of evidence when conducting investigations on alleged human rights violations.

B. IDENTIFYING THE SOURCES

ORGANISATIONS ENGAGED IN fact-finding, while pursuing a broad approach in admitting 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 evidence needed to substantiate each element. For example, in a case of alleged extra-judicial execution where the victim was reportedly killed by a military patrol or by members of armed opposition groups, find out the following basic information:

- (a) who is the victim;
- (b) who is the alleged killer;
- (c) circumstances (when and where: date, time, place);
- (d) how was the victim killed; and
- (e) who found the body, when, where and in what condition.



Based on such an 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. For example: family members who can give a description of the victim, prior 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 like members of the clergy, community leaders and others in a position to know

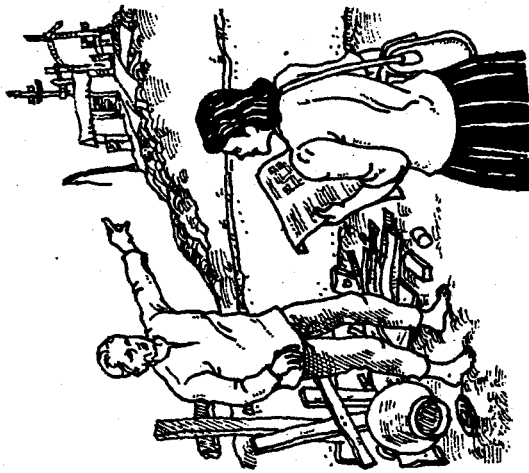
in general what has occurred in the area; outsiders who are not aligned with the involved parties like workers of non-governmental organisations or relief agencies functioning in the area.

C. WRITTEN AND DOCUMENTARY EVIDENCE

A DILIGENT FACT-FINDER should make it a point to look 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.

D. ON-SITE INSPECTION

BEFORE GOING TO a site, 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 like streets, mountains, houses and rivers. This is helpful when witnesses refer to places in connection with certain events under investigation. During the on-site visit, it would be useful to prepare a description of the site, post-event. For example, make a list of burnt or damaged property, etc.



E. LEVEL OF PROOF

HUMAN RIGHTS ORGANISATIONS engaged in fact-finding should decide beforehand 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 organisations 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 organisations will probably not be able to attain this level, in part because human rights organisations 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 organisations should strive to attain the level of "beyond reasonable doubt" in their investigations. Another level of proof is preponderance of evidence, which is used in civil trials (not involving loss of liberty for the defendant).

The level of proof used by a human rights organisation should depend on the action that is planned after the fact-finding activity. For 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 audience of the report. For 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 is the level of evidence in general terms. In most reports incidents that are not one hundred percent established can be included, as long as the level of probability is disclosed. For example, if there was not enough evidence to "definitely conclude," the case can still be presented as "very likely," "probable," "eyewitnesses stated that" or in other phrases in a similar vein.

When human rights organisations 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 organisation is not bound by it forever. For 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. For example, if a particular form of punishment is described as torture in one report, it should not be changed without giving reasons in the later reports.

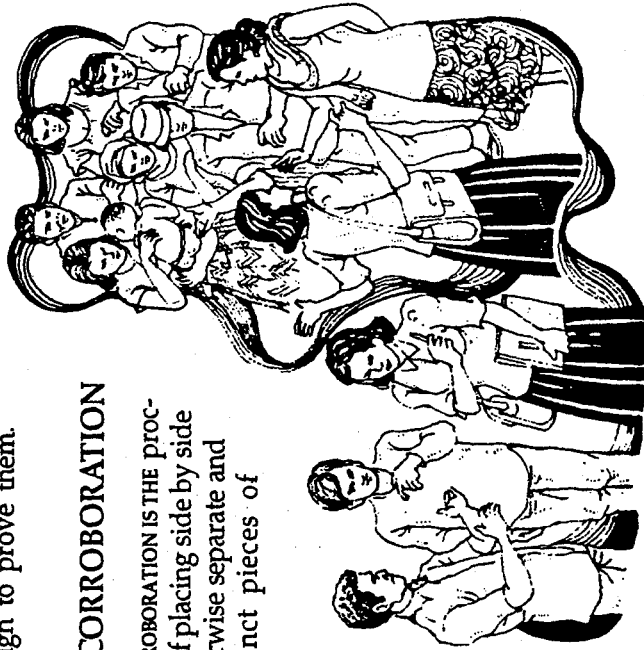
There have been some attempts to categorise levels of proof. For example, the United Nations Truth Commission in El Salvador had three levels of proof. First was "overwhelming proof," which meant highly convincing proof. The second was "substantial proof," which was solid proof in support of the conclusion. 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 organisations, 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.

F. CORROBORATION

CORROBORATION IS THE process of placing side by side otherwise separate and distinct pieces of



evidence in order to establish the probability of something that is being proven. 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 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. For 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 from the same geographical area to check if any pattern emerges providing corroboration. On-site visits can help corroborate information collected from witnesses. For 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.¹ 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.

G. CIRCUMSTANTIAL EVIDENCE

IN OTHER SITUATIONS, it may be difficult to obtain even minimum direct evidence, for 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. For 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.

For example, fact-finders in El Salvador established official involvement in abduction and killing of victims by analysing the method of operation of the security agents in the following manner:

Heavily armed men in civilian clothes in a vehicle with polarized glass windows abduct victims who fall into certain categories such as political activists, union members, students or community leaders. The victims are abducted from home or street or workplace or school often in broad daylight and in front of witnesses, suggesting the perpetrators have a sense of impunity, sometimes at night during curfews, also suggesting sense of impunity. Later the body is found in a place remote from the scene of abduction tortured, blindfolded, hands tied, suggesting captivity probably for interrogation purposes. The place for dumping bodies may be close to a military base or bodies may be dumped during a period and in a place where military checkpoints and curfews prevent ordinary people from free movement.

These examples illustrate that diligent fact-finders can build a case despite difficulties in getting direct evidence by meticulously collecting and analysing circumstantial evidence surrounding a violation. However, it should also be noted that "the problem with the use of indirect evidence is not so much reliance thereon, but the failure to distinguish in fact-finding reports between findings based on direct evidence and inferences based on indirect evidence. NGOs should clearly indicate the basis for their conclusions."²

H. ADMISSIONS AGAINST INTEREST

MOST OFTEN, GOVERNMENTS tend to totally deny findings made by human rights organisations concerning violations of human rights. However, by persistently publishing credible reports, these organizations most often succeed in forcing the governments to at least indirectly acknowledge the findings. For example, a human rights organisation may publish a report with numerous cases of disappearances, and the government may respond by admitting that only a few cases have occurred. The organisation may accept the government's admission against interest as a fact or at least as a minimum figure for the number of cases of disap-

¹ David Weissbrodt & James McCarthy, *Fact-finding by International Nongovernmental Human Rights Organizations*, 22 Va. J. Int'l L. 1-89 (1981).

² *Ibid.*

peared. Normally such limited admissions coming from the horse's mouth, so to speak, are construed most strictly against the government.

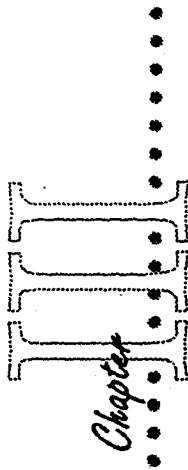
Whenever possible, government officials should be interviewed, and such interviews may provide information and clues that are useful to the investigation.

In cases where a government refuses to meet with human rights organisations or remains silent despite publication of credible reports by the latter, its silence cannot be automatically 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. On the other hand, 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.

I. BURDEN OF PROOF

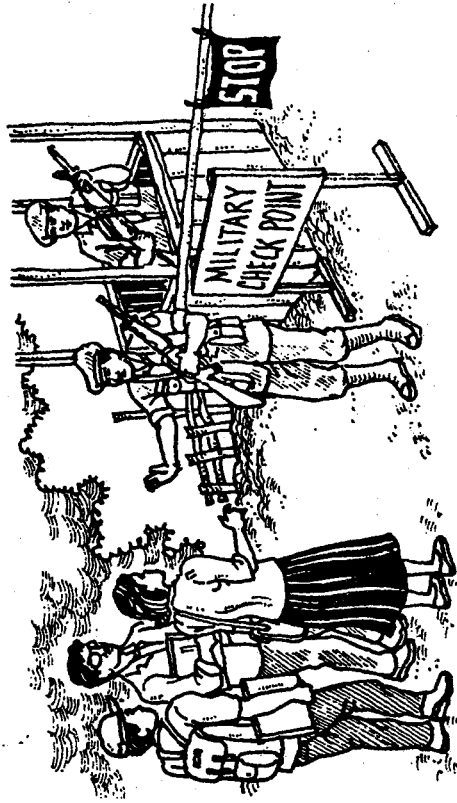
WHEN A HUMAN RIGHTS organisation based on its findings discloses that human rights violations have occurred, it is incumbent upon the government to show that it was not the case or that government agents were not responsible for such violations. The burden of proof rests upon the government.

Burden of proof is another way of stating whose turn it is to move forward with the evidence, whether the organisation engaged in fact-finding should do it or the government should do it. Obviously, human rights organisations always want the onus to be on the government. But they must show sufficient evidence to shift the burden to the government to account for its actions. A primary purpose of human rights investigation 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; i.e., 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. ☸



PROBLEMS INVOLVED IN FACT-FINDING AND SOME SUGGESTIONS FOR RESOLVING THEM

COLLECTION OF CREDIBLE first-hand information on violations of human rights is demanding and at times involves risks. It requires persistence, tact, courage and dedication. Gathering of information on alleged human rights violations can be severely hampered by certain conditions. The following are some common problems encountered by organisations engaged in fact-finding.



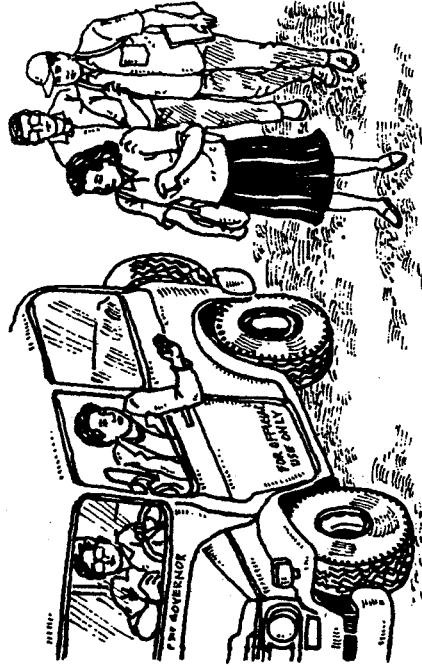
A. LACK OF FREE ACCESS TO AREAS WHERE VIOLATION HAS OCCURRED

SUCCESS OF ON-SITE FACT-FINDING depends on free access to an area, and most often fact-finders are faced with the 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 inter-

ference. However, the "agent", acting on strict orders from higher-ups, 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 governments or armed opposition groups that are repressive, the human rights organisation should consider postponing the visit.

Fact-finders should avoid travelling with government officials or an armed opposition group, since this would create an appearance of partiality even if the interview were done without the presence of any member from either side. Travelling with government officials or an armed opposition group may make it impossible to convince the 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.

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

Domestic human rights organisations 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 pressure 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 the fact-finders or witnesses. Another tactic followed by local organisations is to organise a high-profile fact-finding mission to the area with personalities and representatives of respected organisations as delegates to persuade the government to withdraw the restrictions.

B. THREAT TO THE SAFETY AND SECURITY OF FACT-FINDERS

HUMAN RIGHTS WORKERS often experience harassment and can be victims of the very same violations which they document. It is therefore of utmost importance that the safety and security of the people involved in the fact-finding is taken into account by organisations engaged in fact-finding.

Compared to domestic human rights organisations, 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 were given, there is no guarantee that these will be observed in practice. Consequently, organisations engaged in fact-finding, especially domestic human rights organisations, should prepare their fact-finders to follow some safety measures while collecting information in the field.

Organisations engaged in fact-finding should train their fact-finders (or brief their delegation) 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 and getting caught in a cross-fire in an armed-conflict situation. Organisations should also insist on knowing where the fact-finder is going and when he/she plans to return and should have a plan of action if the fact-finder does not return as scheduled. Further, they should

brief their fact-finders to make contacts with colleagues at appointed times. Knowledge of first-aid would also help.

Special safety precautions must be followed by those engaged in fact-finding in internal armed-conflict situations. For 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 if stopped at a checkpoint. For instance, they should determine whether it would be safe to identify themselves as human rights workers or whether that would jeopardise 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 if the army troops or guerrillas usually take shots at such targets and learning how to take cover in the event of gunfire.

C. THREAT TO THE SAFETY AND SECURITY OF WITNESSES

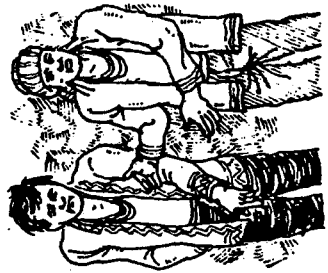
IN SOME SITUATIONS WITNESSES, or even victims, may face reprisals after giving testimony. Witnesses may be detained, tortured or even killed for testifying to a human rights fact-finding mission. Therefore, fact-finders should always bear in mind the security and welfare of the people who provide information.

Fact-finders should obtain the consent of the witnesses to the interview and seek the help of reliable local contacts to encourage witnesses to cooperate. 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. For example, should the fact-finder withhold just 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".¹

D. GATHERING OF UNRELIABLE INFORMATION

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



Similarly, in ethnic and other social conflict situations, communities are divided, and from within each social group there may be pressure on members to blame the other for the conflict. Similarly, there may be a tendency on the part of the victims to exaggerate facts to gain sympathy for the group they belong to. Fact-finders should take care to assess the

information they obtain in such situations. Moreover, members of a fact-finding team should be careful to ensure that they are not identified with one of the groups involved in the conflict.

E. RELUCTANCE OF A WITNESS TO PROVIDE INFORMATION

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 provide information. 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 like 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 coexist with both government and armed opposition groups. Depending on the length of the conflict, many have coexisted for years. Coexistence 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.

F. LACK OF AWARENESS CONCERNING HUMAN RIGHTS

IN SOME INSTANCES, due to lack of awareness concerning human rights, some victims may not report violations that are committed against them. For example, victims of ill-treatment in police custody

¹ David Weissbrodt, *International Fact-finding in Regard to Torture*, 57 *Nordic J. Int'l. L.* 27 (1988).

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.

G. LACK OF TRAINING OR RESOURCES TO CONDUCT FACT-FINDING

THIS IS A PROBLEM often faced by human rights organisations at the national level. It may not be necessary for each and every domestic human rights organisation to undertake individually fact-finding and documentation of human rights violations. It would be more effective if several human rights organisations pool 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 organisations to develop coordination and exchanges at the regional level so as to learn from human rights organisations in the region who may have similar experiences in fact-finding. ☺

IV

Chapter

INTERVIEWING

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. 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 veracity 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.



A. TIPS ON CONDUCTING INTERVIEWS

It is useful to think of an interview as a three-step process and plan accordingly. The normal stages in interviewing are : (1) Pre-interview; (2) Interview proper or during the interview; and (3) Post-interview.

1. PRE-INTERVIEW

Ensure that the venue, conditions and the timing are suitable for conducting the interview. Select a proper place and create a good atmosphere by eliminating distractions. 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.

Understand the elements of human rights abuses to be investigated so that relevant questions or a checklist can be prepared in advance. If detailed questions are not prepared, a fact-finder can use a simple checklist consisting of: "How, Where, When, Who, What, Why."

2. INTERVIEW PROPER OR DURING THE INTERVIEW

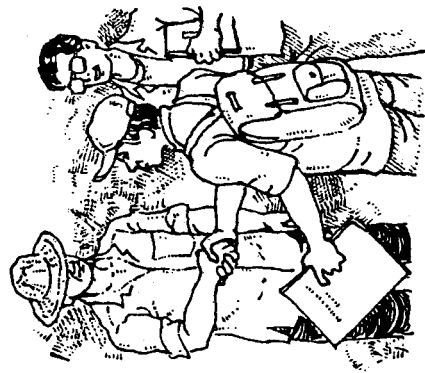
Provide the necessary introductions and identification such as organisational affiliations. Explain clearly the purpose of the interview and the consequences if any of providing information. Seek permission if you intend using the name of the interviewee in the report. Also explain how the information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

Establish rapport and trust with the interviewee, show respect and proper courtesy. Do not be judgmental or show one's biases against the interviewee. Be aware that the response of an interviewee is conditioned by his/her past experiences; therefore do not expect a interviewee 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 taking notes may intimidate a witness, so ask permission to take notes and explain why you need to do so. In some instances a fact-



finder 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. Use the checklist to gently guide the witness to return to the main story. Asking the victim to narrate the story in a chronological order would 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 and 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. For 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 in 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 interview; location of interview; duration of 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.

3. POST-INTERVIEW

The fact-finder 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 had conducted interviews independently, a preliminary cross-checking of notes should be made between them.

If a witness during an interview had referred to a place or object, look for that place or object for purposes of corroboration. Also prepare maps or sketches if necessary.

Type your notes as soon as possible.

B. SOME ELEMENTS INVOLVED IN INTERVIEWING

1. QUESTIONS

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. For example, questions that are vital for investigating an alleged case of involuntary disappearances are those that will help determine the place of arrest or abduction or where the missing person was last seen and with whom. These questions will help establish whether it was an involuntary disappearance or not.

Make a note of issues that need further clarifying or double-checking as and when they arise while interviewing witnesses. Issues noted while interviewing one witness can become questions for another witness.

Care should be exercised in the choice of words. Avoid emotionally charged words. Use familiar everyday language and avoid jargon. Try and use the language and terminology of the victim, and seek clarifications when a particular terminology used by the victim is not clear. 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. Be polite and allow the witness to finish the narration.

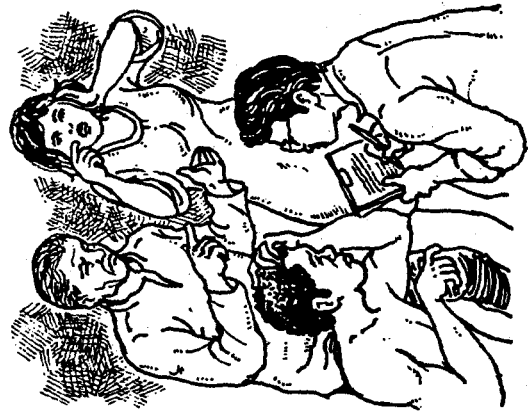
Maintain anonymity of the source while using the statement of one witness to cross-examine another witness.

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.

2. RESPONSES

Obtaining an adequate response which will help substantiate an allegation is the purpose of questioning. However, not all responses will be informative, so each response should be probed to clarify fully the matter under investigation. The extent of probing will depend on the level of proof to be established and the extent of knowledge of the witness. For example, in an armed-conflict situation, a statement by a witness that "they shot indiscriminately" (or a statement to that effect) is not sufficient and should be probed to find out whether it was indiscriminate or not from the perspective of humanitarian principles that govern armed-conflict situations. Since a witness may not be able to make such distinctions, it is the responsibility of the fact-finder to gather the facts and seek clarifications of the statements given as thoroughly as possible so that there are enough grounds to conclude that it was an indiscriminate attack.

Take into account local and cultural patterns of speech. For 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.

3. INTERPRETERS

In some situations it may be impossible to conduct an interview without the help of an interpreter. 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.

Sometimes, an interpreter may get involved in the case and start asking questions he/she is interested in or get involved 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 and never criticize the witness. There is no guarantee that the interviewee did not understand what was told to the interpreter.

4. USE OF EQUIPMENT

There is no one rule concerning use of equipment such as tape recorders, cameras and video cameras. In some situations it may not be possible to use sophisticated equipment due to security risks involved in using them or due to lack of infrastructural facilities such as transport or electricity. 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 decides to use sophisticated equipment, they should anticipate the difficulties they may face and prepare a contingency plan for dealing with such difficulties. Permission should be obtained from witnesses before using equipment such as a tape recorder to record testimony and a camera or video camera.

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

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.

C INTERVIEWING RESPONDENTS WITH PARTICULAR CHARACTERISTICS

1. INTERVIEWING VICTIMS

Victims of human rights violations are usually the best source of information. There are, however, several factors that need to be considered in interviewing them. Victims may be in a traumatised condition because of their experience and may not be in the proper state of mind to give information. If they agree to be interviewed, the interviewer 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 cooperation when they are released from custody.

2. 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 clarifications 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 organisations should make use of official investigations or inquiries ordered by the government to state their findings and also to 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.

3. 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 the socio-economic and political structures. Therefore, fact-finders, in particular men, should be aware of discriminatory values and behaviour patterns that exist in the society and should avoid stereotyping of 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 consulted. Obtaining her consent (free choice) to testify must be preceded by adequate explanations. It is essential that women interview female rape victims.

4. INTERVIEWING CHILD VICTIMS

Information gathering from children is a gradual process. 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/victim or even through verbal interactions with her/him. 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 of neighbours, etc.

5. 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 empathise 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 the country of their origin from the country where they

have sought asylum, 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 any 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.



6. 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 indigenous groups themselves should be aware of and respect these differences.

RURAL POPULATIONS

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 folk concerning the 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 organisations that are working in the area to reassure witnesses who are afraid of giving information.

D. PREPARING A SIGNED STATEMENT

A STATEMENT UNDER OATH is a written description of an incident as stated by an eyewitness and signed by him/her attesting to the contents of the statement.

Normally, human rights organisations do not insist on receiving signed statements from witnesses due to security considerations and also because formal procedures may discourage victims from testifying. However, a signed statement by a witness may carry more weight and credibility, and where possible human rights organisations, while taking into account security and other considerations, can obtain signed statements as part of their fact-finding activity. A signed and properly authenticated document such as an affidavit can be used in court and in other formal forums.

The following are some tips for preparing a statement signed by a witness:

The first step is to ask the eyewitness who has consented to give a signed statement to slowly narrate his/her story, and to record it. The person recording the statement should only seek clarifications on points that are not clear and should not dictate or direct the narration. The person making the statement should only testify about things which he/she has direct knowledge of and not things heard from others.

It is important to record the statement without interference from others, and if possible it should be recorded privately. If there is more than one eyewitness to an event, each of them should narrate it independently, and others should not be present when one of them is making the statement.

As far as possible, a second draft should be prepared immediately and the person preparing it should not add anything of his/her own to it.

The second draft should be read slowly to the witness, who should be given time to say whether anything needs to be added or to be deleted. If the witness agrees to the draft, then he/she should be asked to sign the statement. All pages of the testimony should be signed.

The format should follow the generally accepted affidavit model, with the beginning of the statement containing some important personal information concerning the person making it. The language used should be that of the person signing it and should not be unnecessarily formal.

At the end, it should be clearly stated that the person signing the statement read the statement before signing it. Similarly, the person who recorded the statement should declare that he/she prepared it. The date and time of signing should be written. Two independent witnesses should attest to the statement. (See Appendix B for sample affidavit.)

V

Chapter

SPECIAL SITUATIONS AND SPECIAL METHODS IN FACT-FINDING

A. SPECIAL SITUATIONS

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 organisations have accumulated enough experience in obtaining information from torture victims, and this can be used by domestic human rights organisations in their work with torture victims. For 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 have developed a protocol which is used for taking a history of abuse or torture in connection with interviewing asylum seekers in Canada.

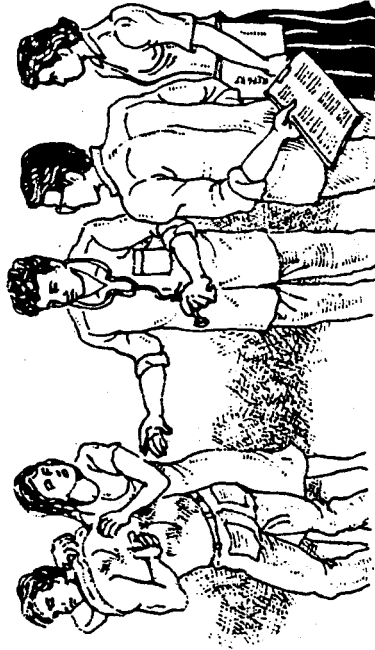
Fact-finding organisations should bear in mind the following points while working with torture victims.¹

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.

¹ These points are taken from an article on the subject by Prof. David Weissbrodt, which is largely based on an analysis of both the Danish and Canadian protocols. The Danish Medical Group has not revealed fully its protocol, and Prof. Weissbrodt's article is based on the results of their examination and general descriptions of the protocol.

Ref: David Weissbrodt, *International Fact-finding in Regard to Torture*, 57 *Nordic J. Int'l L.* 27 (1988).

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 the 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 cooperated 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. A fact-finder should take time to gain the trust of the victim, with early questions leading delicately toward the sensitive parts of the interview. Extra sensitivity should be shown to women victims when gathering information about sexual abuse.

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

- a. The individual's name, age, profession, family status and other personal details (if requested, anonymity should be provided to the victim);
- b. The individual's state of health before the arrest, including past illnesses, previous injuries, previous experience of torture and medical history;
- c. The time, place, date and circumstances of the individual's arrest;
- d. The nature of the treatment which the individual suffered, with precise reference to dates, duration, implements used, the identity of the torturer, etc;
- e. The condition of confinement, including: the size of the cell and the number of occupants, whether or not there was solitary confinement, the amount and nature of food, the lighting, furnishings, sanitary conditions and the medical care available;
- f. How the individual felt at the time ill-treatment occurred, the parts of the body affected and any physical symptoms which the prisoner noted;
- g. The feelings and other symptoms which the individual noted at various intervals after the ill-treatment, e.g., one week afterwards, one month, at the time of the examination;
- h. Any medical examination or other contacts with doctors the individual may have had while in detention or prior to the present interview;
- i. Any medical or other treatment the victim may have

already received;

- j. Any individuals who may have seen the individual soon after the ill-treatment and who may be able to corroborate the victim's story;
- k. Any complaints the individual may have presented to the authorities and any investigations undertaken;
- l. Length of confinement and the circumstances of the individual's release.

The medical examination should include: (a) the individual's pulse; (b) blood pressure; (c) height; (d) weight; (e) any significant changes in weight experienced; (f) any breakages of the teeth, bones, etc.; (g) condition (including tenderness, swelling and flexibility) of the individual's muscles and joints; (h) bruises and scars; (i) a general assessment of the intellectual functioning and orientation of the individual; (j) voice modulation which might reveal stress; (k) any complaints about hallucinations, sleep disruption, nightmares, fear, etc.; and (l) emotional appearance, including crying, tears, trembling lips, depression, etc.

2 FACT-FINDING IN ARMED-CONFLICT SITUATIONS ²

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.³ However, in the last decade, an increasing number of inter-

² In addition to the discussion at the Workshop held in Chiangmai, this section is also based on the following article by Prof. David Weissbrodt, *The Role of International Organizations in the Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflict*, Vanderbilt Journal of Transnational Law, Vol. 21:313-363, 1988.

³ The principles of humanitarian law applicable to armed conflict are found in the four Geneva Conventions of August 12, 1949 (Geneva Conventions) and the two Additional Protocols of June 8, 1977 (Additional Protocols I and II or Additional Protocols). See supra note 1, for details.

national human rights organisations and some national human rights organisations have begun to apply principles of humanitarian law while monitoring the human rights conditions prevailing in situations of armed conflict. Despite a growing interest shown by human rights organisations in monitoring armed conflict-situations, particularly the 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 Convention. Also, an understanding is required of the characteristics of non-international armed conflicts under Additional Protocol II of the Geneva Convention. In doing so "human rights groups have to make political and highly contestable conclusions about the existence of certain sorts of armed conflict, but they will also need to base their decisions on factual information of a kind not previously customary for human rights research."⁴

The factors to be taken into account in applying Common Article 3 include whether insurgents possess an organised 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 organised as a military force and in possession of a part of the national territory.⁵

All human rights organisations may not be able to collect detailed information about the sort of facts required to determine the nature of armed conflict. However, these organisations 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 would have

⁴ *Supra* note 1.

⁵ *Commentary on the Geneva Conventions of 12 August 1949* (J. Pictet ed. 1952).

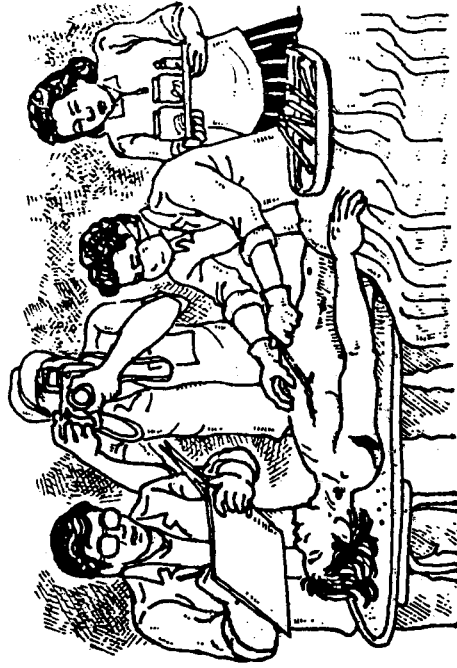
been written, and the concerned human rights organisation can refer to them to determine the nature of the conflict.

Human rights organisations should not be deterred by this complexity but should rather find out what the important criteria are under the various possible definitions and collect the relevant information.

B. SOME SPECIAL METHODS

1. FORENSIC INVESTIGATION (AUTOPSY AND DISINTERMENT)

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



Domestic human rights organisations can play an important role by collecting credible information concerning cases that require autopsy and disinterment (exhumations) 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 organisations should call for the establishment of an independent commission of inquiry. Thus, knowledge of basic principles concerning forensic investigation is vital to assess whether an official inquiry was properly conducted or not. Moreover, human rights organisations with expertise in forensics can help an independent commission of inquiry where possible to ensure that the investigation is conducted in a competent manner.

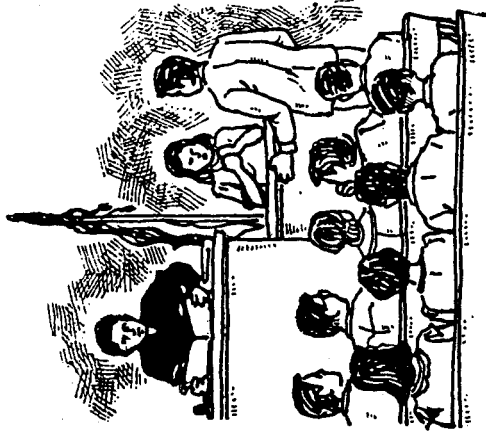
In countries where human rights organisations have not developed expertise in the field of forensics, efforts should be made to establish a group consisting of experts and human rights organisations and to train them to deal with forensic investigations. At the minimum, domestic human rights organisations should familiarise themselves with the laws prevailing in their countries concerning autopsy and disinterment and ensure that these are in accordance with internationally established norms. For 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.⁶ Refer to Appendix A for the Model Autopsy Protocol and the Model Protocol for Disinterment and Analysis of Skeletal Remains reproduced from the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).⁷

⁶ Resolution 1989/65 of 24 May 1989.

⁷ *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions*, UN Publication, New York, 1991 (Sales No:E.91.IV.1).

2 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 organisations who send observers to various parts of the world as part of their human rights monitoring activity. However, trial observation can also be done by local organisations to insure 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 organisations 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, particularly those in chapters I and II of this Handbook, can be applied to trial observation.

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

The following are some clarifications concerning purpose, selection of trials to be observed and selection of trial observers:⁸

i. THE PURPOSE

The purpose of an observer mission usually is: (a) to prepare an independent, impartial and objective report on the fairness of the trial, taking into account its legal, economic and political context; (b) to help assure the defendant of a fair trial through the influence of the observer; (c) to give the defense counsel, the defendant and the defendant's supporters a sense of international concern; and (d) to express the sponsor's concern about the fairness of the proceedings without prejudging whether the trial is fair.

Different trials may require a distinct emphasis on any of these four principal purposes. Also, the purposes 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.

ii. SELECTION OF TRIALS

Trials should be selected for observation in 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.

III. SELECTION OF TRIAL OBSERVERS

The principal factors to consider in choosing a trial observer

include the individual's (a) prestige and reputation for impartiality; (b) knowledge of the legal system in which the trial will occur; (c) knowledge of the language in which the trial will be held; (d) availability on short notice; (e) experience as a trial observer; and (f) knowledge of international human rights standards.

C ORGANISING ON-SITE VISITS OR MISSIONS FOR THE PURPOSE OF FACT-FINDING

IN ADDITION TO DAY-TO-DAY collection of information by researchers or field level staff engaged for that purpose, special visits or missions can be organised to an area to conduct an investigation 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, research documents, etc.

Fact-finding missions can be broadly classified as local, national or international, depending on the composition of their membership, or as high-profile or low-profile missions. High-profile missions are widely publicised, 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 while organising a mission:

1. PRE-MISSION

- a. Weighing the Advantages and Disadvantages of On-Site Visits

⁸ These guidelines are reproduced with permission from, David Weissbrodt, *International Trial Observers*, 18 Stan. J. Int'l L. 1 (1982). (Footnotes omitted)

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

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

On the other hand, the advantage of sending an on-site mission is that it will facilitate gathering of 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 findings of a well-organised and credible mission.

b. 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 its 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 pre-judgement or bias.

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

It may not be appropriate to publicise the terms of reference in advance to the media to avoid generating a real or staged 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 minimise collection of irrelevant information.

c. 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 briefed properly. The briefing material should include press reports or previous 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.

d. Finalising Procedures for Ensuring Reliability of Evidence

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

e. 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 organisation should identify a reliable translator and make arrangements to obtain his/her services for the mission.

Arrangements for obtaining visa should be made if foreign nationals are participating in a mission and visa is required for them to enter the country. Depending on the circumstances, the organisation should decide whether to disclose the purpose of the visit while 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 organise the mission. The delegation should be briefed in advance if they have to bear some of the expenses of the mission. The duration of a mission would depend on the purpose and scope of the investigation.

e. Meeting of the Delegation

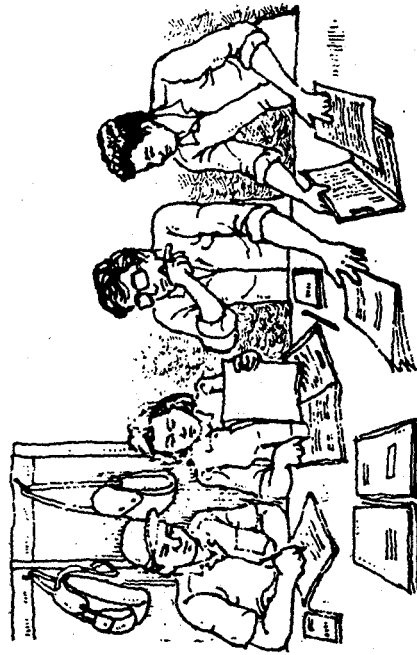
When a delegation consists of a large group, it is essential for all the members to meet prior to the visit to discuss the terms of reference of the mission and clarify the purpose

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 organise a large delegation, the different tasks of the mission should be identified and shared between different members. For example, tasks such as coordinating the mission, negotiating with the authorities and dealing with the press can be delegated to different persons. Tasks also can be divided according to the expertise of different members. For example, a medical doctor can interview torture victims and a child psychologist can deal with child victims.

2. THE ACTUAL VISIT

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



The delegation should keep an exact record of their activities during the mission, 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 met the delegation.

No public statement should be made on the findings during a 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.

3. POST-MISSION

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 organised. ❁

VI

Chapter

WRITING AND DISSEMINATION OF REPORTS

ALL THE EFFORTS THAT go into organising a fact-finding mission would be lost if no report were written and published on its findings. Similarly, a badly written report may destroy the very purpose for which the fact-finding mission was undertaken. To that end, try to avoid the use of jargon or rhetoric, and write as clearly as possible. More importantly, a single error or exaggeration can render a report useless. Efforts should also be made to eliminate any appearance of bias or prejudice in the report.

A fact-finding mission report should reflect the following:

- a. The terms of reference of the fact-finding body;
- b. The identity of the body's members. However, some organisations also follow the policy of not disclosing the identity of the members of the mission;
- c. A description of the materials upon which the report is based, including the identity of witnesses to the extent that their safety will not be jeopardized;
- d. Any statements by the government under investigation or attempts made to obtain such government statements;
- e. A description of the circumstances surrounding any interviews that may have been conducted during the course of the investigation such as the identity of the interviewer(s), whether government officials were present, whether an oath or affirmation was administered, whether careful questioning was possible, the duration of the interviews, whether the interviews were private or public, whether the witnesses were harassed during the interview and what provisions if any were made for the protection of witnesses;
- f. An account of any on-site visits made, including a list of participants, a description of places inspected, an account of contacts with government officials and a description of facilities provided to the mission by the government;
- g. Whether or not the fact-finding body chose to disregard any evidence during the preparation of its report;

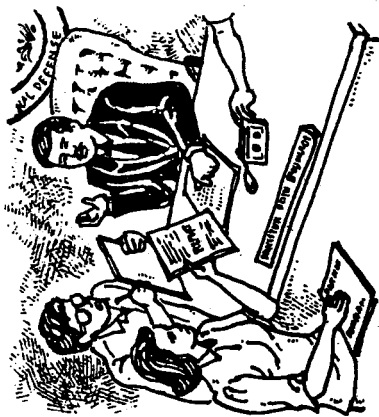
- h. An indication of the methods employed to ensure the reliability of evidence, including any efforts made to corroborate witnesses' statements, the use of direct evidence, etc;
- i. A specification of the international and/or municipal legal norms applied to the facts;
- j. A clear separation of findings based on the facts from any recommendations the human rights organisation may wish to make;
- k. Statement of what efforts, if any, were made or will be made to obtain a government response to the report, or an account of any such response already obtained.¹

OBTAINING THE GOVERNMENT'S COMMENT ON THE REPORT

SOME INTERNATIONAL HUMAN rights organisations follow the practice of giving the concerned government an opportunity to comment on the mission's report

prior to its publication. However, these organisations make no commitment to publish the report only after they receive the comments from the concerned government. On the other hand, domestic human rights organisations generally publish their report without providing an opportunity to

the government to comment on it. Such a practice is influenced by the fear that giving an advance copy of the report to the government may lead to cover-



¹ Taken from, David Weissbrodt & James McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organisations*, 22 Va. J. Int'l L. 11-89 (1981).

up operations, including retaliation against the human rights organisation and witnesses. However, while following this practice, domestic human rights organisations should keep an open mind and acknowledge any clarifications which may later be made by the government on their report. This would help domestic organisations to increase their credibility and effectiveness in dealing with their respective governments.

DISSEMINATION OF THE REPORT

THE SUCCESSFUL DISSEMINATION of a fact-finding report will depend on the strength of the concerned human rights organisation's links with the media and also its ability to network with other nongovernmental organisations and groups.

A. CONDUCTING CREATIVE CAMPAIGNS

Organisations engaged in fact-finding activities should develop appropriate strategies for disseminating their mission reports or other publications. For example, in some situations, a report of a local human rights organisation may not draw much attention despite the seriousness of its findings. In such situations, the concerned organisation should seek the help of other organisations to mount a campaign to publicise the report. Alternatively, it can use other methods to publicise the report and its findings.

One such strategy would be to convene a meeting of eminent personalities and submit its report to them, including if necessary testimonies of witnesses so the group can evaluate the information and make a public statement on their findings. Some human rights organisations in India have used this technique successfully and describe such a process with the term "tribunal." Fact-finding tribunals² have been used in

² A "tribunal" is not a formal judicial or quasi-judicial body and its role is similar to that of non-governmental fact-finding bodies. If established a tribunal should have well-defined terms of reference or mandate specifying its purpose and scope.

India to deal with communal conflicts or riots in which events happen over a wide area and there are thousands of victims. In such situations, it may be futile for local human rights organisations to publish numerous reports without any coordination. Therefore, as an alternative, an Independent Tribunal consisting of eminent persons is established to receive information collected by various organisations for verification and to publish a single report based on such information.

This technique of establishing tribunals consisting of independent and eminent personalities to verify and make pronouncements on reports made by local human rights organisations would generate more publicity and support for the report and may also protect the concerned organisation(s) from government retaliation.

b. SOME TIPS FOR EFFECTIVE USE OF MEDIA

Domestic human rights organisations should formulate plans for interacting with the media and using the media for effective dissemination of their reports and other publications.

Timing is very important. Use opportunities like anniversaries of the government or other such events to release reports or to explain or highlight human rights concerns.

It is not advisable to call for press conferences frequently to get publicity. It should be determined beforehand if the information is substantial and has news value to the media.

The following points should be kept in mind when organising a press conference:

- * remember that while press conferences may be a critical event for the human rights organisation, it is routine for journalists. They tend to be very busy and will not stay (or come back) for a press conference which wastes time;

- * start and end on time;

- * have written material ready;

- * do not let the speakers read out or repeat the written material;

- * select the speakers carefully based on who will be most effective for the purpose of the press conference and not according to how much they deserve or want to speak; and
- * keep speeches short, and leave enough opportunity for questions.

Not all human rights organisations will have similar access to the media, and it takes time to build credibility about their work and with media contacts.

Try and involve relatives of the victims or organisations of victims to disseminate information on human rights concerns. These groups provide human interest stories to the media.

Understand the media: how it works and what it wants. Be aware that at times dissemination of information through the mass media may lead to distortion of facts or sensationalism.

There is no fixed formula for effective dissemination of human rights information; a lot depends on the credibility factor and there is no short cut to establishing such credibility. In this regard it is crucial for a human rights organisation to establish a reputation for accuracy. ☸

VIII

Chapter

DOCUMENTATION

A. RECORDING TOOLS

1. THE NEED FOR RECORDING TOOLS

DOCUMENTATION IS THE process of systematically recording the information gathered during an investigation or fact-finding. Another goal of documentation is to organise the information collected so that it may be easily retrieved and disseminated when needed.

Documentation begins during the actual fact-finding activity. During interviews, the facts are already recorded in one way or another. The facts can be retained in memory, written down or recorded on tape or on video. Using one's memory is obviously the most ineffective because there is no guarantee that a fact-finder would recall all the information that was shared by the witnesses.

Recording tools for use by those handling data or information have been developed to ensure uniformity in collection and dissemination of information.

The following sections deal with how to develop and use recording tools.

2. DEFINING THE SCOPE OF INFORMATION TO BE DOCUMENTED

Tools for recording information cannot be effectively used if the scope of the information to be collected is not defined in advance. In the field of human rights, which types of violations to document should be clearly defined for effective use of recording tools. The scope of alleged violations to be documented would depend on the situation prevailing in an area or country. For example, "house sealing" is a violation particular to the Occupied Territories, and it is regularly documented by the local human rights organisations. It is evident that the recording tools used in the Occupied Territories cannot be used in the same manner by organisations in other countries where "house sealing" and its elements are non-existent.

Therefore, it is important for an organization, based on the local situation and its mandate, to identify which cases it wants to monitor and plan accordingly its fact-finding and documentation activities.

3. USE OF CONTROLLED VOCABULARY

It would be of great help to have a listing of the categories of violations to be documented. For example, an organization may wish to confine the monitoring activities to violations such as extra-legal, arbitrary and summary executions, illegal arrests, torture and disappearances.

Once the categories are identified, the scope of each term should be defined. The resulting list is called a controlled vocabulary.

There are usually two parts in a controlled vocabulary — the terms and the scope notes. The scope notes indicate when a term is to be used. For example, there is a great deal of difference between extra-judicial execution and death due to torture. The first is committed always with the intention to kill, while the second may not.

A list of categories should be as exhaustive as possible. Mutual exclusivity, meaning that the scope of one term should not overlap with the scope of another, should preferably be ensured. This is especially necessary when statistics are compiled. For example, a case cannot be categorized under torture as well as under cruel, inhuman and degrading punishment.

Further, a controlled vocabulary is developed by choosing the preferred term if two terms are equivalent. For instance, application of the death penalty and legal execution are equivalent terms, and one must choose which is the preferred term. Also, a term should be brief but represents the whole idea. Categories can be listed not only for cases of violations but also for other pieces of information such as occupation, religion, civil status, etc.

An example of a controlled vocabulary is shown in Box 7.1. It is a listing of categories of human rights violations documented by the Task Force Detainees of the Philippines (TFDP).

CATEGORIES USED BY TFDP

1. ARREST AND DETENTION

Arrest is defined as "an act by which a person is taken into custody by state authorities to answer for the commission of a crime." When the taking of a person is not meant to make him answer for a crime, then do not consider the act as an arrest. Use **HARASSMENT**. Example is a person forced to act as a guide by military men. If a person is invited for questioning, and is afterwards detained, consider the act as one which has turned into an arrest.

2. TORTURE

Torture is defined as "any act by which severe pain or suffering whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or another person. It does not include pain or suffering arising from, inherent in or incident to lawful sanctions consistent with the standard rules for the treatment of prisoners."

For an act to be considered as torture, the person must be held in detention or in prison, and that the infliction of pain was for the above-named purposes. Otherwise, consider the case as **PHYSICAL ASSAULT** (if physical pain is inflicted) or **HARASSMENT** (if mental pain is inflicted).

3. DISAPPEARANCE

Disappearance is defined as "the taking away of a person, with reasonable grounds to believe that said person had been taken by authorities or with their connivance, with the latter denying having taken the person in custody."

4. EXTRA-JUDICIAL EXECUTION

Extra-judicial execution is defined as "the killing of a suspected offender by state agents, outside of the even most summary administrative proceeding."

Death in combat is not included here, unless the victim has been rendered hors de combat earlier.

The killing should be premeditated. If not, use other categories.

5. DEATH DUE TO TORTURE, CRUEL TREATMENT AND RELATED CASES

For this category to be used, the death should be a result of severe torture or related cases (such as cardiac arrest while being tortured) >>>

>> continuation)

The killing is considered as unpremeditated in that the original intention was to torture and not to execute the victim.

6. OTHER UNPREMEDITATED KILLINGS

This category is for other killings which are unpremeditated aside from death due to torture and related cases. An example is when a prisoner had tried to escape, had been shot but with the intention to maim rather than to kill, and died later.

Another example is death during indiscriminate firing with the intention to harass. Such killing could not be equated with execution which is premeditated.

7. PHYSICAL ASSAULT

Physical assault is defined as "an act inflicting bodily injury upon another."

This category includes many types of acts, such as truncheon attack, being hit with rifle butts, kicking, etc. Use this category especially when the victim is not under detention.

8. HARASSMENT

Harassment is defined as "the use of words, gestures and actions which tend to frighten a person or persons." Examples are threats, verbal abuse, surveillance, etc. Use this category especially when the victim is not under detention.

Box 7.1

4. METHODS OF RECORDING

a. FREE TEXT

A free text is a loose or unformatted organisation of data using sentences and paragraphs, such as a narrative report. A press release is an example of a free text.

A large number of human rights organisations prepare fact sheets, which are free text reports, after each fact-finding activity.

In Box 7.2 is an example of a fact sheet describing an event.

TFDP Fact Sheet

Ref: 90-CAL-001

GARCIA ET AL MASS ARREST

Five active unionists were arrested by policemen identified to be members of the Caloocan City Police Force who raided the house of Pedro Garcia, president of the Valley Bus Line Co. Workers Union on January 7, 1990.

Garcia, 30, was having a meeting with four other unionists in his house at 34 Biglangliko St., Consolacion, Caloocan City, when the raiders wielding Armalite rifles barged in at about 11:00 a.m. and arrested the five without showing any warrant. The others arrested were: Juan Manuel, 26; Victor Gonzales, 23; Valerio Bangkal, 22; and Mario Galicia, 31. The policemen, led by a certain Lt. Damian, arrived on board two police cars and a Ford Fiera van. Other identified policemen were Sgt. Ignacio and Sgt. Maui.

A woman cigarette vendor who requested anonymity said that she saw and identified a certain Lorenzo Almarino inside one of the cars. Almarino is known to the community residents as a member of the Alliance Against Communists (AAC) in the area.

The house of the Garcias was searched even without a warrant shown, according to Garcia's wife, who also claimed that cash amounting to some P1,000.00 was taken by the raiders. Afterwards, Garcia and the others were forcibly taken aboard the Fiera blindfolded. The three vehicles then sped away and went directly to the Caloocan City police headquarters.

Wilma Garcia, 28, wife of Garcia, together with the wives of Manuel and Bangkal, went to the police headquarters in the afternoon. They were able to see Garcia, Manuel and Bangkal. Garcia informed them that they were tortured by the policemen, among them Lt. Damian, through fist blows and kicks at different parts of their bodies. Manuel and Bangkal were released on the same day at about 5:00 p.m.

As of January 15, 1990, Gonzales and Galicia could not yet be located. Relatives of the two have gone to various military camps, detention centers and police stations but were not able to find them. At their last inquiry at the Camp Crame Regional Security Unit on January 14, Editha, wife of Gonzales, was pushed by a military man who said she deserved it for being too inquisitive.

Meanwhile, Garcia remains in detention at the Caloocan City Jail as of January 15. He has been charged with "Violation of RA 1700" before the Caloocan City court last January 14, 1990, after the preliminary investigation conducted by Fiscal Noel Nazareno.

Prepared by:
TFDP-NCR
15 January 1990

b. STANDARD FORMATS

Information can be divided into smaller parts. For example, information about a witness can be sub-divided into his name, age, religion, occupation, etc. All these subdivisions are called "fields."

A standard format is an empty record in which the fields are arranged in a predetermined manner.

Standard formats are used for cases that occur with a certain frequency, and where the events are distinct, that is, the start and end can be identified. Thus, normally, standard formats are used for reported violations like extra-judicial killings, arrests, disappearances, etc.

Standard formats can be used during the fact-finding itself, in which case they are called intake forms, or as data entry forms for storing information in a database.

In Box 7.3 (see next page) is an example of a form used by TFDP, with sample entries.

c. INTAKE FORM

When receiving complaints, an organization may use an intake form. Intake forms are forms used for on-the-spot recording of data gathered. A crude, but nevertheless effective intake form can simply be a sheet with the questions what, where, when, why, who, and how.

More structured types of intake forms are questionnaires and interview schedules.

5. DESIGNING FORMATS

In designing formats, different elements that constitute a case are analysed. A case is a single instance of an alleged violation. Its most basic elements are: the act (what is done), the victim (individual against whom the act is committed) and the perpetrator (the person who committed the act).

TFDP FORM 1A (Revised September 1983) UNIT CODE 110

EVENT TITLE: Garcia et al mass arrest REF: No. 90-040-001

IS CONFIDENTIAL

CASE # AKD METHOD 3 DOI(S) 01-02-90 DOI(E) _____
 POI 24 Wilmington, N.C. Calverton City
 NO. OF VICTIMS 5 INDIVIDUALS 5 EOC/FAMILIES _____ CLASS _____
 IF MASS KILLING: K W U CLASS NAME _____
 IF HRVUS, PROPERTY: _____ HOUSES, EST. VALUE TAKEN DESTROYED _____
 VICTIMIZATION TYPE 52 DUE TO terrorism in same industrial group

GROUP PROFILE: #MALE _____ #FEMALE _____ #CHILDREN _____ #ADULT _____
 REL _____ ETH _____ MAJOR OCCUPATION(S) _____
 IF MASS ARREST: _____ NOWARRANT _____ FLAGRANT _____ RELEASED _____ UND _____
 IF EVACUATION: UNIT (IND/FAM) _____ EVAC CENTER _____
 RETURNED _____ STILL AT EVAC CENTER _____ MOVED TO NEW LOC. _____ UND _____

OTHER HRVUS: DOI BCI #VICTIMS VA
1 01-07-90 Calverton City 2 D/E

RECURRENT _____ ORIGINAL RECORD# _____

PERPETRATORS: OPLAN _____ ADDRESS _____
1 Calverton City Police Parade Calverton City
2 Alliance Against Communists Calverton City

IDENTIFIED PERPETRATORS: GE ROLE IN HRV
 NAME _____ 1 Lead raiding team
Sgt. Ignacio 1 Took part in raid
Sgt. Henri 1 Took part in raid
Lorenzo Almarico 2 Took part in raid

SOURCE: NAME Wilma Garcia RELATION TO EVENT witness
 ADDRESS 24 Wilmington, N.C. Calverton City CONFIDENTIALITY ✓
 DOCUMENTS: PRETEXTS FS 1, SA 90-001, PA 0101
 UPDATES No. 1, No. 2
 UNIT BO N90-0101 NC
N90-0105

FFM REPORT: OTHER PRIMARY DOCUMENTS: Affidavit by Wilma Garcia
charge sheet vs. Pedro Garcia

DATE EVENT BEHOLD 01-09-90 REASON FOR HOLD see serial entry
 INTERVIEW/DATE OBTAINED 01-09-90 DATE FORWARDED TO HQ 01-12-90
 PROCESSED BY THE UNIT BY 678 DATE FORWARDED TO HQ BY 01-12-90
 PROCESSED AT THE SO BY 697 DATE SUBMITTED TO HQ BY 01-12-90

Box 7.3: Filled-up form

In technical terms, the act, the victim and the perpetrator are called entities. An entity is a person, thing, event or group which can be viewed as a whole on its own. Each entity has its own attributes or descriptive qualities.

Thus, among the attributes of a victim (entity) are: name, age, gender, civil status and occupation.

Among the attributes of an act are: what is done (e.g., torture, killing), the method employed (e.g., shooting, electrocution), the reason behind the act (e.g., trade union repression), when and where the act was committed, and the result (e.g., killed or wounded).

Among the attributes of a perpetrator are: name, age, gender, rank and affiliation.

Therefore, each format has a list of attributes based on the information gathered.

The basic elements — act, victim and perpetrator — are a must in monitoring. Normally, for human rights monitoring there should be at least an EVENT format (for the entity act), VICTIM format, and a PERPETRATOR format.

In addition to these three formats there are other elements which one may want to look into. An example is the entity court case, in the event that a victim is charged in court. Among the attributes are: charge, court branch, assisting lawyer, judge, status of case, etc. Still another example of an additional element is the victim's family. Among the attributes are: number of children and source of income. An organisation actively engaged in providing welfare services would be greatly interested in finding out the details on a victim's family and would include the relevant fields for collecting information.

It is also up to an organisation to determine which attributes for each element it will include in data gathering. For instance, the father's name is a very important attribute in Tamil and Burmese societies, while the colour of the eyes is very important in non-Asian societies. Therefore, a standard format for victims designed by a Burmese group would contain the attribute "name of father."

6. ENSURING COMPLETENESS OF DATA

There is no standard yardstick by which one can say that an empty format contains all the attributes to be collected for different entities. Ideally, all the possible attributes of a victim, for instance, should be gathered, including maternal name, height, weight, birth date, educational background, etc. In reality, however, not all such data can be obtained at all times. Moreover, the importance of each attribute is relative.

The key, therefore, is for an organisation to prioritise the attributes it wants to have data on. The main consideration should be the purposes for which the fact-finding and documentation are meant. If an organisation is geared heavily toward legal actions, data such as the use of arrest warrants, the conduct of the officer making the arrest, etc. would be extremely important. Organisations that collect information on missing persons, on the other hand, should place utmost importance on such victim's attributes as identifying marks, dental characteristics, clothes worn when last seen, etc.

Further, while documenting a case, one should ask additional questions such as: "Who else was affected by the incident?", "What else was done to the victim?", "Who else are the companions of the first perpetrator?", and include the necessary attributes for collecting additional information.

Once the attributes are identified, the fact-finder should be constantly be aware of them. These may be organised into a checklist, to be consulted occasionally or structured into a questionnaire.

7. COMBINING FORMATS

In human rights fact-finding, most often the elements of a case are not always arranged in a regular pattern, i.e., a single act, a single victim and a single perpetrator. Most often, among the elements of a case (i.e., act, victim, perpetrator, etc.), the relationships are not exactly one-to-one. In other words, the relationship can be one-to-many or many-to-many. For instance, in a massacre, a single act such as shooting can affect

several victims. A single victim may also be victimised by several acts, such as a being arrested, tortured, denied due process and ultimately executed. Or a single victim may be abused by different perpetrators.

In most cases, separate formats are needed when entities have one-to-many or many-many relationships. Examples are the TFDP formats and HURDOCS formats where, for instance, there are separate formats for victims and for the events.

Alternatively, in the lay-out of forms used for manual recording, columns can be used for one-to many relationships. See Box 7.4 for an example of such a form. Thus, in this form, the perpetrators' group format and the individual perpetrator format are placed together, though they are essentially distinct entities.

Name of perpetrator group: <u>CALOCCAN CITY POLICE FORCE</u>			
Address: <u>CALOCCAN CITY</u>			
Identified members:			
Name of Identified Perpetrator	Rank	Role in Violation	
DAMIAN	LIEUTENANT	LED RAIDING PARTY	
IGNACIO	SERGEANT	MEMBER OF RAIDING PARTY	
MAUI	SERGEANT	MEMBER OF RAIDING PARTY	

Box 7.4: Perpetrator Table

Formats can be joined in the manner that best suits an organisation. The forms used by a Filipino organisation called Families of Victims of Involuntary Disappearances (FIND) are a good example of such combined formats. The FIND FORM I (Box 7.5) is a combination of the victim format and case format. This is perfectly appropriate because in cases of disappearances, the relationship between the entity VICTIM and the entity CASE is one-to-one.

FIND Form 1

Name of Person Disappeared _____ Civil Status _____
 Sex _____ Occupation _____
 Ethnicity _____
 Organizational Affiliation _____
 Religion _____
 Address _____
 Date of Disappearance _____
 Place where last s _____
 Status _____
 Circumstances: _____

Box 7.5: Combined victim format and case format

The second form of FIND (Box 7.6) is an intervention format, but arranged in columns. By using columns, one avoids using a new page whenever an intervention is made and saves space in manual recording.

Find Form 2

Action	By Whom	Directed to Whom	Date	Response

Box 7.6: Intervention format

8. EXAMPLES OF STANDARD FORMATS

Three models which represent most, if not all, the different formats that can be used for human rights monitoring are: the Model Questionnaire issued by the UN Working Group on Arbitrary Detention; HURIDOCs formats;¹ and formats

¹ HURIDOCs—Human Rights Information and Documentation Systems, International is a global network of human rights organisations engaged in developing more effective, appropriate and compatible methods and techniques of information handling. See resource list for a list of HURIDOCs publications in the field of human rights documentation.

used by the Task Force Detainees of the Philippines (see Appendix B for samples of these formats).

i. MODEL QUESTIONNAIRE OF THE U.N. WORKING GROUP ON ARBITRARY DETENTION

- a. Part I is a victim format.
- b. Part II is a case format (for arrest).
- c. Part III is another case format (for detention).
- d. Part IV is an intervention format.
- e. Part V is a field which has been made a separate format because it could be related either to Part II or Part III.
- f. Part VI is a source format.

ii. HURIDOCs FORMATS

HURIDOCs has formats for: event, victim, source, perpetrators and interventions. They are not arranged in a particular manner, because HURIDOCs leaves it to the organisations who will use them to come up with their own arrangements.

iii. TFDP FORMATS

- a. Form IA contains event, group profile, case, perpetrators group, identified perpetrator, source and control formats.
- b. Form IB is the victim format, designed using columns (meant for multiple victims).
- c. Form IC is an intervention format, likewise designed using columns.
- d. Form 2A is the victim format (meant for a single

victim, or when more information per victim is available).

e. Form 2B contains formats for additional details, such as detention format, torture format, detention centre format, court case format, lawyer format, and witness format. Because the relationship is often one-to-many (e.g. there may be many charges against one victim, or many lawyers for one victim), columns are used in most formats.

B. STORAGE AND RETRIEVAL

THE MAIN ELEMENTS in a storage and retrieval system are: relating records, record numbering, filing system and retrieval devices.

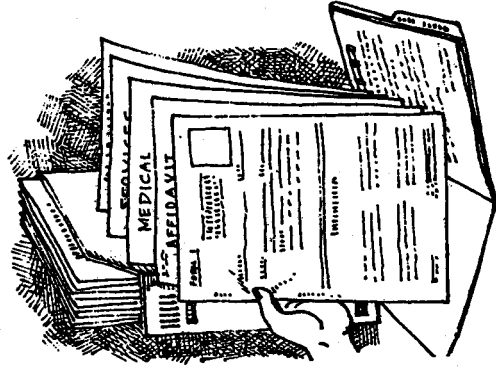
1. RELATING RECORDS

In cases where several formats are used, it is necessary to relate the various records. The two ways employed in relating records are:

a. Physical proximity

An example is a form where the victim and case attributes are all placed in one page. This is possible when it is certain that for each case, there is only one victim.

Another example is putting documents together in a folder. Thus, there can be a form which will serve as the top document in a folder, to which are attached documents like affidavits, medical records, etc. which need not be numbered.



b. Chaining method

For this method, there is need for a key. A key is a field common to both records. The most common key is the record number assigned to the main or parent record.

For example, the record of a man named A can be related to the records of his three wives (respectively named X, Y and Z). If the record of A is numbered 001, then the number 001 should appear on the records of his three wives to indicate that these three records are linked to A's record. A's record is what is called the parent record, while the three other records are called child records.

2. RECORD NUMBERING SYSTEM

All the formats that are completed with the relevant information need to be given a record number so that they can be retrieved when needed. Record numbering is usually done by assigning sequential numbers. For example in the TFDP system, record number is done by assigning a number for each event: YY-AAA-NNN (year, area code and number of event). A file bearing code 91-QUE-001 means that it is the first reported event that happened in Quezon City for the year 1991.

3. FILING SYSTEM

Documents may be arranged by geographical location, by year, by source or by subjects. An organisation has to determine which would be the master or parent document, and all other related documents would follow the same numbering (key).

A filing system is dependent on the record numbering system. For instance, if the record numbers begin with the year, a filing cabinet can be reserved for the 1990 documents, another for the 1991 documents, and so on.

Assigning record numbers solves about fifty per cent of retrieval problems. Browsing, which is the act of going through

documents one by one, can then be employed with more success, especially if the documents are grouped according to year, location or subject. Furthermore, if a document is taken out, one would know where to return it.

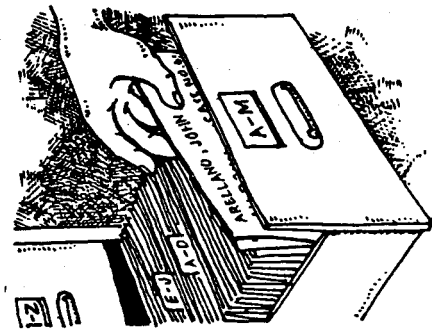
4. RETRIEVAL DEVICE

After the documents have been properly organised, a device may be necessary to facilitate the retrieval of specific documents. The most common retrieval device is the index card system. An index is a smaller document which can be easily consulted.

Thus, if an organisation decides that it wants to retrieve documents by the name of the victim, the various names are written on index cards, together with the record numbers. The index cards are then arranged alphabetically for easy consultation.

With the advent of computerised databases, a large number of organisations nowadays have decided to do away with manual retrieval devices.

(NOTE: This section discusses very basic points in documentation, and organisations that are interested in developing a proper documentation system should contact organisations like HURIDOCs which specialises in providing training to human rights organisations on this subject.) ☸



MODEL AUTOPSY PROTOCOL

A. INTRODUCTION

DIFFICULT OR SENSITIVE cases should ideally be the responsibility of an objective, experienced, well-equipped and well-trained prosecutor (the person performing the autopsy and preparing the written report) who is separate from any potentially involved political organization or entity. Unfortunately, this ideal is often unattainable. This proposed model autopsy protocol includes a comprehensive checklist of the steps in a basic forensic postmortem examination that should be followed to the extent possible given the resources available. Use of this autopsy protocol will permit early and final resolution of potentially controversial cases and will thwart the speculation and innuendo that are fuelled by unanswered, partially answered or poorly answered questions in the investigation of an apparently suspicious death.

This model autopsy protocol is intended to have several applications and may be of value to the following categories of individuals:

- (a) Experienced forensic pathologists may follow this model autopsy protocol to ensure a systematic examination and to facilitate meaningful positive or negative criticism by later observers. While trained pathologists may justifiably abridge certain aspects of the postmortem examination or written descriptions of their findings in routine cases, abridged examinations or reports are never appropriate in potentially controversial cases. Rather, a systematic and comprehensive examination and report are required to prevent the omission or loss of important details;
- (b) General pathologists or other physicians who have not been trained in forensic pathology but are familiar with basic postmortem examination techniques may supplement their customary autopsy procedures with this model autopsy protocol. It may also alert them to situations in which they should seek consultation, as written material cannot replace the knowledge gained through experience;

- (c) Independent consultants whose expertise has been requested in observing, performing or reviewing an autopsy may cite this model autopsy protocol and its proposed minimum criteria as a basis for their actions or opinions;
- (d) Governmental authorities, international political organizations, law enforcement agencies, families or friends of decedents, or representatives of potential defendants charged with responsibility for a death may use this model autopsy protocol to establish appropriate procedures for the postmortem examination prior to its performance;
- (e) Historians, journalists, attorneys, judges, other physicians and representatives of the public may also use this model autopsy protocol as a bench mark for evaluating an autopsy and its findings;
- (f) Governments or individuals who are attempting either to establish or upgrade their medicolegal system for investigating deaths use this model autopsy protocol as a guideline, representing the procedures and goals to be incorporated into an ideal medicolegal system.

While performing any medicolegal death investigation, the prosector should collect information that will establish the identity of the deceased, the time and place of death, the cause of death, and the manner or mode of death (homicide, suicide, accident or natural).

It is of the utmost importance that an autopsy performed following a controversial death be thorough in scope. The documentation and recording of the autopsy findings should be equally thorough so as to permit meaningful use of the autopsy results. It is important to have as few omissions or discrepancies as possible, as proponents of different interpretation of a case may take advantage of any perceived shortcomings in the investigation. An autopsy performed in a controversial death should meet certain minimum criteria if the autopsy report is to be proffered as meaningful or conclusive by the prosector, the autopsy's sponsoring agency or governmental unit, or anyone else attempting to make use of such an autopsy's findings or conclusions.

This model autopsy protocol is designed to be used in diverse situations. Resources such as autopsy rooms, X-ray equipment or adequately trained personnel are not available everywhere. Forensic pathologists must operate under widely divergent political systems. In addition, social and religious customs vary widely throughout the world, and autopsy is an expected and routine procedure in some areas, while it is abhorred in others. A prosector, therefore, may not always be able to follow all of

the steps in this protocol when performing autopsies. Variation from this protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted.

It is important that the body should be made available to the prosector for a minimum of 12 hours in order to assure an adequate and unhurried examination. Unrealistic limits or conditions are occasionally placed upon the prosector with respect to the length of time permitted for the examination or the circumstances under which an examination is allowed. When conditions are imposed, the prosector should be able to refuse to perform a compromised examination and should prepare a report explaining this position. Such a refusal should not be interpreted as indicating that an examination was unnecessary or inappropriate. If the prosector decides to proceed with the examination notwithstanding difficult conditions or circumstances, he or she should include in the autopsy report an explanation of the limitations or impediments.

Certain steps in this model autopsy protocol have been emphasized by the use of boldface type. These represent the most essential elements of the protocol.

B. PROPOSED MODEL AUTOPSY PROTOCOL

1. SCENE INVESTIGATION

The prosector(s) and medical investigators should have the right of access to the scene where the body is found. The medical personnel should be notified immediately to assure that no alteration of the body has occurred. If access to the scene was denied, if the body was altered or if information was withheld, this should be stated in the prosector's report.

A system for coordination between the medical and non-medical investigators (e.g. law enforcement agencies) should be established. This should address such issues as how the prosector will be notified and who will be in charge of the scene. Obtaining certain types of evidence is often the role of the non-medical investigators, but the medical investigators who have access to the body at the scene of death should perform the following steps:

- (a) Photograph the body as it is found and after it has been moved;
- (b) Record the body position and condition, including body warmth or coolness, lividity and rigidity;

- (c) Protect the deceased's hands, e.g. with paper bags;
- (d) Note the ambient temperature. In cases where the time of death is an issue, rectal temperature should be recorded and any insects present should be collected for forensic entomological study. Which procedure is applicable will depend on the length of the apparent postmortem interval;
- (e) Examine the scene for blood, as this may be useful in identifying suspects;
- (f) Record the identities of all persons at the scene;
- (g) Obtain information from scene witnesses, including those who last saw the decedent alive, and when, where and under what circumstances. Interview any emergency medical personnel who may have had contact with the body;
- (h) Obtain identification of the body and other pertinent information from friends or relatives. Obtain the deceased's medical history from his or her physician(s) and hospital charts, including any previous surgery, alcohol or drug use, suicide attempts and habits;
- (i) Place the body in a body pouch or its equivalent. Save this pouch after the body has been removed from it;
- (j) Store the body in a secure refrigerated location so that tampering with the body and its evidence cannot occur;
- (k) Make sure that projectiles, guns, knives and other weapons are available for examination by the responsible medical personnel;
- (l) If the decedent was hospitalized prior to death, obtain admission or blood specimens and any X-rays, and review and summarize hospital records;
- (m) Before beginning the autopsy, become familiar with the types of torture or violence that are prevalent in that country or locale.

2. Autopsy

The following Protocol should be followed during the autopsy:

- (a) Record the date, starting and finishing times, and place of the autopsy (a complex autopsy may take as long as an entire working day);

- (b) Record the name(s) of the prosector(s), the participating assistant(s), and all other persons present during the autopsy, including the medical and/or scientific degrees and professional, political or administrative affiliation(s) of each. Each person's role in the autopsy should be indicated, and one person should be designated as the principal prosector who will have the authority to direct the performance of the autopsy. Observers and other team members are subject to direction by, and should not interface with, the principal prosector. The time(s) during the autopsy when each person is present should be included. The use of a "sign-in" sheet is recommended;
- (c) Adequate photographs are crucial for thorough documentation of autopsy findings:
 - (i) Photographs should be in colour (transparency or negative/print), in focus, adequately illuminated, and taken by a professional or good quality camera. Each photograph should contain a ruled reference scale, an identifying case name or number, and a sample of standard grey. A description of the camera (including the lens "f-number" and focal length), film and the lighting system must be included in the autopsy report. If more than one camera is utilized, the identifying information should be recorded for each. Photographs should also include information indicating which camera took each picture, if more than one camera is used. The identity of the person taking the photographs should be recorded;
 - (ii) Serial photographs reflecting the course of the external examination must be included. Photograph the body prior to and following undressing, washing or cleaning and shaving;
 - (iii) Supplement close-up photographs with distant and/or immediate range photographs to permit orientation and identification of the close-up photographs;
 - (iv) Photographs should be comprehensive in scope and must confirm the presence of all demonstrable signs of injury or disease commented upon in the autopsy report;
 - (v) Identifying facial features should be portrayed (after washing or cleaning the body), with photographs of a full frontal aspect of the face, and right and left profiles of the

face with hair in normal position and with hair retracted, if necessary, to reveal the ears;

- (d) Radiograph the body before it is removed from its pouch of wrapping. X-rays should be repeated both before and after undressing the body. Fluoroscopy may also be performed. Photograph all X-ray films;
- (i) Obtain dental X-rays, even if identification has been established in other ways;
- (ii) Document any skeletal system injury by X-ray. Skeletal X-rays may also record anatomic defects or surgical procedures. Check especially for fractures of the fingers, toes and other bones in the hands and feet. Skeletal X-rays may also aid in the identification of the deceased, by detecting identifying characteristics, estimating age and height, and determining sex and race. Frontal sinus films should also be taken, as these can be particularly useful for identification purposes;
- (iii) Take X-rays in gunshot cases to aid in locating the projectile(s). Recover, photograph and save any projectile or major projectile fragment that is seen on an X-ray. Other radio-opaque objects (pacemakers, artificial joints or valves, knife fragments, etc.) documented with X-rays should also be removed, photographed and saved;
- (iv) Skeletal X-rays are essential in children to assist in determining age and developmental status;
- (e) Before the clothing is removed, examine the body and the clothing. Photograph the clothed body. Record any jewellery present;
- (f) The clothing should be carefully removed over a clean sheet or body pouch. Let the clothing dry if it is bloody or wet. Describe the clothing that is removed and label it in a permanent fashion. Either place the clothes in the custody of a responsible person or keep them, as they may be useful as evidence or for identification;
- (g) The external examination, focusing on a search for external evidence of injury is, in most cases, the most important portion of the autopsy;
- (i) Photograph all surfaces--100 per cent of the body area. Take good quality, well-focused, colour photographs with adequate illumination;

(ii) Describe and document the means used to make the identification. Examine the body and record the deceased's apparent age, length, weight, sex, head hair style and length, nutritional status, muscular development and colour of skin, eyes and hair (head, facial and body);

(iii) In children, measure also the head circumference, crown-rump length and crown-heel length;

(iv) Record the degree, location and fixation of rigor and livor mortis;

(v) Note body warmth or coolness and state of preservation; note any decomposition changes, such as skin slippage. Evaluate the general condition of the body and note adipocere formation, maggots, eggs or anything else that suggests the time or place of death;

(vi) With all injuries, record the size, shape, pattern, location (related to obvious anatomic landmarks), colour, course, direction, depth, and structure involved. Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. In the description of projectile wounds, note the presence or absence of soot, gun powder, or singeing. If gunshot residue is present, document it photographically and save it for analysis. Attempt to determine whether the gunshot wound is an entry or exit wound. If an entry wound is present and no exit wound is seen, the projectile must be found and saved or accounted for. Excise wound tract tissue samples for microscopic examination. Tape together the edges of knife wounds to assess the blade size and characteristics;

(vii) Photograph all injuries, taking two colour pictures of each, labelled with the autopsy identification number on a scale that is oriented parallel or perpendicular to the injury. Shave hair where necessary to clarify an injury, and take photographs before and after shaving. Save all hair removed from the site of the injury. Take photographs before and after washing the site of any injury. Wash the body only after any blood or material that may have come from an assailant has been collected and saved;

(viii) Examine the skin. Note in the photograph any scars, areas of keloid formation, tattoos, prominent moles, areas of increased or decreased pigmentation, and anything

distinctive or unique such as birthmarks. Note any bruises and incise them for delineation of their extent. Excise them for microscopic examination. The head and genital area should be checked with special care. Note any injection sites or puncture wounds and excise them to use for toxicological evaluation. Note any abrasions and excise them; microscopic sections may be useful for attempting to date the time of injury. Note any bite marks; these should be photographed to record the dental pattern, swabbed for saliva testing (before the body is washed) and excised for microscopic examination. Bite marks should also be analyzed by a forensic odontologist, if possible. Note any burn marks and attempt to determine the cause (burning rubber, a cigarette, electricity, a blowtorch, acid, hot oil, etc.). Excise any suspicious areas for microscopic examination, as it may be possible to distinguish microscopically between burns caused by electricity and those caused by heat;

(ix) Identify and label any foreign object that is recovered, including its relation to specific injuries. Do not scratch the sides or tip of any projectiles. Photograph each projectile and large projectile fragment with an identifying label, and then place each in a sealed, padded and labelled container in order to maintain the chain of custody;

(x) Collect a blood specimen of at least 50 cc from a subclavian or femoral vessel;

(xi) Examine the head and external scalp, bearing in mind that injuries may be hidden by the hair. Shave hair where necessary. Check for fleas and lice, as these may indicate unsanitary conditions prior to death. Note any alopecia as this may be caused by malnutrition, heavy metals (e.g. thallium), drugs or traction. Pull, do not cut, 20 representative head hairs and save them, as hair may also be useful for detecting some drugs and poisons;

(xii) Examine the teeth and note their condition. Record any that are absent, loose or damaged, and record all dental work (restorations, fillings etc.), using a dental identification system to identify each tooth. Check the gums for periodontal disease. Photograph dentures, if any, and save them if the decedent's identity is unknown. Remove

the mandible and maxilla if necessary for identification. Check the inside of the mouth and note any evidence of trauma, injection sites, needle marks or biting of the lips, cheeks or tongue. Note any articles or substances in the mouth. In cases of suspected sexual assault, save oral fluid or get a swab for spermatozoa and acid phosphatase evaluation. (Swabs taken at the tooth-gum junction and samples from between the teeth provide the best specimens for identifying spermatozoa). Also take swabs from the oral cavity for seminal fluid typing. Dry the swabs quickly with cool, blown air if possible, and preserve them in clean plain paper envelopes. If rigor mortis prevents an adequate examination, the masseter muscles may be cut to permit better exposure;

(xiii) Examine the face and note if it is cyanotic or if petechiae are present;

a) Examine the eyes and view the conjunctiva of both the globes and the eyelids. Note any petechiae in the upper or lower eyelids. Note any scleral icterus. Save contact lenses, if any are present. Collect at least 1 ml of vitreous humor from each eye;

b) Examine the nose and ears and note any evidence of trauma, haemorrhage or other abnormalities. Examine the tympanic membranes;

(xiv) Examine the neck externally on all aspects and note any contusions, abrasions or petechiae. Describe and document injury patterns to differentiate manual, ligature and hanging strangulation. Examine the neck at the conclusion of the autopsy, when the blood has drained out of the area and the tissues are dry;

(xv) Examine all surfaces of the extremities: arms, forearms, wrists, hands, legs and feet, and note any "defence" wounds. Dissect and describe any injuries. Note any bruises about the wrists or ankles that may suggest restraints such as hand-cuffs or suspension. Examine the medial and lateral surfaces of the fingers, the anterior forearms and the backs of the knees for bruises;

(xiv) Note any broken or missing fingernails. Note any gunpowder residue on the hands, document photographically and save it for analysis. Take fingerprints in all cases. If the decedent's identity is unknown and finger-

prints cannot be obtained, remove the "glove" of the skin, if present. Save the fingers if no other means of obtaining fingerprints is possible. Save fingernail clippings and any under-nail tissue (nail scrapings). Examine the fingernail and toenail beds for evidence of objects having been pushed beneath the nails. Nails can be removed by dissecting the lateral margins and proximal base, and then the undersurface of the nails can be inspected. If this is done, the hands must be photographed before and after the nails are removed. Carefully examine the soles of the feet, noting any evidence of beating. Incise the soles to delineate the extent of any injuries. Examine the palms and knees, looking especially for glass shards or lacerations;

(xvii) Examine the external genitalia and note the presence of any foreign material or semen. Note the size, location and number of any abrasions or contusions. Note any injury to the inner thighs or pre-anal area. Look for perianal burns;

(xviii) In cases of suspected sexual assault, examine all potentially involved orifices. A speculum should be used to examine the vaginal walls. Collect foreign hair by combing the pubic hair. Pull and save at least 20 of the deceased's own pubic hairs, including roots. Aspirate fluid from the vagina and/or rectum for acid phosphatase, blood group and spermatozoa evaluation. Take swabs from the same areas for seminal fluid typing. Dry the swabs quickly with cool, blown air if possible, and preserve them in clean plain paper envelopes;

(xix) The length of the back, the buttocks and extremities including wrists and ankles must be systematically incised to look for deep injuries. The shoulders, elbows, hips and knee joints must also be incised to look for ligamentous injury;

(1) The internal examination for internal evidence of injury should clarify and augment the external examination;

(i) Be systematic in the internal examination. Perform the examination either by body regions or by systems, including the cardiovascular, respiratory, biliary, gastrointestinal, reticuloendothelial, genitourinary, endocrine, musculoskeletal, and central nervous systems.

Record the weight, size, shape, colour and consistency of each organ, and note any neoplasia, inflammation, anomalies, haemorrhage, ischaemia, infarcts, surgical procedures or injuries. Take sections of normal and any abnormal areas of each organ for microscopic examination. Take samples of any fractured bones for radiographic and microscopic estimation of the age of the fracture;

(ii) Examine the chest. Note any abnormalities of the breasts. Record any rib fractures, noting whether cardiopulmonary resuscitation was attempted. Before opening, check for pneumothoraces. Record the thickness of subcutaneous fat. Immediately after opening the chest, evaluate the pleural cavities and the pericardial sac for the presence of blood or other fluid, and describe and quantify any fluid present. Save any fluid present until foreign objects are accounted for. Note the presence of air embolism, characterized by frothy blood within the right atrium and right ventricle. Trace any injuries before removing the organs. If blood is not available at other sites, collect a sample directly from the heart. Examine the heart, noting degree and location of coronary artery disease or other abnormalities. Examine the lungs, noting any abnormalities;

(iii) Examine the abdomen and record the amount of subcutaneous fat. Retain 50 grams of adipose tissue for toxicological evaluation. Note the interrelationships of the organs. Trace any injuries before removing the organs. Note any fluid or blood present in the peritoneal cavity, and save it until foreign objects are accounted for. Save all urine and bile for toxicologic examination;

(iv) Remove, examine and record the quantitative information on the liver, spleen, pancreas, kidneys and adrenal glands. Save at least 150 grams each of kidney and liver for toxicological evaluation. Remove the gastrointestinal tract and examine the contents. Note any food present and its degree of digestion. Save the contents of the stomach. If a more detailed toxicological evaluation is desired, the contents of other regions of the gastrointestinal tract may be saved. Examine the rectum and anus for burns, lacerations or other injuries. Locate and retain any foreign bodies present. Examine the aorta, inferior vena cava and iliac vessels;

- (v) Examine the organs in the pelvis, including ovaries, fallopian tubes, uterus, vagina, testes, prostate gland, seminal vesicles, urethra and urinary bladder. Trace any injuries before removing the organs. Remove these organs carefully so as not to injure them artifactually. Note any evidence of previous or current pregnancy, miscarriage or delivery. Save any foreign objects within the cervix, uterus, vagina, urethra or rectum;
- (vi) Palpate the head and examine the external and internal surfaces of the scalp, noting any trauma or haemorrhage. Note any skull fractures. Remove the calvarium carefully and note epidural and subdural haematomas. Quantify, date and save any haematomas that are present. Remove the dura to examine the internal surface of the skull for fractures. Remove the brain and note any abnormalities. Dissect and describe any injuries. Cerebral cortical atrophy, whether focal or generalized, should be specifically commented upon;
- (vii) Evaluate the cerebral vessels. Save at least 150 grams of cerebral tissue for toxicological evaluation. Submerge the brain in fixative prior to examination, if this is indicated;
- (viii) Examine the neck after the heart and brain have been removed and the neck vessels have been drained. Remove the neck organs, taking care not to fracture the hyoid bone. Dissect and describe any injuries. Check the mucosa of the larynx, pyriform sinuses and esophagus, and note any petechiae, edema or burns caused by corrosive substances. Note any article or substances within the lumina of these structures. Examine the thyroid gland. Separate and examine the parathyroid glands, if they are readily identifiable;
- (ix) Dissect the neck muscles, noting any haemorrhage. Remove all organs, including the tongue. Dissect the muscles from the bone and note any fractures of the hyoid bone or thyroid or cricoid cartilages;
- (x) Examine the cervical, thoracic and lumbar spine. Examine the vertebrae from their anterior aspects and note any fractures, dislocations, compressions or haemorrhages. Examine the vertebral bodies. Cerebrospinal

fluid may be obtained if additional toxicological evaluation is indicated;

- (xi) In cases in which injury is suspected, dissect and describe the spinal cord. Examine the cervical spine anteriorly and note any haemorrhage in the paravertebral muscles. The posterior approach is best for evaluating high cervical injuries. Open the spinal canal and remove the spinal cord. Make transverse sections every 0.5 cm and note any abnormalities;
- (i) After the autopsy has been completed, record which specimens have been saved. Label all specimens with the name of the deceased, the autopsy identification number, the date and time of collection, the name of the prosector and the contents. Carefully preserve all evidence and record the chain of custody with appropriate release forms;
- (i) Perform appropriate toxicologic tests and retain portions of the tested samples to permit retesting;
- a) Tissues: 150 grams of liver and kidney should be saved routinely. Brain, hair and adipose tissue may be saved for additional studies in cases where drugs, poisons or other toxic substances are suspected;
- b) Fluids: 50 cc (if possible) of blood (spin and save serum in all or some of the tubes), all available urine, vitreous humor and stomach contents should be saved routinely. Bile, regional gastrointestinal tract contents and cerebrospinal fluid should be saved in cases where drugs, poisons or toxic substances are suspected. Oral, vaginal and rectal fluid should be saved in cases of suspected sexual assault;
- (ii) Representative samples of all major organs, including areas of normal and any abnormal tissue, should be processed histologically and stained with haematoxylin and eosin (and other stains as indicated). The slides, wet tissue and paraffin blocks should be kept indefinitely;
- (iii) Evidence that must be saved includes:
- a) All foreign objects, including projectiles, projectile fragments, pellets, knives and fibres. Projectiles must be subjected to ballistic analysis;
- b) All clothes and personal effects of the deceased, worn by or in the possession of the deceased at the time of death;

- c) Fingernails and under nail scrapings;
- d) Hair, foreign and pubic, in cases of suspected sexual assault;
- e) Head hair, in cases where the place of death or location of the body prior to its discovery may be an issue;
- (f) After the autopsy, all unretained organs should be replaced in the body, and the body should be well embalmed to facilitate a second autopsy in case one is desired at some future point;
- (k) The written autopsy report should address those items that are emphasized in boldface type in the protocol. At the end of the autopsy report should be a summary of the findings and the cause of death. This should include the prosecutor's comments attributing any injuries to external trauma, therapeutic efforts, postmortem change, or other causes. A full report should be given to appropriate authorities and to the deceased's family. Ⓢ

MODEL PROTOCOL FOR DISINTERMENT AND ANALYSIS OF SKELETAL REMAINS

A. INTRODUCTION

THIS PROPOSED MODEL protocol for the disinterment and analysis of skeletal remains includes a comprehensive checklist of the steps in a basic forensic examination. The objectives of an anthropological investigation are the same as those of the medicolegal investigation of a recently deceased person. The anthropologist must collect information that will establish the identity of the deceased, the time and place of death, the cause of death and the manner of mode of death (homicide, suicide, accident or natural). The approach of the anthropologist differs, however, because of the nature of the material to be examined. Typically, a prosecutor is required to examine a body, whereas an anthropologist is required to examine a skeleton. The prosecutor focuses on information obtained from soft tissues, whereas the anthropologist focuses on information from hard tissues. Since decomposition is a continuous process, the work of both specialists can overlap. An anthropologist may examine a fresh body when bone is exposed or when bone trauma is a factor. An experienced prosecutor may be required when mummified tissues are

present. In some circumstances, use of both this protocol and the model autopsy protocol may be necessary to yield the maximum information. The degree of decomposition of the body will dictate the type of investigation and, therefore, the protocol(s) to be followed.

The questions addressed by the anthropologist differ from those pursued in a typical autopsy. The anthropological investigation invests more time and attention to basic questions such as the following:

- (a) Are the remains human?
- (b) Do they represent a single individual or several?
- (c) What was the decedent's sex, race, stature, body weight, handedness and physique?
- (d) Are there any skeletal traits or anomalies that could serve to positively identify the decedent?

The time, cause and manner of death are also addressed by the anthropologist, but the margin of error is usually greater than that which can be achieved by an autopsy shortly after death.

This model protocol may be of use in many diverse situations. Its application may be affected, however, by poor conditions, inadequate financial resources or lack of time. Variation from the protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted in the final report.

B. PROPOSED MODEL SKELETAL ANALYSIS PROTOCOL

1. SCENE INVESTIGATION

A burial recovery should be handled with the same exacting care given to a crime-scene search. Efforts should be co-ordinated between the principal investigator and the consulting physical anthropologist or archaeologist. Human remains are frequently exhumed by law enforcement officers or cemetery workers unskilled in the techniques of forensic anthropology. Valuable information may be lost in this manner and false information is sometimes generated. Disinterment by untrained persons should be prohibited. The consulting anthropologist should be present to conduct or supervise the disinterment. Specific problems and procedures accompany the excavation of each type of burial. The amount of information ob-

tained from the excavation depends on knowledge of the burial situation and judgement based on experience. The final report should include a rationale for the excavation procedure.

The following procedure should be followed during disinterment:

- (a) Record the date, location, starting and finishing times of the disinterment, and the names of all workers;
- (b) Record the information in narrative form, supplemented by sketches and photographs;
- (c) Photograph the work area from the same perspective before work begins and after it ends every day to document any disturbance not related to the official procedure;
- (d) In some cases, it is necessary to first locate the grave within a given area. There are numerous methods of locating graves, depending on the age of the grave :
 - (i) An experienced archaeologist may recognize clues such as changes in surface contour and variation in local vegetation;
 - (ii) A metal probe can be used to locate the less compact soil characteristics of grave fill;
 - (iii) The area to be explored can be cleared and the top soil scraped away with a flat shovel. Graves appear darker than the surrounding ground because the darker topsoil had mixed with the lighter subsoil in the grave fill. Sometimes a light spraying of the surface with water may enhance a grave's outline;
- (e) Classify the burial as follows:
 - (i) Individual or commingled. A grave may contain the remains of one person buried alone, or it may contain the commingled remains of two or more persons buried either at the same time or over a period of time;
 - (ii) Isolated or adjacent. An isolated grave is separate from other graves and can be excavated without concern about encroaching upon another grave. Adjacent graves, such as in a crowded cemetery, require a different excavation technique because the wall of one grave is also the wall of another grave;
 - (iii) Primary or secondary. A primary grave is the grave in which the deceased is first placed. If the remains are then

removed and reburied, the grave is considered to be secondary;

- (iv) Undisturbed or disturbed. An undisturbed burial is unchanged (except by natural processes) since the time of primary burial. A disturbed burial is one that has been altered by human intervention after the time of primary burial. All secondary burials are considered to be disturbed; archaeological methods can be used to detect a disturbance in a primary burial;
- (f) Assign an unambiguous number to the burial. If an adequate numbering system is not already in effect, the anthropologist should devise a system;
- (g) Establish a datum point, then block and tap the burial site using an appropriate-sized grid and standard archaeological techniques. In some cases, it may be adequate simply to measure the depth of the grave from the surface to the skull and from the surface to the feet. Associated material can then be recorded in terms of their position relative to the skeleton;
- (h) Remove the overburden of earth, screening the dirt for associated materials. Record the level (depth) and relative coordinates of any such findings. The type of burial, especially whether primary or secondary, influences the care and attention that needs to be given to this step. Associated materials located at a secondary burial site are unlikely to reveal the circumstances of the primary burial but may provide information on events that have occurred after that burial;
- (i) Search for items such as bullets or jewellery, for which a metal detector can be useful, particularly in the levels immediately above and below the level of the remains;
- (j) Circumscribe the body, when the level of the burial is located, and, when possible, open the burial pit to a minimum of 30 cm on all sides of the body;
- (k) Pedestal the burial by digging on all sides to the lowest level of the body (approximately 30 cm). Also pedestal any associated artifacts;
- (l) Expose the remains with the use of a soft brush or whisk broom. Do not use a brush on fabric, as it may destroy fibre evidence. Examine the soil found around the skull for hair. Place this soil in a bag for laboratory study. Patience is invaluable at this time. The remains may be fragile, and interrela-

tionships of elements are important and may be easily disrupted. Damage can seriously reduce the amount of information available for analysis;

- (m) Photograph and map the remains in situ. All photographs should include an identification number, the date, a scale and an indication of magnetic north;
- (i) First photograph the entire burial, then focus on significant details so that their relation to the whole can be easily visualized;
- (ii) Anything that seems unusual or remarkable should be photographed at close range. Careful attention should be given to evidence of trauma or pathological change, either recent or healed;
- (iii) Photograph and map all associated materials (clothes, hair, coffin, artifacts, bullets, casings etc.). The map should include a rough sketch of the skeleton as well as any associated materials;
- (n) Before displacing anything, measure the individual:
 - (i) Measure the total length of the remains and record the terminal points of the measurement, e.g. apex to plantar surface of calcaneus (note : This is not a stature measurement);
 - (ii) If the skeleton is so fragile that it may break when lifted, measure as much as possible before removing it from the ground;
- (o) Remove all elements and place them in bags or boxes, taking care to avoid damage. Number, date and initial every container;
- (p) Excavate and screen the level of soil immediately under the burial. A level of "sterile" (artifact-free) soil should be located before ceasing excavation and beginning to backfill.

2. LABORATORY ANALYSIS OF SKELETAL REMAINS

The following protocol should be followed during the laboratory analysis of the skeletal remains:

- (a) Record the date, location, starting and finishing times of the skeletal analysis, and the names of all workers;
- (b) Radiograph all skeletal elements before any further cleaning;

- (i) Obtain bite-wing, apical and panoramic dental X-rays, if possible;
- (ii) The entire skeleton should be X-rayed. Special attention should be directed to fractures, developmental anomalies and the effects of surgical procedures. Frontal sinus films should be included for identification purposes;
- (c) Retain some bones in their original state; two lumbar vertebrae should be adequate. Rinse the rest of the bones clean but do not soak or scrub them. Allow the bones to dry;
- (d) Lay out the entire skeleton in a systematic way :
 - (i) Distinguish left from right;
 - (ii) Inventory every bone and record on a skeletal chart;
 - (iii) Inventory the teeth and record on a dental chart. Note broken, carious, restored and missing teeth;
 - (iv) Photograph the entire skeleton in one frame. All photographs should contain an identification number and scale;
- (e) If more than one individual is to be analyzed, and especially if there is any chance that comparisons will be made between individuals, number every element with indelible ink before any other work is begun;
- (f) Record the condition of the remains, e.g. fully intact and solid, eroding and friable, charred or cremated;
- (g) Preliminary identification:
 - (i) Determine age, sex, race and stature;
 - (ii) Record the reasons for each conclusion (e.g. sex identity based on skull and femoral head);
 - (iii) Photograph all evidence supporting these conclusions;
- (h) Individual identification:
 - (i) Search for evidence of handedness, pathological change, trauma and developmental anomalies;
 - (ii) Record the reasons for each conclusion;
 - (iii) Photograph all evidence supporting these conclusions;
- (i) Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. Photograph all injuries;
- (i) Examine the hyoid bone for cracks or breaks;

APPENDIX B

(ii) Examine the thyroid cartilage for damage;

(iii) Each bone should be examined for evidence of contact with metal. The superior or inferior edges of the ribs require particular scrutiny. A dissecting microscope is useful;

(i) If the remains are to be reburied before obtaining an identification, retain the following samples for further analysis:

(i) A mid-shaft cross-section from either femur, 2 cm or more in height;

(ii) A mid-shaft cross-section from either fibula, 2 cm or more in height;

(iii) A 4-cm section from the sternal end of a rib (sixth, if possible);

(iv) A tooth (preferably a mandibular incisor) that was vital at the time of death;

(v) Sever molar teeth for possible later deoxyribonucleic acid finger printing for identification;

(vi) A cast of the skull for possible facial reconstruction;

(vii) Record what samples have been saved, and label all samples with the identification number, date and name of the person who removed the sample.

3. FINAL REPORT

The following steps should be taken in the preparation of a final report:

- (a) Prepare a full report of all procedures and results;
- (b) Include a short summary of the conclusions;
- (c) Sign and date the report.

4. REPOSITORY FOR EVIDENCE

In cases where the body cannot be identified, the exhumed remains or other evidence should be preserved for a reasonable time. A repository should be established to hold the bodies for 5-10 years in case they can be identified at a later time.

Model questionnaire to be filled by persons alleging arbitrary arrest or detention 1/

I. Identity of the person arrested or detained

- 1. Family name.....
- 2. First name.....
- 3. Sex..... (Male) (Female)
- 4. Birth date or age (at the time of the detention).....
- 5. Nationality (ies).....
- 6. Identity document (if any)..... No.....
- 7. Profession and/or activity (if believed to be relevant to the arrest/detention).....
- 8. Address of usual residence.....

II. Arrest 2/

- 1. Date of arrest.....
- 2. Place of arrest (as detailed as possible).....
- 3. Forces who carried out the arrest or are believed to have carried it out.....
- 4. Did they show a warrant or other decision by a public authority? (YES) (NO).....
- 5. Authority who issued the warrant or decision.....
- 6. Describe the circumstances of the arrest.....

III. Detention 2/

- 1. Date of detention.....
- 2. Forces holding the detainee under custody.....
- 3. Places of detention (indicate any transfer and present place of detention).....
- 4. Authorities that ordered the detention.....
- 5. Offences imputed by the authorities.....

6. Relevant legislation applied.....

 IV. Indicate internal steps taken to redress the irregularities
 (If internal steps were not taken explain why)

 V. Indicate precise reasons why you consider
 the arrest or detention to be arbitrary 3/

 VI. Full name and address of the person(s) submitting the information
 (telephone and fax number, if possible) 4/

 Date..... Signature.....

1/A separate questionnaire has to be used for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not necessarily result in the inadmissibility of the communication.

2/ In some cases, only section II (arrest) or section III (detention) may be applicable. None the less, whenever possible, both sections should be filled in. Please note that the term "detention" refers to detention before, during and after trial.

3/ Copies of documents that prove the arbitrary nature of the arrest or detention, or help to better understand the specific circumstances of the case, may also be attached to this questionnaire.

4/ If a case is submitted to the Working Group by anyone other than the victim or his family, such person or organization should indicate authorization by the victim or his family to act on their behalf.

This questionnaire should be addressed to the Working Group on arbitrary detention, c/o Centre for Human Rights, United Nations Office at Geneva, 8 - 14 avenue de la Paix, 1211 Geneva 10, Switzerland, telefax no. (022) 733.98.79, telex No. 41.29.62.

EVENT INFORMATION FORMAT

- 101 *Event Record Number*
- 102 *Geographical Code*
- 103 *Geographical Term*
- 104 *Type of Event*
- 105 *Initial Date*
- 106 *Final Date*
- 107 *Type of Location*
- 108 *Local Region*
- 109 *Exact Location*
- 110 *Event Description*
- 111 *Role of Authorities*
- 112 *Charges or Stated Reason*
- 113 *Type of Perpetrator*
- 114 *Number of Victims*
- 115 *Type of Victim*
- 116 *Witnesses*
- 117 *Remarks*
- 118 *Related Event Record(s)*
- 119 *Victim Record Number(s)*
- 120 *Source References*
- 121 *Perpetrator Record Number(s)*
- 122 *Intervention Record Number(s)*
- 123 *Supporting Documents*
- 124 *Date of Entry*
- 125 *Date Received*
- 126 *Notes*
- 127 *Prepared by*
- 128 *Index*
- 129 *Confidentiality*
- 130 *Project Title*
- 131 *Relevant National Legislation*
- 132 *Relevant International Legislation*
- 133 *Files*
- 134 *Contacts*
- 135 *Count*
- 136 *Event Status*

VICTIM INFORMATION FORMAT

201	<i>Victim Record Number</i>
202	<i>Name</i>
203	<i>Age</i>
204	<i>Date of Birth</i>
205	<i>Place of Birth</i>
206	<i>Gender</i>
207	<i>Religion</i>
208	<i>Identification Documents</i>
209	<i>Origins</i>
210	<i>Marital Status</i>
211	<i>Number of Dependents</i>
212	<i>Name of Spouse</i>
213	<i>Health</i>
214	<i>Background</i>
215	<i>Occupation</i>
216	<i>Affiliation</i>
217	<i>Current Status</i>
218	<i>Remarks</i>
219	<i>Event Record Number(s)</i>
220	<i>Related Victim Record Number(s)</i>
221	<i>Source References</i>
222	<i>Perpetrator Record Number(s)</i>
223	<i>Intervention Record Number(s)</i>
224	<i>Date of Entry</i>
225	<i>Notes</i>
226	<i>Count</i>
227	<i>Confidentiality</i>
228	<i>Prepared by</i>
229	<i>Current Address</i>
230	<i>Secondary Address</i>
231	<i>Contacts</i>
232	<i>Language Spoken</i>

SOURCE INFORMATION FORMAT

301	<i>Source Record Number</i>
302	<i>Name of Source</i>
303	<i>Relationship</i>
304	<i>Type of Source Material</i>
305	<i>Remarks</i>
306	<i>Event Record Number(s)</i>
307	<i>Victim Record Number(s)</i>
308	<i>Perpetrator Record Number(s)</i>
309	<i>Source Documents</i>
310	<i>Languages of Source Documents</i>
311	<i>Date of Source Material</i>
312	<i>Address of Source</i>
313	<i>Confidentiality</i>
314	<i>Prepared by</i>
315	<i>Date of Entry</i>
316	<i>Reliability</i>

ALLEGED PERPETRATOR INFORMATION FORMAT

401 *Perpetrator Record Number*
 402 *Name*
 403 *Age*
 404 *Gender*
 405 *Language Spoken by Perpetrator*
 406 *Religion*
 407 *Origins*
 408 *Employment*
 409 *Affiliation*
 410 *Government/Military Service*
 411 *Remarks*
 412 *Event Record Number(s)*
 413 *Victim Record Number(s)*
 414 *Source References*
 415 *Perpetrator References*
 416 *Prepared by*
 417 *Notes*
 418 *Date of Entry*

INTERVENTION INFORMATION FORMAT

501 *Intervention Record Number*
 502 *Type of Intervention*
 503 *Date of Intervention*
 504 *Intervening Party*
 505 *Measures Taken*
 506 *Sent to*
 507 *Nature of Response*
 508 *Impact on the Situation*
 509 *Assistance*
 510 *Remarks*
 511 *Follow-up*
 512 *Status*
 513 *Event Record Number(s)*
 514 *Victim Record Number(s)*
 515 *Related Intervention Record Number(s)*
 516 *Prepared by*
 517 *Date of Entry*

TFDP FORM 1A (Revised September 1993)

EVENT TITLE: _____ UNIT CODE _____
 HS CONFIRMED TO BE HRV REF _____ No. _____

CASE _____ METHOD _____ DOI (S) _____ DOI (E) _____
POI _____ IND/FAM/S/B _____ EQM OF FAMILIES _____ CLASS _____
NO. OF VICTIMS _____ W U _____ CLASS NAME _____
IF MASS KILLING: K _____ W _____ EST. VALUE TAKEN/DESTROYED _____
VICTIMIZATION TYPE _____ DUE TO _____

GROUP PROFILE: #MALE _____ #FEMALE _____ #CHILDREN _____ #ADULT _____
REL _____ ETH _____ MAJOR OCCUPATION(S) _____
IF MASS ARREST: NO RECORDS _____ NO WARRANT _____ FLAGRANT _____ RELEASED _____ UND _____
IF EVACUATION: UNIT (IND/FAM) _____ EVAC. CENTER _____ MOVED TO NEW LOC. _____ UND _____
RETURNED _____ STILL AT EVAC. CENTER _____

OTHER HRVS: _____ DOI _____ DOI _____ #VIC/DMS _____ %
L HRV/METHOD _____

RECURRENT _____ ORIGINAL RECORD # _____

PERPETRATORS: _____ OPLAN _____ ADDRESS _____
GI NAME OF GROUPE _____ BANK GI ROLE IN HRV _____
IDENTIFIED PERPETRATORS: _____
NAME _____

SOURCE: NAME _____ RELATION TO EVENT _____ CONFIDENTIALITY _____
ADDRESS _____
DOCUMENTS: FREE TEXTS _____
UPDATES _____
PHOTOS: UNIT _____ EQ _____ NC _____

PFM REPORT: _____
OTHER PRIMARY DOCUMENTS: _____

DATE EVENT BEGON _____ MONITORED THROUGH _____
INTERVIEW DATA GATHERED _____ DATE OF INTERVIEW _____
PROCESSED AT THE UNIT BY _____ DATE SUBMITTED TO NC _____ DATE RECEIVED BY NC _____
PROCESSED AT THE HQ BY _____ DATE SUBMITTED TO HQ _____

EVENT NO. _____		TFDP FORM 1B	
V# F2A NAME (INCLUDING PERSONAL DATA IF W/O F2A)	HRV/METHOD	DOI/POI	OTHER HRVS AGAINST INDIVIDUAL
IF SURFACED:	DATES	IF SURFACED:	IF ARD:
PPSF	F2B		

TFDP FORM 1C
INTERVENTIONS

EVENT NO.

DATE OF INT.

INTERVENTIONS

ENTRY BY / DATE

TFDP FORM 2A

UNIT CODE

VICTIM'S PROFILE

CATEGORY: POLITICAL PRISONER
 DISAPPEARED
 OTHERS

VICTIM No.

DATE OF INCIDENT

PERSONAL PROFILE

NAME _____ AGE _____
DATE OF BIRTH _____ SEX _____
CIVIL STATUS _____ OCCUPATION _____
EDUCATIONAL BACKGROUND: _____ SECTOR _____

ORGANIZATIONAL AFFILIATION _____ ETHNICITY _____
RELIGION _____
HOME ADDRESS _____

FAMILY PROFILE

IF SINGLE: Name of Parents _____ Age _____ Educational Attainment _____ Occupation _____
IF MARRIED: Name of Spouse _____ Age _____ Educational Attainment _____ Occupation _____
Names of Children _____ Age _____ Educational Attainment _____

OTHER ADDRESSES) WHERE RELATIVES MAY BE CONTACTED:

ACCOMPLISHED BY _____
DATE _____

**TFDP FORM 2B
LEGAL/DETENTION STATUS**

VICTIM NO. _____

NAME OF ACCUSED/PRISONER _____
 ARRESTED / SURRENDERED _____ DATE _____
 IN FLAGRANT ACT _____ ARRESTING UNIT _____
 WITHOUT WARRANT _____ WITH VALID WARRANT _____ WITH INVALID WARRANT _____
 SEARCH CONDUCTED _____ PROPERTIES SEIZED _____
 WITHOUT WARRANT _____ WITH VALID WARRANT _____ WITH INVALID WARRANT _____
 INTERROGATED _____ IN THE PRESENCE OF LAWYER _____

IF TORTURED:
 METHODS _____ DATE _____ PERPETRATORS _____ PLACE OF TORTURE _____

DETENTION CENTER ADDRESS _____

IF TRANSFERRED:
 DATE _____ DETENTION CENTER _____

DIED DUE TO CRUEL TREATMENT/HUMAN CONDITIONS _____ DATE _____
 CHARGES: CHARGED WITHIN PRESCRIBED TIME _____

CN	CHARGE	DATE FILED	JUDGE	FISCAL	CASE NO.
	COURT BR.			ACTUAL BAIL	
	BAILABLE	RECOMMENDED BAIL			
CN	CHARGE	DATE FILED	JUDGE	FISCAL	CASE NO.
	COURT BR.			ACTUAL BAIL	
	BAILABLE	RECOMMENDED BAIL			
CN	CHARGE	DATE FILED	JUDGE	FISCAL	CASE NO.
	COURT BR.			ACTUAL BAIL	
	BAILABLE	RECOMMENDED BAIL			

IF IMMEDIATELY RELEASED, DATE _____ GROUND _____
1 - ADDITIONAL SHEET ATTACHED

LAWYERS
 NAME _____ CN _____ ORGANIZATION _____

WITNESSES
 NAME _____ CN _____ FOR PROS/DEF _____

**FDP FORM 2C (FOR USE BY UNITS)
NAME OF PP**

VICTIM NO. _____

DEVELOPMENTS ON _____
 FOR THE PERIOD _____ (COURT CASE, PRISON CONDITIONS, FAMILY CONDITION, INTERVENTIONS)

DATE OF DEVT _____ DEVELOPMENTS _____ ENTRY BY / DATE _____

**TFDP FORM 3A
UPDATES**

EVENT NO.

Update No. : _____

PROCESSED AT THE UNIT BY _____ DATE SUBMITTED TO HC _____
 PROCESSED AT THE NO BY _____ DATE SUBMITTED TO HC _____

TFDP FORM 3B (PPS UPDATE) FOR THE PERIOD _____					
TOTAL NO. OF PPS IN THIS LIST _____					
NAME OF PP	INTERVENTIONS	ON BEHALF OF PP	COURT CASE	PRISON CONDITION	FAMILY CONDITION

REPUBLIC OF THE PHILIPPINES)
CALOOCAN CITY.....) S.S.

AFFIDAVIT

I, Wilma Garcia, of legal age, married, and presently residing at 34 Biglangliko St., Consolacion, Caloocan City, after having been sworn in accordance with law depose and state:

THAT I am the wife of Pedro Garcia, who is the president of the Valley Bus Line Co. Workers Union;

THAT in the morning of January 7, 1990, my husband met with four other fellow unionists, namely, Juan Manuel, Victor Goonzales, Valerio Bangkal and Mario Galicia, at our house at 34 Biglangliko St., Consolacion, Caloocan City;

THAT at about 11:00 a.m., several policemen suddenly barged into our house and shouted at my husband and his companions to surrender;

THAT they immediately handcuffed my husband and his companions and brought them to the front of the house;

THAT the policemen proceeded to search the whole house;

THAT no search warrant was shown while the search was made;

THAT afterwards, my husband and his four companions were blindfolded and pushed to a waiting Ford Fiera parked a short distance from our house;

THAT the Ford Fiera and two other cars then sped away towards the direction of the Caloocan City hall;

THAT I immediately contacted the wives of my husband's fellow unionists;

THAT together with Perla, wife of Juan Manuel, and Nenita, wife of Valerio Bangkal, we went to the Caloocan City Police Headquarters at around 3:0 p.m.;

THAT we were able to see my husband, Juan Manuel and Valerio Bangkal being kept at the detention cells at the police headquarters;

THAT my husband informed us that several policemen hit them with fist blows and kicks at various parts of their bodies before we arrived;

THAT when we went home at about 5:00 p.m., Juan Manuel and Valerio Bangkal were allowed to go home with us;

THAT upon reaching our home, I discovered that cash amounting to about P1,000.00 hidden in my locker in our room was missing;

THAT up to this date, my husband remains detained at the Caloocan City Police headquarters; and

THAT up to now, the police cannot show a warrant for the arrest of my husband and his companions.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, 1990 at Caloocan City, Metro Manila, Philippines.

WILMA GARCIA

Affiant

Sample Affidavit

I

A. FACT-FINDING TECHNIQUES

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- D. Forensic Investigation
- M.E. Donnelly, *On-site investigation and identification of human remains: the need for a single, neutral, investigatory body*, *ILSA 14 Journal of Int'l Law* 83 (1990).

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Victorian Foundation for
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III

ORGANISATIONS THAT PROVIDE FORENSIC ASSISTANCE IN MEDICOLEGAL INVESTIGATIONS OF SUSPICIOUS DEATHS

AAAS Science and
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1333 H St. NW
Washington D.C. 20005,
USA

(202) 326-6790
Fax: (202) 289-4950

Training Workshops, Missions

Argentine Forensic Anthropology Team (54-1) 387-815
Combate de los Pozios, nr. 764
1222 Buenos Aires,
ARGENTINA

Missions, Training

Committee of Concerned Forensic
Scientists and Physicians
c/o Dr. Jorgen L. Thomsen
University Institute
of Forensic Medicine
J.B. Winslows Vej 17
DK-5000 Odense C,
DENMARK

(45-66) 158-600 ext. 4900
Fax: (45-65) 916-227

Cosponsors Missions, maintains a listing of
forensic specialists interested in human rights
(probably inactive, although CCFSP members
still go on missions for PHR and others)

Guatemala Forensic
Anthropology Team
(Equipo Antropologia
Forense de Guatemala)
8 Avenida, Calle 3-18
Zona 1, Edificio Packard,
piso 3, oficina F
Ciudad de Guatemala,
GUATEMALA

(011-5022) 51-8005
(Home of Stefan
Schmitt, a member
of the team)
Fax: (011-5022) 51-0102

Missions, Consulting with others,
Organizing missions

Grupo Antropologia Forense
(Chilean Forensic Anthropology Group) (56-2) 222-7721
San Francisco 841 Fax: (56-2) 697-2279,
Casilla 13823 c/o Ivan Caceres,
Correo 21 Museo Chileno de Art
Precolombiano
Santiago, CHILE

Currently conducting missions
inside Chile (disbanding due
to lack of funding, but experts
still available for consulting
and missions)

Human Rights Watch
485 Fifth Avenue
New York, NY 10017,
USA

(212) 972-8400
Fax: (212) 972-0905

Obtains forensic consultants
for its missions

Minnesota Advocates
for Human Rights
400 Second Avenue South,
Suite 1050 Minneapolis,
MN 55401,
USA

(612) 341-3302
Fax: (612) 341-2871

Missions, Legal Advice, Training
(provide legal side of medicolegal
investigations)

Physicians for Human Rights
100 Boylston Street
Boston, MA 02116,
USA

(617) 695-0307
Fax: (617) 695-0307

Missions, Consulting with
others, Organizing missions

IV

HURIDOCS PUBLICATIONS ON INFORMATION HANDLING

1. HURIDOCS Standard Formats: A Tool for Documenting Human Rights Violations, by Judith Dueck and a HURIDOCS Task Force. Oslo: HURIDOCS, 1993.
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V

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Diana Vincent-Daviss, *Bibliographic Essay, in Guide to International Human Rights Practice 249-66* (Hurst Hanaum 2d ed., Philadelphia, PA: University of Pennsylvania Press, 1992).

International Bibliography of Refugee Literature (Geneva: International Refugee Integration Resource Center (IRIRC), 1985) 151p.



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**FACT-FINDING AND
DOCUMENTATION
OF HUMAN RIGHTS
VIOLATIONS**

practical suggestions to enable local human rights organisations engaged in fact-finding and documentation of human rights violations to systematise their work. It is a modest attempt to identify some of the basic elements involved in the collection and documentation of information on human rights violations. Human rights organisations should build on what has been discussed in this Handbook and adapt it to suit their particular conditions.

—The Editors



**ASIAN FORUM FOR
HUMAN RIGHTS AND
DEVELOPMENT
(FORUM - ASIA)**

ISBN 971-91436-0-6