FIVE STEPS IN HUMAN RIGHTS MONITORING

OVERVIEW

The aim of this overview on human rights monitoring is to introduce the reader to key concepts and principles involved in monitoring, recording, cross-checking, reporting and following-up information regarding a human rights situation.

1. Introduction

2. Focus and Identifying priorities

3. Elements of human rights violations

4. Monitoring: How?

5. Recording: precise and detailed information

6. Cross-checking

7. Reporting-communicating

8. Following-up: action to stimulate change

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1. INTRODUCTION

“Since the efficacy of fact-finding rests so largely on credibility, and credibility emanates primarily from manifest integrity of process, sound procedures are not merely desirable but a functional prerequisite”\(^2\)

The aim of training in human rights monitoring is: to enhance understanding of the role of human rights NGOs, as well as the skills and knowledge necessary for stimulating human rights change. There is no single definitive model of human rights monitoring which can be applied to all human rights issues, in all contexts.

There are, however,

a) **Principles which derive from the human rights framework itself** which should apply to all Human Rights monitoring

b) **Examples of best practice** based on decades of experience of human rights monitoring world-wide whether by NGOs or international organizations such as UN.

**Principles deriving from the human rights framework**

An example of a principle of human rights monitoring (these principles derive from the human rights framework itself) is the principle ‘do no harm’. This means, for example, ensuring that a complainant is informed of the implications of challenging their treatment, protecting their dignity and, where they so choose, protecting their privacy.

Accuracy is also a key principle underlying human rights monitoring. The international legal framework is not an *a la carte* menu from which NGOs can select at will. If an NGO presents itself as a human rights organisation, it may focus on priority human rights issues, but it may not undermine other human rights in doing so. For example, in many countries, even among human rights organisations, there is a reluctance to address violations such as discrimination on grounds of sexual orientation, or the rights of those accused of ‘terrorism’ etc.

There are a number of common misperceptions which need to be addressed as part of NGO awareness-raising. Some examples follow.

**Corruption as a human rights issue:** For example corruption of judges is sometimes seen as a matter of Judges ‘private gain’, not as a human rights issue concerning the independence and impartiality of the judiciary. The attitude is deep-rooted and linked to the economic situation.

**Economic, Social and Cultural rights not seen as ‘real’ human rights:** There is a widespread scepticism as regards economic social and cultural rights, even among human rights NGOs. There is a need for human rights NGOs to help highlight the exact nature of Iraq’s international law obligations. In particular, NGOs need to be alert to:

a) The danger of acting as apologist for state alleged ‘inability’ to deliver on their human rights commitments; as well as

b) The importance to NGO credibility of their being seen up-to-date and legally accurate in their analysis of economic, social and cultural rights.

Key considerations for any organisation engaging in human rights monitoring include:

- The need for detail and precision in the information collected, cross-checked and reported;
- The need for confidentiality of information and sources;
- The need for objectivity and impartiality in all aspects of monitoring; and
- The need for sensitivity to the physical and psycho-social security of victim-witnesses and other sources.

Guidance and suggestions can be given, but daily guidance for each NGO has to derive from the application of common sense and consulting with more experienced colleagues (locally, nationally or internationally) when in doubt.

**What is Observing/Monitoring/Verification?**

There is no single definition of monitoring that distinguishes it from related activities such as verification or observation of human rights. Frequently the terms are used interchangeably. Definitions will not concern us here. All these terms usually involve gathering comprehensive, reliable information on a human rights situation in order to produce reports - to target corrective recommendations and follow-up action.

In general, monitoring by human rights NGOs is carried out by establishing and maintaining contact with reliable sources of information and with alleged victims. This is followed by the corroboration and analysis of information received, which is then transmitted for reports and follow-up action. This process may involve several different information-gathering techniques, and different methods of analysis - all of which come together to present an overall picture.

Different monitoring techniques are necessary because of the range of different human rights: economic and social as well as civil and political. Human rights NGOs should seek to monitor the human rights situation – not only examples of human rights violations, but also attempts to improve the situation made in good faith by the state federal or local authorities. From this information human rights NGOs carry out an overall analysis, and make recommendations regarding how to improve the human rights situation.

**The aim: to provide sound and precise information**

This requires thorough enquiries and well-documented reports. The key principle is accuracy and precision. Why? to establish the basic facts of the case or situation so that the information can be useful to your NGO, local or international human rights mechanisms or to the authorities in seeking corrective action. Accuracy is essential to ensure that the relevant and appropriate action is taken.

However, a common misperception is that information-gathering is only valid if it involves large numbers of people being surveyed or interviewed. This ignores the fact that information leading to human rights conclusions can also be found in documents, press reports, a small number of case studies or by studying an individual case. At the same time, surveys of large numbers of people may yield a lot of information in the form of views, opinions, but this does not automatically or always allow human rights conclusions to be drawn. An example, 1000 prisoners may be
interviewed about whether they have experienced torture. If 600 say they have, does this mean that 400 have not experienced torture? Perhaps the 400 are afraid of the consequences of making a complaint, or perhaps they are tolerant of treatment and conditions that they should regard as torture. Alternatively the 600 who complain of torture may be mistaken or lying? Asking a smaller number of prisoners or ex-prisoners or guards to describe the treatment and conditions in detention may be a more accurate and efficient means of conducting such monitoring. In contrast, in the case of the criminal justice system it may be more relevant that a large number of people believe that, for example judges are not independent, as the right to a fair trial requires that judges not only be independent but be seen to be so.

2. FOCUS AND IDENTIFYING PRIORITIES

The nature of the monitoring undertaken in Iraq will vary depending on the type of NGO, its mandate and priorities etc (e.g addressing past violations or the current situation) Does your NGO examine root causes?; what methods of monitoring are possible given your resources etc Your NGO will need to include at least some lawyers if it is to monitor the functioning of the Legal system, for example.

Regardless of the specific monitoring assignment undertaken it will invariably involve:

• seeking to use your presence as influence;

• recording information collected (see Recording, below); and

• communicating the information (see Reporting, below) to your NGO and/or to the relevant national and international human rights actors.

Traditionally, human rights monitoring has given priority to civil and political rights such as freedom from torture or freedom of expression etc. However, the international legal obligations undertaken by Iraq, such as the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child require a wider focus, monitoring the full spectrum of human rights. Equally the connection between different types of rights needs to be borne in mind. Economic and Social rights are inextricably linked to the exercise of civil and political rights for example the poor or uneducated are most likely to be denied a fair trial. What is obvious is that every Ngo cannot expect to monitor all human rights or all situations, not least as it is important not to raise unjustified expectations among the victims of human rights violations.

Human rights NGOs in Iraq are faced with widespread and systematic violations across the spectrum of human rights commitments the state has undertaken. Important choices will have to be made to prioritise resources. What are the factors to use to choose priorities – who decides? Identify priorities according to the most urgent reality in the region or locality. Preserving life and preventing torture are always more immediate than e.g freedom of expression.

Beyond the criteria of the more grave violations, identify what other organisations are already working on the issue, see if there is a need for your NGO to add to those efforts and, if so, how to co-ordinate with them. What are the skills and experience within your organisation?

It is not possible or desirable that an NGO should spread itself too thinly by trying to do everything – covering all human rights issues, for all vulnerable groups. It should not, in general try to replace the local authorities by conducting investigations into crimes. The role of the NGO is to stimulate the existing system to function effectively to protect human rights, and to advocated reform where needed. This will depend on the political will and capacities of the authorities at local, regional and federal level and the degree to which the public are organised to demand their human rights effectively.
Hard choices will have to be made to identify priority substantive rights - once made, these should be monitored thoroughly and actively.

3. ELEMENTS OF HUMAN RIGHTS VIOLATIONS

The building-bricks of information-gathering are identified below. But first, it may be necessary to point out some of the areas where human rights specialists may be required in order to provide legal analysis of the information gathered. This is where human rights networking comes in, so that within the network there are Iraqi or international specialists to provide input and complement the role of your NGO.

Not everyone who works in a human rights NGO is a human rights specialist – and a range of skills are needed to conduct monitoring effectively. Knowing your NGO’s priority area of focus means not only knowing the name of the human rights concerned (life, torture, fair trial, expression, association etc, etc.), but also understanding that these are legal terms whose parameters are defined by international human rights law. For example, ‘torture’ refers to specific type of treatment or conditions. If an NGO colleague receives an allegation of an incident or torture, they gather as much relevant detail with as much accuracy as possible - and pass it to a specialist who knows that the internationally accepted definition which must be met if the NGO is to accurately use the term “torture”:

• acute suffering (mental or physical); which is
• intentionally inflicted;
• by a public official or other person acting in an official capacity (or on their instigation or with their consent or acquiescence); which is
• not incidental to lawful sanctions; and that
• the legal prohibition of torture applies under any circumstances - there is never a legal justification for inflicting torture (see article 1, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

The potential complexity of human rights legal analysis also arises from the range of actors who may be involved in violence in any country. The classical situation or human rights violations involves armed agents of the state using violent, unilateral repression against the civilian population. However, there may be mutually violent confrontations between the army/police and “civilians” who are in fact armed opposition groups. Or, there may be violence between different sectors of the population - without any obvious involvement of the apparatus of the state (such as the police). Or, there may be violence between some, or all such groups and armed criminal gangs/private armies such as narco-traffickers. These issues require careful analysis to situate the problems in a proper human rights context.

4. MONITORING: HOW?

Networks and credibility

The key to effective monitoring is to combine strategic networking with credibility. This is because the key to monitoring is information. The amount and quality of information received depends a great deal on the networks of local organisations, etc., with whom your NGO has built up relations of trust. Good relations must be built up - especially with any other human rights, political, economic, religious, religious organisations, lawyers organisations, trades unions, hospitals, etc. working in the area. This means actively contacting other organisations, holding
regular meetings etc. An NGO that confines its activities to monitoring court procedure, for example, needs to have credible information regarding practices during investigation and arrest and pre-trial detention, all of which have a direct bearing on the fairness of a trial.

**Active v. passive monitoring**

Passive monitoring relies on information produced by others, or which is observed directly. Why might passive monitoring be inadequate to get a true picture of the situation?

Even if you have a very well developed and well resourced network of civil society (other NGOs, religious leaders, women's groups, lawyers, youth organisations, etc.) providing information:

- This network needs to be actively established and nurtured (as mentioned above); and
- The network needs to have geographical spread to every corner of the city or region, together with completely systematic coverage of all human rights substantive issues; and
- you must be satisfied that the information the network gives you has been thoroughly checked and impartially gathered in all circumstances.

The priority that information used as a basis for decision-making is full, factually accurate and politically unbiased means that information must be actively sought and cross-checked (see below).

**Active monitoring: What is a ‘source’ of information?**

Any person with direct or indirect knowledge relevant to an individual case may be a ‘source’: victims-survivors, witnesses, relatives, perpetrators, but it also could be a newspaper article, a radio broadcast, an NGO, a community leader, staff of international organisations and sometimes local authority officials.

The general rule may seem self-evident: identify the best possible sources. From an initial report or rumour try to identify eyewitnesses - from third-hand to second-hand to first-hand - one source leading to another. In some cases e.g. confessions produced by torture, there may only be two direct witnesses: the victim and the perpetrator. However, even sources without direct knowledge can provide background information or leads to other sources.

**Active monitoring: individual complaints**

One method of human rights monitoring is to record and analyse individual cases, as well as to try to identify from them any general patterns of behaviour, or failure to prevent, that may exist. This involves gathering statements and individual complaints. Often, this includes receiving information from the general public who are encouraged to present their complaints to the offices of your NGO.

**Active monitoring: systematic visits**

Certain types of human rights are better monitored using additional information-gathering techniques, beyond individual complaints. This may involve a programme of systematic visits to places where human rights violations can frequently take place (or where indicators of such
violations may be found) to assess the overall situation. For example, a programme of routine albeit perhaps irregular visits, may be established to monitor courts, trials, prisons, hospitals, morgues, or political meetings and demonstrations.

These visits are an important part of systematic monitoring, helping to reduce the element of chance in the information received by the NGO.

All of these types of visit have their own sensitivities, and guidance through training and standard practices will be necessary as well as instruction for NGO representatives on what to note in detail during the visit. Care is required not only for the safety of the monitors but also those that they interact with, witnesses, complainants etc.

**Active monitoring: the interview**

A key building-block in human rights monitoring is the interview. This is the method which underlies the gathering of information in individual cases. It can also be part of systematic visits - and is frequently used in cross-checking information (see next section).

Here, “interviews” means any kind of oral exchange with another person - whether formal or informal. These will vary a great deal according to the kind of information to be sought, the persons to be interviewed and the aim of the interview. For example, the aim may be to determine whether an incident took place, to ascertain the facts, determine responsibilities, assess the actions taken by the competent authorities, prepare evidence for possible prosecution, make recommendations for follow-up action, etc. The interview is central to monitoring. Professionally conducted it can not only produce information that will form the basis of human rights conclusions but can also enhance the credibility of an NGO among interviewees and the public at large.

**5. RECORDING: PRECISE AND DETAILED INFORMATION**

What information is to be noted and recorded?

Torture was used above to illustrate the elements of an internationally recognised human right. Those elements tell us the kind of information that needs to be documented, to allow analysts to determine the situation regarding respect for such rights.

The kind of data that will be needed in individual cases will commonly include:

- the victim
- the alleged incident
- the motivation for the alleged violation
- the context and circumstances of the alleged violation
- the alleged perpetrators
- the alleged action (or lack of action) by responsible authorities (police, prosecutor, tribunal)
- the sources of information.

The language used in recording information is important, eg, always be careful to think in terms of an alleged violation, the alleged victim, the alleged perpetrator. This is part of the discipline of being impartial, and also essential to the credibility of working methods which require cross-checking of all information. Nothing should be taken at face value.
There are as yet no standard recording formats in universal use, whether for noting details of individual cases, or for noting relevant information from systematic visits. However, guidance is provided by a range of manuals and check lists on human rights monitoring some of which are referred to below.

6. CROSS-CHECKING

Cross-checking: general

“Take nothing on its looks; take everything on evidence. There’s no better rule.” - Charles Dickens: Great Expectations, Chapter XL.

This is good advice. Do not act on information unless it is first cross-checked. Information can be manipulated. There is one exception to this rule: act when life is at risk and when experience and common sense tell you that the allegation (e.g of a disappearance) may be true. The NGO should have procedures for prompt action in such situations.

In seeking to check an allegation, we are seeking to “corroborate” or “refute” the information received. In some cases we will be able to do neither, but can record the allegation, and monitor the state’s investigation of the allegation. What is sufficient, or “enough” information in any case depends on the aim of gathering that information (for reporting, prosecution, test cases, press release etc.).

For all information-gathering and cross-checking, key principles are: be thorough, prompt, impartial and protect sources.

Precautions: before contacting a possible source, consider how best to do so without placing them at additional risk: e.g to contact them directly or indirectly? These considerations take on enhanced importance in conflict situations.

Cross-checking: assessing the source itself

Three main types of information arise:

- witness statements;
- documents (trial record, death certificate, medical records, prison register etc)
- physical material (wounds, spent bullets, grave site, weapon, vehicle).

Be careful to avoid treating information as corroboration when there is in fact no independence between sources: sometimes you will receive several second-hand allegations relating to a single event. It sometimes happens that all these accounts are based on the same original (and sometimes unreliable) source.

Assess the reliability of the sources: are they each related to each other e.g family members, same political group, do they have any vested interest in the outcome of the complaint, what motivates the source to come to your NGO. All information received, especially if provided by political parties and other groups which might attempt to use your NGO as an instrument for their own ends, should be evaluated with caution. However, the mere fact that a source may have other motivations, does not of course mean that the information is automatically untrue.

Impressions of a source’s behaviour must be used with caution, especially if the source is the alleged victim. Cultural differences and the effects of trauma can mislead an interviewer into thinking that the interviewee is not telling the truth just because they do not show signs of being “upset”.
It is not advisable to pay for information as this has obvious implications for the reliability of information received (what about compensating the source for a day’s work lost? or travel costs if the source is in poverty and has had to travel from far away to see you? what about providing food or medical care for wounds?).

**Dependency on interviews with witnesses**

Contrast what happens in the movies when detectives carry out a murder investigation, with the normal situation facing human rights fact-finders in NGOs. On TV there are usually many elements of information available as leads or tools get access to such information:

- the murder scene;
- the corpse;
- forensic evidence such as fingerprints, hair samples; etc.;
- powers of search and seizure...

For an NGO, these types of information are not generally available. Very often you do not have speedy access to the scene of the alleged human rights violation - if at all. For example, a grave may remain indefinitely under the control of the alleged perpetrator (such as de facto or other authorities or a prison, where access may be refused or delayed by the prison authorities); the body of the alleged deceased victim has not been found and you have no power to compel production of evidence, witnesses or documents. Of course we cannot force witnesses to co-operate, we do not have a system of subpoenas at our disposal, a witness protection programme, or the possibility of arresting suspects.

Another key difference is that, unlike the situation of investigations conducted by police, we almost never have the opportunity to interview suspects - our key interviews are with other witnesses.

These differences exist because as human rights NGOs our function is **NOT** the same as the national authorities. Unlike the national level, our witnesses may not know who we are, or properly understand our role. Therefore we must explain a great deal more to witnesses to enable them to give informed consent to providing information to our NGO.

The reliability of an allegation may have to be assessed in the first instance on the basis of the statement of a single witness. This is why the interview with that witness may be all-important.

**Cross-checking is not the same as investigating for prosecution**

Human rights NGOs “monitor”, “gather information” and “assess” it. This is because, when we speak of checking information insofar as we can, we are not using the standards that would apply to judicial decision-making.

Here we do not use the term evidence, but “information-gathering” or “fact-finding”. Evidence may be defined as any material which tends to persuade a court of the truth or probability of some fact asserted before it. We do not use the word “prove”, but “suggests”, or “tends to show” - because these terms more accurately reflect the quality of information we usually receive and the difficulties of cross-checking which have been highlighted here.

We do not have the usual personnel, facilities or time available to conduct what may be called investigations. Our aim is to identify generally what is happening, to protect individuals and to prevent violations where possible, to target remedial recommendations to change the situation and to facilitate possible later prosecutions if in-depth investigations are later conducted.
After allegations have been followed-up

If inquiries show that there has been a violation, or a pattern of violations, reports should make recommendations, if possible with target dates for compliance and follow-up. Throughout your enquiries, improvements in respect for human rights should be verified, noted and assessed as time passes.

REPORTING-COMMUNICATING

The communication of information depends on the nature of the case and the objectives to be achieved: serious and urgent cases, individual cases, or the general human rights situation. The nature and frequency of NGO reports or public reporting will vary according to the NGO.

Broadly, three types of reporting arise.

a) Communicating information on serious and urgent cases for immediate action;
b) Reporting on individual cases;
c) A periodic report (e.g weekly or monthly depending on the speed of change in the situation) evaluating the general human rights situation in the region/geographic area within which you work;
d) Thematic reports analysing a particular group or issue e.g the human rights of women, or the right to fair trial

Throughout, we have emphasised the need for precision and detail in information-gathering. The most important reason for this is that you are collecting information for action: the efficiency of action depends on the quality of information. The quality of the information and its analysis determines the appropriateness of the recommendations which are founded on it. For example, do the patterns of human rights violations suggest bad faith by the authorities, or do they suggest lack of means/resources to improve the situation. Different causes require different recommendations and follow-up action.

Here, attention is drawn to two aspects of reporting by NGOs. The reporting procedures can utilise the UN special procedures. In urgent cases - where intervention may save life- the NGO may send a fax to the UN Office of the High Commissioner for Human Rights in Geneva where the Secretariat for these mandates is based. The special procedures of the UN Commission on Human Rights (special rapporteurs, working groups and experts) work on the major themes of executions, torture, involuntary disappearances, or arbitrary detention - as well as others. An NGO’s reporting instructions should put these mechanisms to good use, activating their urgent action system whenever appropriate.

The second aspect of the available international mechanisms is the range of recommendations which the treaty-monitoring bodies have made to Iraq. These recommendations from, say the Committee against Torture or the Committee on the Rights of the Child form a valuable source of recommendations for NGOs to raise public awareness, to advocate, and to monitor in their implementation.
FOLLOWING-UP: ACTION TO STIMULATE CHANGE

Follow-up means monitoring the implementation of recommendations by local, national or federal authorities as well as follow-up where feasible for the individual victim.

To be effective, the monitoring of violations must be translated into reporting and effective action against the abuser. It is vital for an NGO to follow-up on its own human rights reporting: both for efficiency and to avoid losing credibility in the eyes of the network of information sources. Human rights NGOs can frequently get distracted by the activity involved, especially if donor funding is available to undertake certain activities. Collecting information and producing a report for a funding body is not human rights monitoring – it only becomes human rights monitoring when it is accompanied by human rights conclusions, human rights recommendations and targeted action to change the human rights situation concerned.

NGOs sometimes fail to appreciate the need to use, and the opportunities available for, international advocacy, outside of legal mechanisms. International economic actors have a fundamental and vested interest in a state having a proper functioning justice system. Another example is the UN system’s UN Development Assistance Framework (UNDAF) in which all UN bodies (including the World Bank) agree with the government their analysis of the development-human rights situation (called the Common Country Assessment, CCA), and how to address it in the coming years by making choices in applying resources. These advocacy opportunities are sometimes not seen as targets for advocacy by human rights NGOs. The effective functioning of the offices of international human rights actors in Iraq is dependent on effective NGOs. Iraqi NGOs can take responsibility for this by becoming familiar with the mandates of these offices and ensuring that this mandate is met.

When an NGO presents a human rights report to those authorities, it is merely reminding them of commitments which the Iraq has voluntarily undertaken, which bind them in international law.

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Further internet sources on Human rights monitoring, see the links provided on the IHRN website and:

OHCHR Training Manual on Human Rights Monitoring (Arabic)
http://www.ohchr.org/english/about/publications/docs/train_ara.htm

Various tools on and checklists on Human Rights Monitoring (English)
http://www.huridocs.org/

University of Minnesota Monitoring Tools (English)
http://www.mnadvocates.org/Human_Rights_Monitoring_Tools.html

NORDEM Manual on Human Rights Monitoring,
www.humanrights.uio.no/nordem/manualen.html