



## **KHRC GUIDELINE TO FACT-FINDING MISSIONS**

### **Background: The Kenya Human Rights Commission**

The Kenya Human Rights Commission (KHRC) is a national non-governmental organization (NGO) established over two decades ago to work towards the protection, promotion and realization of human rights in the country and beyond. The Goal of KHRC is: enhancing human rights centered governance at all levels. The KHRC has, for over 20 years monitored and reported on Kenya's international human rights obligations, particularly at national, regional and global levels. The experience has been brought through collection, collation, and analysis of all human rights and democratic freedoms that obtain in many events in the country's history. These events include, electoral processes, international reporting obligations, political and socio-economic developments, through conduct of trade, commerce or business, and also, perhaps the most important, the transition of Kenya from a laidback former constitution to a more progressive constitutional dispensation.

### **I. Introduction**

*"NGOs working in the field of human rights recognise that fact-finding is not an end in itself. It is a crucial vehicle for the implementation of human rights in all countries or situations under examination."* (Raoul Wallenberg Institute and International Bar Association).

Fact-finding and report writing are essential to human rights monitoring. Here, we will provide guidelines for fact-finding missions (FFM or mission) aimed at improving the accuracy, objectivity and transparency of these missions. By adopting these guidelines, we intend to make the allegations, observations and conclusions of FFMs reasonably reliable and thus enhance the efficacy and credibility of work. While your community based organisation (CBO) or NGO's independence and integrity must be respected in the course of its FFMs, these missions must nevertheless be, and be seen to be, conducted in a bona-fide manner. Reports must be clearly objective and properly sourced and the conclusions therein reached in a transparent manner.

## **II. Definition of Fact-Finding**

For the purposes of this guide, fact-finding means information-gathering mandated by your CBO/NGO to ascertain the relevant facts relating to a situation of human rights concern resulting from claims of violations, whether allegedly committed by state or non-state actors.. Fact-finding missions (FFM) have a common purpose with the intention to protect and promote human rights. The specific goals may include the following:-

- To record human rights violations
- To clarify disputed facts arising in the context of complaints of human rights violations
- To start a dialogue with the State in order to restore compliance with human rights standards

It is also important to note that FFM have a narrow scope and focus on a specific case or a specific form of maltreatment. All FFM should conclude with a report.

## **III. Instigation of a Fact-Finding Mission**

Where a situation of human rights concern is identified, a FFM should be considered in the light of the mandate, priorities, resources and procedures of your CBO/NGO. However, before embarking on any FFM, you should consider the possible negative consequences of undertaking the mission. You should take into account the work that other relevant organisations have done or are doing on the same situation and of the effect any previous missions or public statements relating to the situation have had. In order to strengthen efforts and maximise the effective use of resources, cooperation (Joint FFM's) with those other organisations should be considered.

## **IV. Terms of Reference for Fact-Finding Mission**

Given the fact that each FFM will be in response to a unique human rights situation, it follows that each mission will have its specific terms of reference (TORs). These TORs must be determined prior to the mission. The TORs should relate to the specific situations under investigation bearing in mind your organisation's mandate. The TORs must not reflect any predetermined conclusions about the situation under investigation. The TORs should also be clear, concise and relevant. However, they should be sufficiently flexible to permit the investigation of and reporting on any other related relevant circumstances.

However, in the cases of joint FFM's, it is crucial that the organisations involved in the mission draft a memorandum of understanding (MoU) and/or a detailed concept note to ascertain the role of each organization. The MoU will also state the involvement of each party in the generation of the report and the dissemination of the same.

## **V. Composition of the Fact-Finding Delegation**

The missions' delegations must comprise of individuals who are and are seen to be unbiased. Your organisation should ensure that all members of the delegation are aware that they must, at all times, act in an independent, unbiased, objective, lawful and ethical manner. Your Organisation should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the TORs. Each delegation should have a leader and/or a rapporteur for all its FFM activities. You should ensure that delegation members have sufficient time for pre-mission and/or

training for implementation of the mission and any proposed follow-up work, including contributing to the report. The FFM delegations should be comprised of people with relevant expertise and skills in interviewing members of specific victim groups, especially when these are children, women, victims of torture or other vulnerable groups and internally displaced persons.

Appropriate gender balance in the composition of the delegation should be considered. Where relevant, you may wish to consider such issues as geographic, racial, ethnic or other types of balance and diversity when selecting the delegation members. You may also wish to consider the importance of linguistic expertise and/or region/local knowledge of the delegation members. When appointing a member of a FFM delegation, you should take into account any potential risk in appointing people of specific ethnicities or members of particular religious groups, and any other reasons which might make it too dangerous for an individual to participate in the mission, or create danger for that person's family or others. This possibility should always be kept under review by the delegation and your CBO/NGO both before and during the visit.

Further, when making decisions regarding the number of people in the delegation, it is important to note that fewer numbers are required so that the victims or interviewees are not intimidated. This enhances the accuracy of the information that will be obtained from the victims of human rights violations.

## **VI. Important Safety and Logistical Considerations**

All persons associated with a mission and/or reports must at all times, act in an independent, unbiased, objective, lawful and ethical manner. You should ensure that the delegation and other persons associated with the mission in the field develop inclusive operational methods that encourage the development of a participatory and unified team spirit.

The delegation should maintain as a principal consideration, the safety of all persons associated with a mission and/or report, keeping personal details confidential. If there is a risk to any person/people during the mission or afterwards, your organization should, where possible, seek assurances from the government that the person/people will not be persecuted, victimized or otherwise put in a worse position for having worked with the delegation. In case there is no credible assurance from the government that a person or persons who participated in a given mission will not be at a risk because of their participation, you should take measures to ensure the safety of the at-risk person/people.

Where necessary, you should employ the services of an interpreter or interpreters during the course of the mission. Every care must be taken in the selection of the interpreter(s) to ensure that s/he is or they are experts in the required languages who understand relevant technical concepts and whose work ethic is professional. If the interpretation is not satisfactory, or if the interpreters are not independent, or if they pose a risk to the safety of the delegation or those being interviewed, your fact-finding delegation must desist from using the said interpreter(s) and where possible, make alternative arrangements.

## **VII. Pre-Mission Briefing**

Your CBO/NGO should provide a pre-visit briefing for members of the delegation, which includes balanced material relating to the reason for the visit and any relevant cultural, economic, political, historical and legal information. Where necessary, any relevant material should be translated. You should also provide a briefing on local logistical issues, operating procedures, medical issues (including preparation for travel), appropriate conduct in the region of visit and other relevant matters. All members of the delegation should be provided with a copy of these guidelines.

Your organisation should ensure that all the members of the delegation are confident that they have been adequately briefed and understand the TORs for the FFM, the initial reason for the visit and the mandate of your CBO/NGO in the execution of a given mission. If any member of the delegation is not sufficiently confident that the briefing has been adequate, such a member should inform your CBO/NGO that s/he is not satisfied with the briefing and you should then proceed to provide additional briefing. You should ensure that all the members of the delegation appreciate the need to be unbiased and not pre-judge any issues during the mission. You must also ensure that the delegation understands the need to act in an ethical manner and in accordance with the laws of the country/county/region and with internationally accepted human rights standards. You should, where necessary, provide awareness training on key issues for a given mission, including training on gender sensitivity. Your CBO/NGO should ensure that members of the delegation and persons associated with the mission receive clear and consistent messages about the mission, specifically its objectives and limitations, to ensure that the mission can be clearly explained to the people with whom they meet, so as to manage expectations and avoid miscommunication. When essential or where possible, your CBO/NGO should inform the relevant government authorities in the regions in which the mission is to take place or any other relevant authorities that the mission will take place.

Where necessary, you must ensure that all members of the delegation are fully briefed on recognising and managing stress and psychosocial trauma to prepare them properly for the realities of the situation and to promote the well-being of persons they interview, persons otherwise associated with the mission, and themselves.

## **VIII. Standard Operating Procedures during Fact-Finding Missions**

### **▪ General Observations:**

The overall responsibility for all missions and members of their delegation should rest with your CBO/NGO. The members of the deployed FFM delegation must conduct themselves with integrity, professionalism and in accordance with national as well as international human rights law standards at all times during the mission.

If a member of the delegation, or any other person associated with the mission, conducts himself or herself in a way which jeopardises the mission, the safety of others or the confidentiality of sources, or in any other way acts without sufficient professionalism or integrity, that person should be required to

leave the mission. In such situations it will be the responsibility of your CBO/NGO to determine whether to abandon the mission or replace that person. If the team leader is implicated, or is otherwise unavailable, any other member of the delegation may draw the matter to the attention of your CBO/NGO for further action.

Any threats to, or intimidation of, the delegation or any member of the delegation must be reported immediately to your organisation. Where appropriate, you will need to seek assurances from the government as to the safety of the delegation or make arrangements to provide security. At all times however, you should be ready to initiate emergency procedures for the FFM delegation should the same be required.

- **Agenda for the Fact-Finding Mission**

You should determine the criteria for selecting the people and locations to visit. Make the necessary arrangements and draw up a schedule for the visit, as far as possible<sup>1</sup>. In so doing, you should take into account the safety and security of potential interviewees and persons associated with them. It may be necessary to amend the schedule as the mission progresses. Wherever possible your FFM delegations should interview all parties relevant to the situation under consideration in order to achieve a balanced, comprehensive picture. This might include members of the government, judiciary, parliamentarians, opposition party members, journalists, clerics, NGO personnel, academics, staff of intergovernmental organizations, or any other person who could reliably shed light on the situation under review. Your delegation may wish to operate as unit i.e. with all members, or may wish to separate into smaller groups for specific assignments.

- **Conducting Interviews during Fact-Finding Missions**

Your FFM delegation must take into account the safety and security of the interviewees. The delegation should be mindful that the venues for interviews will ensure the protection and confidentiality of all involved and are culturally appropriate. In case of interviews, they should be scheduled with sufficient time for the ascertainment of all the relevant facts and to give the interviewee an opportunity to express their opinion. Your FFM delegations should inform interviewees of the terms of reference, as well as giving reasons for the visit, prior to or at the meeting, in a language they understand.

The delegations should take a careful note of whether an interviewee provides informed consent to be interviewed and identified or quoted and of future possible use of their statements. If they do not consent, their wishes must be respected. Where appropriate, interviews should be conducted by at least two members of the FFM delegation. It should be clarified in all cases whether interviewees wish to have a supporting person present, or wish for some person to absent themselves during the interview. The interviews should also be consistent, thorough and be conducted in a professional manner<sup>2</sup>.

---

<sup>1</sup> In selecting its fact-finding missions, the organization should be guided by, but not limited by, the following thematic concerns identified by the Human Rights Council in 1999: Enforced or involuntary disappearances; summary or arbitrary executions; torture; sale of children, child prostitution and child pornography; arbitrary detention; freedom of opinion and expression; violence against women; toxic wastes; economic reform policies and foreign debt; physical and mental health; internally displaced persons; mercenaries; and minority issues.

<sup>2</sup> In order to meet this objective, a questionnaire should be developed for each fact-finding mission

Members of your FFM must be especially aware of the vulnerabilities of particular categories of potential interviewees and such interviewees should be approached with the utmost care. Interviews of vulnerable groups must only be undertaken by those with the relevant expertise and skills. Particular methodological techniques should be considered in certain cases: for example, female victims of sexual abuse should be offered the choice of being interviewed by a female member of the delegation and a clear explanation given of the possible future need for testimony in criminal or other proceedings.

Members of the FFM delegation must be alert to the possibility of stress or trauma experienced by interviewees. Depending on the level of the trauma, members must be ready to terminate the interview if necessary. Wherever possible, the delegation members should ensure that interviewees are referred to appropriate victim support services. Members of the delegation should be alert to the humanitarian needs of interviewees as well, and, wherever possible, ensure that interviewees are referred to appropriate humanitarian or other organisations which might be able to meet those needs.

- **Information Gathering**

It is essential that the FFM delegations make use of all data collection techniques available. In addition to interviews, these may include site visits, collation of documents, or assessment of local situations and practices. Where the delegation relies upon information gathered by a third party, the delegation should take all reasonable measures to verify the objectivity of that information gathering process in order to rely on the evidence collected. The delegation should also take full and fair notes or, where necessary, ensure that these are being taken on the delegation's behalf.

The delegation should endeavour to obtain and review all relevant written materials and documents pertaining to a given FFM. These materials and information must be collated for the drafter of the final report. The security of all notes, transcripts and documents, including electronic data, together with other materials from the visit is of paramount importance. The delegation must also document any relevant obstacles it has met during its visit and in relation to the collection of information. The delegation must assess all the information gathered and reach conclusions to its reasonable satisfaction based on this assessment. In reaching conclusions and making its findings, the FFM delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.

- **Compiling Fact-Finding Mission Reports**

If not already decided, the FFM delegation and your CBO/NGO should identify the person or persons with responsibility for drafting the report. Unless there are exceptional circumstances, this should be a person or persons who was a delegate or who participated in the mission. Meanwhile, the delegation as a whole should reach its conclusions and make recommendations where required by the TORs. Where possible, recommendations should attempt to outline possible practical solutions. Every effort should be made to reach a consensus on conclusions and recommendations. If there is a dissenting viewpoint, you should consider publishing it.

In order to enhance the overall quality and credibility of the report, it must be accurate, clear and drafted objectively so that the processes of the mission are transparent. It should fairly reflect all the information gathered and must refrain from bias. It is good practice to identify the standards against which the delegation members weigh the information obtained. As good practice, FFM reports should include:

- ✓ An executive summary;
- ✓ The mandate of your CBO/NGO;
- ✓ The reason for the visit and TORs of the mission;
- ✓ The names of the delegation members, including brief particulars as to their relevant expertise and experience, to assure transparency;
- ✓ The dates of the visit;
- ✓ Sufficient background information to enable readers to contextualise the evidence;
- ✓ The methodology used during the visit, especially regarding interviews;
- ✓ As appropriate and where safety and confidentiality would not be compromised, a list of the sites visited and organisations and categories of people interviewed;
- ✓ Identification of any other sources of information relied upon, including disclosure of unverified third party evidence;
- ✓ Disclosure of the source of funding for the mission;
- ✓ The applicable law;
- ✓ Where applicable, complementary secondary sources should be identified as such;
- ✓ Identification of any circumstances relevant to the mission, including anything that impeded it;
- ✓ The findings of the report;
- ✓ An acknowledgment of any contributions by people or organisations that rendered assistance to the delegation or your CBO/NGO, where it would not compromise their safety;
- ✓ Conclusions and recommendations, indicating to whom the latter are addressed;
- ✓ Details of any significant developments occurring after the conclusion of the mission.

As a best-practice procedure and where possible, your CBO/NGO should submit the reports of its FFMs to the relevant government authorities for their response in advance of publication. Any comments received should be included if the relevant government authority consents. Any failure of the government to respond should be noted in the report.

#### ▪ **Translating Fact-Finding Missions' Reports**

You should endeavour to publish its FFM reports in both English and Kiswahili. Every effort must be made to ensure that translation of the FFM reports into any other language(s) is of the highest quality.

#### ▪ **Follow-up Visits**

The safety of those interviewed or engaged by the FFM delegations should continue to be monitored by your CBO/NGO, particularly where safety concerns were already present. Any post-mission threats or hostility should be acted upon immediately by your CBO/NGO and measures taken should include,

where necessary, notifying the government, assisting with protective measures and alerting the wider international community.

Your CBO/NGO should offer post-mission debriefing to members of the delegation and persons associated with the mission where necessary to deal with stress and psychosocial trauma that may be experienced after a mission. After each mission and where necessary, your CBO/NGO should review all aspects of the mission, including the delegation's performance and the adequacy of its fact-finding procedures. Your CBO/NGO should endeavour to disseminate the lessons learned within the organization e.g. during staff or programmes' meetings, and where necessary to others NGOs (especially those that might have collaborated in a given mission), in order to promote the development of good practice and the implementation of standardized fact-finding procedures in Kenya.