



KHRC MONITORING AND FACT FINDING TOOLS (FRAMEWORKS)

What is Fact-finding:

This is a mission or visit mandated by KHRC to ascertain the relevant facts relating to and clarifying a situation of human rights concern, whether allegedly committed by state or non-state actors. Fact finding consists of investigating specific incidences or allegations of human rights violations, collecting or finding a set of facts that proves or disproves that the incident/incidences reported occurred, how they occurred, and verifying allegations or rumours.

KHRC fact-finding missions' delegation must comprise individuals who are and are seen to be unbiased. During the mission a proactive and open-minded approach will enable the fact finding mission team to learn more about issues and political developments locally that may assist them in meeting future information needs of decision making authorities. KHRC fact-finding delegations (including consultants and other agents) are representing the KHRC and must act professionally at all times.

Given the fact that each fact-finding mission will be in response to a unique or a set of unique human rights situations, it follows that each mission will have its specific Terms of Reference (TORs) or a 'Pre-mission Memo'. Notably:

- These TORs and specific objectives of the fact finding mission must be determined prior to the mission. These should relate to the specific situations under investigation bearing in mind KHRC's mandate
- The TORs must not reflect any predetermined conclusions about the situation under investigation
- The TOR's should be clear, concise and relevant. However, they should be sufficiently flexible to permit the investigation of and reporting on any other related relevant circumstances.

After establishing the need for a fact-finding mission. the approaches should be:

- To establish and follow a schedule of visits to allow witnesses to contact the fact-finding delegation
- To visit irregularly and arrive unexpectedly
- To schedule occasional visits through a trusted third party, such as HURINETS or other partners.

Joint Fact-finding Missions

Once a decision to conduct a fact-finding mission has been taken, consideration could be given to collaborate with others, either colleagues from likeminded institutions, or representatives from external organisations. Reasons for conducting joint fact-finding missions should be informed by the following reasons:

- Greater access to sources, by sharing contacts and information
- Strengthening ties with the other participants that could provide a basis for other forms of collaboration in the future
- Improving standards, through sharing experiences, expertise and knowledge of fact-finding missions
- Enhance the impartiality and credibility of the fact-finding mission.

When KHRC is cooperating with partner institutions, coordination and dialogue is particularly important. KHRC delegation leader should make sure that all participants are aware of their respective obligations and responsibilities, preferably through a written memorandum of understanding ahead of the fact-finding mission to avoid misunderstandings.

A TOR for a joint fact-finding mission should not be subject to changes during the fact-finding mission unless all parties agree. The delegation leader must inform those KHRC are cooperating with of any sorts of restrictions KHRC is bound by and where KHRC IS unable to show flexibility.

As a basic check-list, fact-finding mission delegation should:

In pre-mission assessment:

- Establishing the TOR that contains the general topics as well as subtopics that should be addressed during the fact-finding mission
- The delegation must agree on matters of ethics, behaviour and conduct before the mission and

agree upon some basic rules which can be compiled into a “Code of Conduct”. This may include a list of cultural ‘dos and don’ts’

- Identifying potential sources and deciding among the potential sources
- Carry out risk/security assessment
- Each delegate to familiarize themselves on the law and human rights standards
- Get to understand the patterns in relation to allegation
- Know what explanations they require from the mission and contacts
- Know the ‘points to prove’ for the violations under consideration.
- Seek expert advice e.g. lawyers and pathologist
- Prepare an interview format: e.g. Checklist and get input from a local contact
- Identify and map out collaborators/contact in the field
- Identify the appropriate time to conduct the fact-finding mission and prepare a mission plan/program/schedule (flexible)
- Plan logistics carefully (include possibility of security services).

During the mission:

- All incidents should be scrutinized as potential violation until the contrary is proved
- All information should be recorded and documented to ensure that the highest levels of evidence is captured for reporting
- Victims and witnesses must be properly protected during the mission and every effort should be made to ensure that those implicated are not able to obstruct or subvert the inquiry
- A trusting and professional relationship between the delegation/interviewer and interviewee should be developed
- Consider the location and setting in which any interview takes place. Delegates should also be patient and methodical
- Victims of violations must be handled sensitively at all times and provided with appropriate support. Care should be taken not to re-traumatise them during fact finding
- Where the violation has resulted in a death similar consideration should be shown to relatives, partners and next of kin
- Fact finding should take full account of vulnerable persons involved
- Fact finding should also be sensitive to factors such as race, sex, sexual orientation and the nationality, political or religious beliefs, and social, cultural or ethnic background of the alleged victims or perpetrators
- In repressive context where there is surveillance i.e. fact finding delegates are followed by secret (and not so secret) police, in such cases, it is important not to lead them to witnesses, and the

particular interviews should be cancelled rather than reliance placed upon evasion

- Prudence should apply when interviewing people in prison or in any monitored space where guards are nearby or hidden microphones are possibly present
- In circumstances where interviews will need to be conducted through an interpreter, due regard should be given to the impact that the presence of an interpreter may have on the respondent
- If the interview needs a translator present and the choice may be problematic, especially if there is no choice and the translator is officially imposed this should be noted in the report
- Fact finding questions asked must not suggest the answer that is sought or that others have given
- Particular care should be taken to respect the rights of potential suspects
- Delegate/s should never pay for testimony, but should consider providing for the travel costs of witnesses who have to travel long distances
- Professional conduct, in line with the agreed Code of Conduct, will need to be observed by delegates throughout the duration of the mission.

Post mission actions

- The safety of those interviewed or engaged by KHRC's fact-finding delegations should continue to be monitored by KHRC, particularly where safety concerns were already present. Any post-mission threats or hostile acts should be acted upon immediately by KHRC, and measures taken should include, where necessary, notifying the government, assisting with protective measures and alerting the wider international community.
- KHRC 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. The Convener of the Fact-Finding/Urgent Action Committee.
- KHRC should consider any opportunities to cooperate with other NGOs, international organisations and relevant governments working on the same situation, subject area or region so as to maximise the effectiveness of the report.
- KHRC should consider the best means by which to encourage governments and other relevant entities to be receptive of its report and to act upon its recommendations.
- KHRC may wish to monitor any relevant developments in the country, which are the subject of the report, occurring after the report has been published. In such a case a follow-up missions and/ or reports may be considered.
- After each mission and where necessary, KHRC should review all aspects of the mission, including the delegation's performance and the adequacy of its fact-finding procedures. KHRC should endeavor 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.

Mission Reports

All KHRC's fact-finding missions should conclude with an actionable report

- Fact-finding should be approached with an 'open mind' and information obtained should always be tested against what the delegates already know or what can reasonably be established
- The delegation must document any relevant obstacles it has met during its visit and in relation to the collection of information
- In making its findings, the KHRC fact-finding delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.

Possible Report structure/contents

- Executive summary
- Table of contents
- Disclaimer
- Terms of Reference (ToR) of the mission (including the reason for the visit)
- Name of the participating authorities and alternatively the name of the delegation members,
- The dates of the visit and the cities/sites visited (travel route)
- Brief background information to enable readers to contextualise the evidence
- Statement of the problem
- Study objectives
- Study question: Broad specific question of study
- The methodology used during the visit, especially regarding Interview
- List of the organizations and categories of people interviewed (if possible and safe)
- Identification of any other Sources of information relied upon
- Complementary secondary sources should be identified as such
- The findings of the report structured by issues
- Acknowledgments (where possible and safe)
- Optionally: significant developments after the mission.

FACT FINDING MISSION

A. Methodology to be used

The methodology to be adopted is described below.

1. Research design

- Descriptive design
- Employ qualitative and quantitative means of data collection
- Collection of both primary and secondary data

2. Methods of data collection

- Key informant interviews (KII)
- Focus group discussion (FGD)
- Photos and observation
- Where there is a considerable risk of retaliation against individuals as a result of photographs, cameras should not be used
- Story telling especially for victims
- Literature review
- Survey Method
- Video recording if it does not pose any threat to any persons involved
- Particular sensitivity is called for when questioning alleged victims of sexual violence
- Child sensitive methods such as drawing/story telling

3. Sampling techniques

- Snow balling
- Purposive sampling

4. Data analysis

- Statistical data analysis
- Narrative analysis

B. Composition of the delegation

- The size of the delegation will be largely determined by the scope and range of topics that require investigation under the TORS.
- Delegation members must be experienced delegation/Experts
- Delegation must be gender balanced

- Delegation must reflect ethnic balance
- Delegation must be sensitive to culture and traditions (dressing, who speaks, language etc.).

C. Framework of information collection: Incidents, Impacts, Actors and Redress

1. Incidences

An understanding of the background of the conflict/violence

- What is the nature of the conflict/insecurity- what is the manifestation
- When and how did it start – probe for early warning signs before the major attack – e.g. any leaflets, public/private pronouncement by any sections of the community- probe who and collect information of the leaflets/copies
- Where did the conflict/incidence happen
- Was there violence. What were the causes
- Who are the antagonists and who are the perceived aggressors
- What weapons were used
- What are the gender perspectives to conflict
- Were there incidences of sexual abuse¹

2. Impacts/Effects

(Human rights violations enumerated. The respondents should be allowed to mention them in the language they are comfortable with even if not in a human rights language).

- *Right to life e.g. how many deaths*
- *Right to property e.g. the extent and nature of destruction- possible to count by location or village visited (photos are important here) etc.*

3. Actors

Responses taken in an attempt to address the situation by:

- *State's response to the conflict*
- *Non state actors' response (prior to FFM, Advocacy etc.)*
- *Community*

4. Redress

- *Recommendations*
- *What are the possible way forward- suggestions by respondents?*

¹ This is a form of weapon of violence as well