



## **KHRC GUIDELINES & TOOLS FOR HUMAN RIGHTS MONITORING & DOCUMENTATION, OCTOBER 2024**



**MINISTRY OF  
FOREIGN AFFAIRS  
OF DENMARK**  
*Danida*

**Uraia**  
Kenya's National Civic Education Programme



## Foreword from the Executive Director

The Kenya Human Rights Commission (KHRC) is a premier Non-Governmental Organization (NGO) in Africa with a **mandate** of *enhancing human rights centred governance at all levels*. It was established on 9<sup>th</sup> April 1992 by Kenyans exiled in the US and later registered in Kenya on 20<sup>th</sup> January 1994. Its founders are among the foremost leaders and activists in struggles for human rights and democratic reforms in Kenya and beyond.

Since its formation in 1992, KHRC pioneered human rights monitoring and response in the country, which was inspired by the international human rights law and organizations like Human Rights Watch, Amnesty International among others. We began with Quarterly Human Rights Reports(QHRR)then transitioned to Bi-Annual Human Rights Reports(QHRR).

These are complimented by topical and thematic studies, both desktop and field based. These are grounded on sound human rights and social science research methodology. We continue to produce many insightful reports that have deepened our interventions and leadership in research and advocacy with the national and transnational governance and human rights mechanisms.

This is part of our legacy work and documents as mark 30 years of stewardship in the human rights and governance arenas. It is on this basis we are presenting this framework that *aims at creating more political, knowledge/ evidenced-based and rights-based documentation and response to gross and systemic atrocities and governance abuses in our society.* This applies to both the historical and emerging injustices. This based on our exceptional experiences and academic references.

**This document is organized around 2 main components:**

- a) *Understanding human rights, human rights instruments, obligations and violations* which provides the basis for understanding the basics, the duties and responsibilities that come with it.
- b) *Monitoring, documentation and reporting of violations* which is the main subject matter, capturing the key definitions, considerations and steps for each.

Also it has 8 Annexures capturing: *Interview Guidelines; Interview Checklist; Simplified Monitoring and Reporting Tool ; Fact Finding Mission Guidelines; Resourcing Responses to Emerging Human Rights Issues; Key International Human Rights Instruments, KHRC's Engagement on the Solai Dam Tragedy and Key References/ Resource Materials.*

*Above all, this framework is meant to enable us answer the **6 fundamental** research and truth questions:*

- i. **Who** was involved? Who is/are the victims? Who is/are the perpetrator? Who witnessed the incident?
- ii. **What** took place? What is the timeline that the incident occurred? Have similar incidents occurred before?
- iii. **Where** did the incident occur? iv)
- iv. **When** did the incident occur?
- v. **Why** did the incident occur? Were there any warning signs or events that may have led to the incident?
- vi. **How** did authorities respond? Was anyone held to account?

*One must confirm whether indeed human rights violations and abuses have been committed by looking at the following **3 considerations**:*

- Does this alleged (you are not sure yet whether this is indeed a human rights violation) human rights violation fall within the scope of work my organisation is doing?
- Does the allegation or the incident reported violate international standards and domestic laws?
- Do you have all the evidence needed to demonstrate that a human rights violation took place? What is missing?

*Once we determine that a human rights violations have occurred, it is then important to consider if the violations are systemic by looking at the possible patterns and trends based on the following **5 variables**:*

- Is this case one of several cases of this type of violation?
- Are the violations occurring in a particular area or location?
- Is there a pattern in the identity of the victim (religion, ethnicity, political affiliation)?
- Is there a pattern in the identity of the perpetrator (from a particular security force, another armed group, or an individual)?
- Is there a pattern in how authorities respond (are victims detained, are the cases ignored, have perpetrators been questioned or arrested)?

**The final outputs should deliver the following justice and accountability outcomes:**

- a) *Providing immediate assistance to victims-*
- b) *Seeking redress and remedies-*ensure justice and accountability
- c) *Changing policies-*changing laws and practices of a country to ensure that these are consistent with international standards and of putting pressure on governments to comply with their treaty obligations.
- d) *Changing behavior and attitudes of* authorities-especially convincing duty bearers to be respectful and protective of rights.

Our Urgent Action Strategy provides more details about the sources of information, strategies<sup>1</sup> for interventions and mechanisms for resourcing our human rights research, documentation and response work. For human and financial resourcing of this work, see *Annexure 5*.

Our capacity to convince project grant makers to support such unanticipated situations remains one of our major milestones. This framework and support system has enabled KHRC to remain very effective and responsive to many gross injustices over time and space.

The case study about our journey in seeking truth, justice and accountability for the Solai Dam Tragedy between May 2018 to-date(*Annexure 7*) presents one of our practical achievements and challenges of our monitoring, documentation and advocacy work in the field.

Owing to the deepened culture of impunity in the society, we end with many violations requiring our urgent and continuous attention. Some of the emerging issues end up being areas for long term actions owing to the structural and underlying causes.

*With these reflections, I wish to welcome and challenge our readers and fellow compatriots to read and apply this framework very faithfully and diligently in the protection and promotion of human rights violations.*

**#Viva KHRC@30Viva**

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<sup>1</sup> Mainly protection and support to the affected populations; litigation and legal aid; policy interventions; civic and community engagements; public protests and campaigns, media action among others.

*Davis M Malombe,*  
**Executive Director, KHRC**

*October 25, 2024*

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## ABBREVEATIONS

### Abbreviations

- KHRC - Kenya Human Rights Commission
- OAG - Office of the Auditor General
- COB - Controller of Budget
- UN - United Nations
- FFM - Fact-Finding Mission
- NGO - Non-Governmental Organization
- NEMA - National Environment Management Authority
- WRA - Water Resources Authority
- ACC- Assistant County Commissioner
- OCS - Officer Commanding Police Station

## **UNDERSTANDING OF HUMAN RIGHTS, HUMAN RIGHT INSTRUMENTS, OBLIGATIONS AND VIOLATIONS**

What are Human Rights?

Human rights are rights that we have because we are human beings. It is inherent in all human beings irrespective of our sex, status, colour, ethnic origin, religion, language, nationality, etc. The concept of 'human rights' is based on the fact that every human being is born with these rights and is entitled to enjoy all of these rights without discrimination.

## Characteristics of Human Rights

*Human Rights have unique characteristics.*

- a) *Universality:* Human rights are universal. Human rights are universally and equally applied regardless of place or person.
- b) *Inalienable:* Human rights are inherent, and hence cannot be granted or purchased. Because they are inalienable, you cannot lose or be denied these rights so long as you are a human being. In cases where a person is in conflict with the law and is found guilty by a competent court of jurisdiction, some of these rights may be restricted. For example, freedom of movement may be denied or restricted within the period of arrest or detention, but not the right to fair hearing or trial.
- c) *Indivisible:* Human rights are inseparable, and no right is more important than the other.
- d) *Interdependent:* Human rights complement one another. This means that each right needs another to be fully actualized and enjoyed. For example, your ability to participate in governance is directly affected by your right to freedom of peaceful assembly and association and expression.

## Human Rights Instruments

Every government has an obligation to protect and promote the basic human rights of its citizens as expressed and guaranteed by law. Human right laws are contained in treaties<sup>2</sup>, customary law, general principles, and national and international law.

National, regional and international human rights laws or instruments lay down obligations for governments to act in certain ways or to refrain from certain acts, in order to promote and protect these rights. **For details see Annex 6.**

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<sup>2</sup>Once a state has ratified any of the fundamental human rights treaties, by way of signature, it assumes legally binding obligations and duties under the law to respect, to protect and to uphold human rights.

## State Obligations

**Under International Human Rights Law, Human Rights invoke three levels of obligations from the state;**

- a) *Obligation to respect* requires the state to refrain from violating or taking actions that have the effect of violating rights of individuals.
- b) *The obligation to protect* requires the state and its agents to prevent the violation of any individual's rights by any other individual or private/non-state actor. Where this occurs, the state must act to prevent further violations and to guarantee access to legal remedies for any victim of the infringement.
- c) *The obligation to fulfil* requires states to take positive measures that will ensure the full realization of these rights. In the context of our discussion, states are obliged to make appropriate laws as well as provide appropriate, effective and accountable grievance mechanisms that will guarantee individual and group opportunities to seek redress when their rights are violated.

**NB:** Just as states have a role to play toward the realization of these rights, so too do non-state actors such as private companies or transnational corporations. This is because some of their actions or policies affect or lead to violations of these rights. At the individual level, our role is to ensure we do not become a stumbling block to the realization of others rights.

### 1. Human Rights Violations

*“Human rights violations” include governmental transgressions of the rights guaranteed by national, regional and international human rights law and acts and omissions directly attributable to the State involving the failure to implement legal obligations derived from human rights standards.*

Violations occur when a law, policy or practice deliberately contravenes or ignores obligations held by the State concerned or when the State fails to achieve a required standard of conduct or result. Additional violations occur when a State withdraws or removes existing human rights protections.

The phrase *“human rights abuses”* is broader term than “violations”, and includes violative *conduct committed by non-State actors*, mostly individuals and institutions, including corporations

# MONITORING, DOCUMENTATION & REPORTING OF VIOLATIONS

## Introduction

In general, Monitoring, Documenting and Reporting (MDR) is a systematic and active collection of data, analysis of such data and dissemination of such information on human rights violations for immediate use by concerned and interested parties. MDR forms the basis of the work of human rights actors; however, each covers a different aspect of this work.

- a) *Monitoring* is the long term observation and analysis of the human rights situation in your locality.
- b) *Documenting* involves assessing individual allegations and analyzing the overall evolution of the human rights situation. This analysis includes identifying trends and patterns, processing the information in a report, and recording and storing the information.
- c) *Reporting* - involves the dissemination of reports generated to your target audience, which could be government, national or international human rights bodies, or the general public.

Human Rights Monitoring, Documentation & Reporting generally serves the following purposes:

- i. *Providing immediate assistance to victims-*
- ii. *Seeking redress and remedies-*ensure justice and accountability
- iii. *Changing policies-*changing laws and practices of a country to ensure that these are consistent with international standards and of putting pressure on governments to comply with their treaty obligations.
- iv. *Changing behavior and attitudes of authorities-*especially convincing duty bearers to be respectful and protective of rights

## Human Rights Monitoring

### Key Principles for Consideration

- i. *Do no harm:* While it is not within the purview or capacity of human rights monitors to ensure the safety of victims of human rights violation, it is crucial for human rights monitors to know that his/her duty is first to the victims and those sharing information on human rights violations. Informants stand a great risk in providing information, so the monitor must not endanger the lives of his/her contacts or victims of human rights violations.
- ii. *Understanding and respecting the mandate:* Everyone involved in human rights monitoring must be acquainted with the assignment before s/he can be actively involved in carrying out such a sensitive task. The mandate must be respected to prevent monitors from stepping out of bounds. It is most significant to understand as well as respect the mandate of human rights monitors.
- iii. *Widespread consultation:* A human rights monitor is not an island, so s/he should consult widely with supportive personalities or organizations who would add value to the work of human rights monitoring. There exist a good number of people understanding the dynamics prevalent in a community or their sphere of influence. Consulting with such individuals or organizations may enrich the outcome of the investigation.

**iv. *Respect for authorities:*** Human rights monitors are not in competition with the authorities, nor should they maintain an antagonistic front with the authorities, especially since the action and inaction of the authorities has a huge influence on the achievement of their goals. Therefore, there should be respect for the authorities. Monitors should consider them as partners or potential partners who would complement these authorities' efforts towards achieving seeking justice for victims of human rights violation in their area of operation.

**v. *Neutrality:*** If the monitor is seen as being neutral, not showing favouritism or bias towards one side or another, it adds credibility to the outcome of any investigation. You must avoid prejudice in carrying out the task of collecting and analysing information about violations.

**vi. *Precision:*** Human rights monitors must ensure and maintain a great degree of precision and accuracy of information reported. Inaccuracy could affect the perception of reliability of your work.

**vii. *Confidentiality:*** It is important that informants understand and trust that the information that they provide is confidential. Without this confidence, they are unlikely to share information with you. It is also the monitor's responsibility to protect the confidentiality of their informants (See Box 9 for more information on confidentiality).

**viii. *Conspicuousness:*** Your availability as a monitor at crucial times emboldens the contact and victims to feel secure that their course is being pursued vigorously. Ensure that the people you seek to facilitate the protection of their rights and the authorities know your work and mandate.

**ix. *Sensitivity:*** The monitor must be sensitive to the culture and environment of operation and to further exercise sensitivity to the plight of the victims or the culture where they are operating.

## What type of information should monitors collect?

Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussion with government authorities to obtain information and to pursue remedies, and other immediate follow-up actions. The term includes evaluative activities at the level of the United Nations head offices as well as first hand fact-gathering and other work in the field. In addition, monitoring has a temporal quality in that it generally takes place over a protracted period of time.

Monitoring is a long-term observation and analysis of the human rights situation in your sphere of operation so as to understand trends and prevalence in order to make informed decisions and take strategic actions. It could also be the collection, verification and the utilization of information to reduce human rights violation. It involves the continuous and systematic collection of information that is related to human rights violations.

The purpose of monitoring is to make the human rights situation better. The key objective of human rights monitoring is to reinforce the state's responsibility to protect human rights and create an atmosphere that promotes the respect of human rights.

*There is a variety of information that a human rights observer should collect to monitor the human rights situation in their area.*

<b>i)Contextual Information</b>	<p>Historical context</p> <ul style="list-style-type: none"> <li>•<i>Economic indicators</i> (unemployment rate, growth rate, economic policies)</li> <li>•<i>Social indicators</i> (access to health care and education, quality of life )</li> <li>•<i>Demographic Data</i> (size and age of population, presence of refugees or internally displaced persons.</li> <li>•<i>Possible Sources of Information:</i> Government or NGO reports, academic writing, media</li> </ul>
<b>ii)Political Information</b>	<ul style="list-style-type: none"> <li>• Nature of the political system</li> <li>•Role of security forces</li> <li>•Political tensions and conflicts</li> <li>•Ethnic cleavages</li> <li>•Electoral patterns</li> <li>•History of human rights violations</li> <li>•<i>Possible sources of information:</i> political speeches, NGO or international organization reports, the media</li> </ul>
<b>iii)Legal Constitutional Information</b>	<ul style="list-style-type: none"> <li>• International conventions and treaties ratified by the government</li> <li>•Important court cases</li> <li>•Relevant constitutional provisions</li> <li>•Laws</li> <li>•<i>Possible sources of information:</i> court documents, lawyers, police records, media, organizations working on the justice system</li> </ul>

## Tips for Monitoring

*The following are some key tips to help human rights monitors:*

- i.** *Have an in-depth knowledge of human rights as provided by National and International human rights instruments.* Knowing the laws will help you understand what are human rights, when they are violated, and what obligations the state or non-state actors have to protect these rights.
- ii.** *Have an in depth knowledge of accountability mechanisms and their legal framework.* This knowledge will help you know the grievance settlement mechanisms in place and how to access them.
- iii.** *Determine your objectives, identify issues and needs, and define your scope.* Because of limited time and resources, you may not be able to monitor or document everything. Having clear objectives, knowing what issues you are most interested in, and the geographic area you can realistically access will help you focus your work.
- iv.** *Network with other credible human rights organizations.* Never work or fight alone. There may be other organizations working on similar issues or in similar areas with which you can work, combining skills, knowledge and resources.
- v.** *Build credible and reliable contacts.* These contacts can help you stay more up-to-date on happenings in an area or notify you when an incident occurs. Always review your contact list to ensure it is up-to-date.
- vi.** *Have a simple format for reporting* and share with your contacts and your links.

## Contact Building

An important element of monitoring is building a broad network of relevant contacts or informants that consistently provide the human rights monitor with information or reports of incidences that relate to human rights violations.

Having a network of contacts provides access to information about happenings in communities where the monitor is not continuously present. Also, because they are from the community or hold a certain position, the contacts may have access to information that the monitor would not ordinarily be privy to.

In addition, the larger the contacts amassed, the more the credible the information available to the human rights monitor will be. Information from only one source may not be reliable. However, a monitor can use his/her network of contacts to verify information or check facts before documenting or reporting the information.

Having contacts in the area you are operating in also helps mitigate security risks by building a safety network. The pool of contacts can help pass along information of elevated tensions or signs that the monitor or his/her informants are at risk.

*Contacts ideally should be diverse to cover as many sectors and elements of society as possible. The following are possible sources of contacts:*

- i. Local, national or international NGOs
- ii. Religious institutions
- iii. Public officials
- iv. Security agencies
- v. Members of political parties
- vi. Community Development Associations
- vii. Media organizations
- viii. Vigilante Groups
- ix. Trade Associations, Marketers Associations or Unions
- x. Women Groups
- xi. Youth Groups

## Human Rights Documentation

### **a) Introduction**

When human rights violations occur, it is important that there is an accurate and timely account taken of the incident, either to be presented in a legal case or used to document a trend in human rights violations.

Documenting involves: assessing individual allegations; analysing the overall evolution of the human rights situation; identifying trends; processing information in a report; recording and storing information.

## Guidelines for Analysis

*The following questions should guide your analysis:*

**i)** Does this alleged (you are not sure yet whether this is indeed a human rights violation) human rights violation fall within the scope of work my organisation is doing? If the allegation falls within the type of work you do, then you will embark on fact-finding. If it does not, you will report the case to other human rights organisations who are working on such cases.

**ii)** Does the allegation or the incident reported to me constitute a human rights violation?

In other words, does the incident violate international standards and domestic laws?

**iii)** Do you have all the evidence needed to demonstrate that a human rights violation took place? What is missing? For instance, you may want to go to the police station in person and ask to see the alleged victim. If he has been transported to the hospital, you may need to go there and talk with him

### **b) How do you know the data is valid?**

**i)** If you have already gathered some evidence or information (from eye-witnesses, for instance), you then need to ask yourselves whether the data provided to you are likely to be valid.

**ii)** If you have interviewed eye-witnesses, you need to assess the interviews and cross-check all the facts: are the testimonies similar? Do they contradict each other?

**iii)** If you have gathered material evidence, such as medical reports, you also need to check their validity. If you are not satisfied with the official medical report, you may need to seek a second opinion, etc.

**iv)** If you have little material evidence or testimonies, then you may compare an allegation with the existing information in your hands and your knowledge, i.e. whether an allegation “fits” with what you know about the specific aspects of human rights violations

## Steps for Documentation

*Documentation consists of four main steps:*

### **Step 1: Data Collection**

When an incident or account of human rights violations are brought to the attention of human rights monitors, they must engage in fact finding. **Fact-finding** involves the collection of information that either proves or disproves that the incident occurred.

Fact-finding will help the monitor collect key information about the incident, which will later form the basis of their analysis and reporting. The objective of fact-finding is to first and foremost determine if a violation did occur and what type of violation was involved. Once this is determined, there are key questions that the data collected should be able to answer:

- i) **Who** was involved? Who is/are the victims? Who is/are the perpetrator? Who witnessed the incident?
- ii) **What** took place? What is the timeline that the incident occurred? Have similar incidents occurred before?
- iii) **Where** did the incident occur?
- iv) **When** did the incident occur?
- v) **Why** did the incident occur? Were there any warning signs or events that may have led to the incident?
- vi) **How** did authorities respond? Was anyone arrested?

This list of questions is not exhaustive and is dependent upon the type and complexity of the violation that occurred. The type of violation and the circumstances will also determine what methods a monitor can use to collect data. *The possible methods include:*

- *Missions:* Monitors travel to the location where the incident took place. It can be a short-term mission or it may be a long-term mission where the monitor stays in a location to collect information on violations that may be on going.
- *Observation:* Monitors may observe events, trials, elections, or demonstrations to ensure that the process is properly carried out. For example, a group or individual may monitor a campaign rally to observe the behaviour of security forces or they may visit a prison to ensure that prisoners are treated humanely.
- *Interviews:* Monitors can speak directly with individuals who have knowledge of the incidents that occur. This could include the victim(s), eyewitnesses, or community authorities. See Section 6.1a for more information on conducting good interviews.
- *Site Visits:* Information can be collected at the scene where an incident occurred. For example, if there is a case of poor working conditions, the monitor should try to visit the work site to see the conditions him/herself.
- *Surveys:* Monitors can conduct surveys to understand the scale of human rights violations. It can help a monitor to better see how frequently incidents occur. Surveys can also be used to understand the context or environment by asking a larger number of sources.
- *Focus Groups:* Monitors can gather a small group (8-10 people) to discuss incidents that occur. In a group, people may be more encouraged to speak up or may provide different pieces of the puzzle.
- *Audio-visuals:* Information on human rights violations is more reliable if there is video and picture evidence that supports the facts. Monitors should always carry a camera to capture audio-visual evidence, for example, homes that have been burned or property destroyed.

## Step 2: Organizing Data

It is important that monitors and monitoring organizations have a system in place for organizing information collected about human rights violations. Having a consistent process for organizing this data will make the process of analysing the data much easier. Monitors should consider using templates like the Interview Checklist or mission or site visit report template to ensure consistency in how incidents are document.

Data security is also an important consideration. Individual monitors and monitoring organizations should carefully consider how this information will be stored in a manner that is both accessible for those working on the case, but secure. For example, if security agents raid an office and take files on a human rights case, they may have access to information about the victim or confidential informants that could put these individuals at risk. You should consider how you can protect your data from these risks.

## Step 3: Analysing Data

After collecting and organizing data, but before cases are reported, the next step in the documenting process is the analysis. When looking at an individual incident, we return to one of the first questions we asked when fact-finding: Is the case at hand a human rights violation?

This question requires us to examine all of the data collected and compare it with international human rights instruments, humanitarian conventions, and the Kenyan constitution and laws to determine if a clearly defined right was infringed upon. Do all the facts support that a violation has taken place? Are you certain that all of the information is valid?

*Once we determine that a human rights violation has indeed occurred, it is then important to consider if the violation is part of a trend:*

- i) Is this case one of several cases of this type of violation?
- ii) Are the violations occurring in a particular area or location?
- iii) Is there a pattern in the identity of the victim (religion, ethnicity, political affiliation)?
- iv) Is there a pattern in the identity of the perpetrator (from a particular security force, another armed group, or an individual)?
- v) Is there a pattern in how authorities respond (are victims detained, are the cases ignored, have perpetrators been questioned or arrested)?

After identifying these patterns or trends, it is important to draw upon your knowledge of the context to perhaps point to why this trend is occurring? These questions may require reaching out to other human rights actors to determine if they have collected similar information in the same area or perhaps in other areas.

## Human Rights Reporting

#### **(Step 4: Compile Data and send to relevant authorities)**

The purpose of reporting information gathered above is to share and provoke affirmative actions whether as a preventive measure or as a response measure. Reports on human rights violation can take many forms or follow many different patterns but there are critical questions that you need to consider before you commence the writing of the intended report. They are:

- a) *What must be proven and highlighted?* Every report must show evidence that the violation alleged truly happened. The message that you are trying to convey must be clearly presented. It could be to emphasize a pattern of impunity, violence, indifference, or lack of progress.
- b) *What is the main objective of the report?* A human rights report could have one or more clearly defined objectives. Objectives could include redress for victims; policy changes; drafting and implementing of new laws to address subsequent violations; eliciting public opinion; or putting pressure on the government or perpetrators of violations.
- c) *Who is the target audience?* Is the report targeting the government; the media; the public; international community; other NGOs, etc.? Take note that the target audience influences the form the report will take.
- d) *Persuasive and credible presentation of findings:* Your arguments and facts must be presented in a logical, convincing and credible manner. The following gives an example of how to arrange your report:
  - i. The political, historical or economic context and circumstances;
  - ii. Methodology used to gather facts
  - iii. A description of the incident;
  - iv. The nature of the human rights violation,
  - v. The identity of the victims, unless it is confidential.
  - vi. The alleged perpetrators and/or responsibility of the authorities.
  - vii. Recommendation on actions to be taken

#### **It is also important to ask yourself if your report meets the following criteria:**

- *Concise and clear:* Remember the acronym KISS – Keep it Short and Simple
- *Accurate and precise:* This entails that all information provided is verified.
- *Prompt:* It is important to produce the report with a sense of urgency except if the release of such report will provoke violence.
- *Neutral language:* Avoid insulting or loaded words that may demonstrate a lack of impartiality.
- *Action-oriented:* In producing the report, you should remember that the report is not an end in itself, but a means to an end. The report should inspire actions in response to the concerns raised in the report. Therefore, appropriate recommendations, based on the assessed situation, should be to key actors and authorities.

**NOTE.** The 8 Annextures below provide further details on how to deepen human rights monitoring, documentation and response.

## **ANNEXTURES**

### **ANNEXTURE 1: INTERVIEWING GUIDELINES**

*Building on “Steps for Documentation” above*

Interviews are the most common and often the most effective tool in the monitor’s tool box for collecting information on human rights violations. However, a good interviewer does more than just ask questions. A monitor must go into an interview aware of what information they hope to gain, what questions they should ask, how to ask good follow-up and clarifying questions, and how to treat the interviewee who may have experienced or witnessed a traumatizing incident.

## **Step 1: Preparing for the Interview**

Half the work of conducting a good interview takes place before the interview even starts. If a monitor goes into an interview unprepared, s/he is likely to miss asking key questions and collecting important information about an incident. Therefore, it is important that a monitor prepare for an interview in advance.

The first step is to identify what kind of information you hope to learn from the interview. What do you not know about the incident that the interviewee might be able to tell you?

After identifying the type of information you hope to gain, it is important to write out the questions you must ask to illicit that information. Writing out the questions in a checklist will help you stay on track during an interview and ensure no important questions are missed.

## **Step 2: Arranging the Interview**

When making arrangements for an interview, there are a few key points to keep in mind:

- i. *Timing* – The interview should be conducted immediately after the incident occurred if possible. If too much time elapses, the victim or eyewitnesses may forget key information.
- ii. *Introduce yourself and share purpose* – Ensure that the interviewee is aware of the purpose of the interview and what the information will be used for.
- iii. *Voluntary participation* – Never force a person to give a statement or interview. Providing information is voluntary and the interviewee should be made aware of this.
- iv. *Security* – When choosing a location, ensure that it will be safe for both you and the interviewee. You should choose a location that is comfortable for the interviewee, but will also not attract too much attention to what you are doing.
- v. *Confidentiality* – Unless the interviewee explicitly grants you permission to use information that could identify them, do not use it.

## **Step 3: Conducting the Interview**

When conducting the interview it is important to keep these points in mind:

- i. *Ask clarifying or follow-up questions* – While it is important to follow your interview checklist, it is equally important to follow up with clarifying questions.
- ii. *Record the answers accurately* – Record as much of the interviewee’s responses as possible. Using a voice recorder can further ensure accuracy. However, the interviewee should be made aware that s/he is being recorded and understand the risks of their voice being recognized.
- iii. *Capture direct quotes* – Direct quotes are seen to be more reliable than a summary of what someone says. They also paint a more personal picture of what happened.

- iv. *Ensure the interviewee is comfortable* – While it is important to draw out as much information as possible, their participation is voluntary and they can refuse to answer any questions and should know that they can end the interview at any time.
- v. *Check your checklist* – Before completing the interview, refer back to your checklist to ensure that you did not miss any questions.

#### **Step 4: Evaluating the Interview**

After completing the interview, it is important to evaluate how the interview went, both to improve your interviewing techniques and to determine your next steps.

##### **Ask yourself:**

- i. Did I get all of the information that I need?
- ii. Did I miss any questions?
- iii. Did new information emerge that I need to find out more about?
- iv. Did the information I received verify what I already know?
- v. Is there information that I need to verify?

*Based on these questions, you may need to re-interview the person or identify new contacts to interview to find out more information.*

## **ANNEXTURE 2:   INTERVIEW CHECKLIST**

*Building on “Steps for Documentation” above*

<b>Interview Details</b>	Name of Interviewer(s)
Location of Interview	
Date and Time of Interview	
<b>Personal Details</b>	-Full Names
-Age/Date of Birth	
-Sex	
-Address, Telephone Number	
-Occupation/Employment/Name of Employer	
-Family Status	
-Nationality	
-Religion	
-Ethnic Group	
<b>Date and Time of the Violation</b>	<ul style="list-style-type: none"> <li>Day, Month, Year, Hour?</li> </ul>
<b>Location of Violation</b>	<ul style="list-style-type: none"> <li>Where exactly did the violation take place? County, location, village etc</li> </ul>
<b>What violations occurred</b>	<ul style="list-style-type: none"> <li>What did you witness?</li> <li>Describe the incident (or incidents) in detail?</li> <li>What happened leading up to the violations?</li> </ul>
<b>Persons/Institution involved in the violation</b>	<ul style="list-style-type: none"> <li>Do you know the violators? Did you see them, would you recognize them if you saw them again?</li> <li>If they are security actors, which forces did they belong to? How do you know?</li> <li>What type of vehicle (brand, colour, number plate) were they using?</li> </ul>
<b>Witnesses</b>	<ul style="list-style-type: none"> <li>Did other members of the community or outsiders see the violation(s)? Who were they? (Collect full details, names and addresses if possible)</li> </ul>

<b>Injuries and Damage</b>	<ul style="list-style-type: none"> <li>▪ Any physical injury? If yes what part of the body.</li> <li>▪ Any property damage? (Take pictures if possible).</li> <li>▪ Did the victim(s) go to a doctor, medical clinic or hospital? Request for the medical report if available? If not available ask why?</li> </ul>
<b>Response by Authorities</b>	<ul style="list-style-type: none"> <li>▪ Was the matter reported to the police or other authority?</li> <li>▪ Was anyone arrested or detained? Did they give a reason for the arrest? Did they show any warrant?</li> <li>▪ Was the victim taken away? How? Can you identify the type and number of vehicle? How many people were involved in the operation?</li> <li>▪ Are you aware of any investigation by the authorities? If yes, who have they interviewed? Has any action been taken?</li> <li>▪ Any action undertaken by a non state actor on the matter e.g. NGO etc</li> </ul>
<b>Early Warning Signs</b>	<ul style="list-style-type: none"> <li>▪ Were there any incidences that happened soon before the violation that were a sign that the violation was to follow?</li> </ul>
<b>Contextual Information</b>	<p>Depending on the circumstances in question, ask questions to establish context and systems within which the violations occurred e.g. on;</p> <ul style="list-style-type: none"> <li>▪ Historical context</li> <li>▪ Economic indicators (unemployment rate, growth rate, economic policies)</li> <li>▪ Social indicators (access to health care and education, quality of life )</li> <li>▪ Demographic Data (size and age of population, presence of refugees or internally displaced persons).</li> <li>▪ Establish whether this or similar kind of violation has happened before in the same area or involving the same authorities/group of persons.</li> </ul> <p>Or</p> <p><b>Political information such as;</b></p> <ul style="list-style-type: none"> <li>▪ Nature of the political system</li> <li>▪ Role of security forces</li> <li>▪ Political or ethnic tensions and conflicts</li> <li>▪ Electoral patterns</li> <li>▪ History of human rights violations</li> </ul>

<b>Additional Questions</b>	<ul style="list-style-type: none"> <li>▪ Is there anything that I may have left out that you want to share with me?</li> </ul>
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## ANNEXTURE 3: SIMPLIFIED MONITORING AND REPORTING TOOL

*Building on Annexure 2*

Type of Human Rights Issue	Summary of the issue /case (Full details in the original sources)	Location (Where the incidence happened)		Date (where applicable)	Number of people affected (Gender disaggregated) & age			Institution / persons responsible	Responses (include date of the response)		Source of information showing date reported	Tonality (if media source)	Prominence and outreach – AVE (if media sourced)	Early Warning signs or Contextual/political/legal background (where applicable)
		C o u n t y	A c t u a l l o c a t i o n		M	F	A g e		b y S t a t e A c t o r s	b y n o n - s t a t e a c t o r s				

**NOTE.** Other tools are available to guide the documentation other governance critical to KHRC on needs basis. For instance human rights elections monitoring and observation to cover both the campaigns and voting periods.

## ANNEXTURE 4: FACT FINDING MISSION GUIDELINES

*Building on “Steps for Documentation” above*

### **a) 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.”<sup>3</sup>

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 the organisation’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.

### **b) Definition of Fact-Finding**

For the purposes of this guide, fact-finding means information-gathering mandated by the organisation 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 FFMs have a narrow scope and focus on a specific case or a specific form of maltreatment. All FFM should conclude with a report.

### **c) Instigation of a Fact-Finding Mission**

A proposal to undertake a fact finding mission over concerns of a Human Rights violation in a particular geographical area may be communicated by any team leader of a programmatic/thematic area to the Program Advisor in charge of Human Rights Monitoring & Response.

The Program Advisor shall thereafter convene an urgent action team meeting to have the possibility of conducting a fact finding mission considered, and to select the delegation where a decision to undertake FFM is reached.

The urgent action team shall comprise of the Executive Director, Deputy Executive Director, Program Advisor- Human Rights Monitoring, Communications Officer, Program Advisor- Legal Affairs and the team leader of the program under which the issue/thematic area in question falls under.

The FFM shall be considered in the light of the mandate, priorities, resources and procedures of the organisation.

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<sup>3</sup> Raoul Wallenberg Institute and International Bar Association

For purposes of undertaking fact finding missions, a decision on whether to undertake a fact finding mission shall be guided by an analysis of whether an issue constitutes a systemic and gross violation.

*In establishing the veracity of systemic and gross violations the criteria used is one that shows evidence pointing towards similarities in the following:*

- i. Identity of the victims in terms of: religion, ethnic group, social or political group, gender, profession, age-group, etc.
- ii. Location of the violation: a specific village or neighbourhood, prison, police station, military bases, secret detention centre, checkpoint, etc.
- iii. Methods: perpetrators often use similar methods or forms to commit killings, torture, arrests, etc.
- iv. Circumstances surrounding the violations may be quite similar: before, during or after the violations.
- v. Identity of the alleged perpetrators: do they belong to a specific and consistent identity/ appearance e.g. unit of the security forces, assigned to a specific checkpoint etc.?
- vi. Responses or non-responses by the relevant authorities: What actions or non-actions have been taken by the key state and non-state institutions to address the issues?

Before embarking on a FFM, the urgent action team shall 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. Joint FFM's with those other organisations shall be considered where appropriate to maximise on resources.

#### **d) Terms of Reference for Fact-Finding Mission**

Each mission will have its specific terms of reference (TORs). These TORs must be determined prior to the mission.

The TORs shall relate to the specific situations under investigation bearing in mind the 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; including roles as to generation of the report and the dissemination of the same.

#### **e) Composition of the Fact-Finding Delegation**

The missions' delegations must comprise of individuals who are and are seen to be unbiased. The 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.

The 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. The team leader of each FFM 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 the organisation 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.

**For details on the composition and funding of the fact finding and urgent action work, see Annexure 5 on *Resourcing Responses to Emerging Human Rights Issues*.** A diverse team is created together with Urgent Action Fund which is supported from both our core and project grants.

#### **f) 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. The team 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.

### **g) Pre-Mission Briefing**

The head of delegation 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.

The FFM team leader 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 the organisation 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 the head of delegation 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.

The head of delegation 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, the head of delegation 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.

### **h) Standard Operating Procedures during Fact-Finding Missions**

#### *General Observations:*

The overall responsibility for all missions and members of their delegation should rest with the organisation

The members of the deployed FFM delegation shall 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 the organisation 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 the organisation for further action.

Any threats to, or intimidation of, the delegation or any member of the delegation must be reported immediately to the 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.

If a delegation member is detained for any reason, the delegation should immediately inform the organisation and seek assistance.

At all times however, all delegation members, and particularly the head of delegation should be ready to initiate emergency procedures for the FFM delegation should the same be required.

### **i) Agenda for the Fact-Finding Mission**

The urgent action team shall determine the criteria for selecting the people and locations to visit. Thereafter, the team leader shall make the necessary arrangements and draw up a schedule for the visit, as far as possible<sup>1</sup>.

In so doing, the team leader shall 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 the delegation shall 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.

The delegation may wish to operate as unit i.e. with all members, or may wish to separate into smaller groups for specific assignments.

### **j) Information Gathering**

Fact finding basically involves investigating specific incidents/allegations of human rights violations. The focus is to gather hard facts in order to ascertain whether or not the wrongs or violations in question actually took place, and how they occurred. The process usually requires one to obtain information from a cross-section of people and sources.

*When you are investigating human rights violations, you want to find out:*

- i. What kind of violation took place?
- ii. What were the circumstances surrounding the violation?
- iii. Information about the victim(s)
- iv. Information about the alleged perpetrator(s), or doer(s) of the act
- v. Possible causes of violation
- vi. Possible consequences of the violation(s) (legal, political, economic and social).

It is essential that the FFM delegation 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, where necessary, 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.

#### **k) Compiling Fact-Finding Mission Reports**

If not already decided, the FFM delegation 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 the organisation;
- 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 should have;*

- An acknowledgment of any contributions by people or organisations that rendered assistance to the delegation or organisation, 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, the organisation should submit the reports of its FFM 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.

## **1) Follow-up Visits**

The safety of those interviewed or engaged by the FFM delegations should continue to be monitored by the delegation, particularly where safety concerns were already present. Any post-mission threats or hostility should be acted upon immediately by the organisation and measures taken should include where necessary, notifying the government, assisting with protective measures and alerting the wider international community.

The organisation 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, the organisation should review all aspects of the mission, including the delegation's performance and the adequacy of its fact-finding procedures.

The delegation 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.

## ANNEXTURE 5: RESOURCING RAPID RESPONSES TO EMERGING HUMAN RIGHTS ISSUES

There shall be a rapid response committee comprising of the Executive Management<sup>4</sup>, the Human Rights Monitoring Advisor<sup>5</sup>, the Legal Advisor, the Communications Advisor, Finance Manager and the Program Manager and Officer responsible for the thematic area under which the human rights issue in question falls.

Where after the undertaking of an urgent action intervention, long term advocacy is required on a human rights issue; this shall be taken up by the officer in charge of the thematic area concerned. KHRC shall with the support of and negotiations with its development partners establish a kitty to fund rapid response.

The kitty shall be dynamic and flexible enough to adequately address the needs and issues at hand, while ensuring effective accountability to the organization and partners involved. Expenditure of the fund shall be authorised by either the Deputy Executive Director or the Executive Director.

## ANNEXTURE 6: KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The numerous instruments on human rights can be categorised as follows: □ general and special instruments global and regional instruments binding and non-binding instruments. A general instrument, such as the Universal Declaration of Human Rights, comprises a wide range of human

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<sup>4</sup> Executive director , Deputy executive Director and the Director of Finance and Administration

<sup>5</sup> To be Co-Convener of the Urgent Action Committee.

rights. A special instrument on the other hand deals with specific subjects such as rights of women, rights of the child, employment, freedom of information, etc.

Global instruments are those produced by global organisations like the United Nations and the International Labour Organisation. Regional instruments are those produced by regional mechanisms like the African Union, Organisation of American States and the Council of Europe. Instruments could be binding or non-binding on States. Declarations such as the Universal Declaration of Human Rights or the American Declaration on the Rights and Duties of Man are not legally binding, but just the same form part of international law and are often quoted in national law and jurisprudence. They are expressions of good intentions and as such carry great moral force.

A non-binding instrument also has an impact on a bigger number of States because it is adopted by the whole governing body of an IGO (Intergovernmental Organizations), such as the United Nations General Assembly. Instruments that are legally binding are covenants, conventions and other agreements such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

A certain process is followed before an instrument becomes legally binding on a state. The usual process is through signature and ratification. Signature refers to the signing of the instrument by a government, which thereby declares its intention not to do anything contrary to the provisions of the instrument.

Ratification refers to the confirmation of the signature, as effected through an official vote by the country's legislature, and in so doing agreeing to be legally bound to the instrument. For some states, specifically those where the executives also wield lawmaking functions, a single act of accession takes the place of the two-act process of signature and ratification. Accession achieves the same purpose as signature and ratification, that of making the instrument legally binding. States that ratified or acceded to binding instruments are referred to as State Parties or Contracting Parties.

Some instruments have protocols. A protocol is an agreement that is a supplement to a main instrument. An example is the Optional Protocol to the International Covenant on Civil and Political Rights which allows the U.N. Human Rights Committee to receive complaints from individual victims. As the title implies, it is optional for a State Party to ratify or accede to it.

The individual complaint procedure therefore is not binding to all State Parties that ratified or acceded to the International Covenant on Civil and Political Rights, but only to those who ratified or acceded to its protocol. States have two kinds of obligations: moral obligations with respect to non-binding instruments and legal obligations with respect to instruments which they signed and ratified or acceded to. States are expected to meet their obligations by passing domestic laws and by ensuring that these laws are implemented.

## **ANNEXTURE 7:**

# **KHRC ENGAGEMENT IN SOLAI DAM TRAGEDY-MAY 2018 TODATE**

*A Case Study documented by Robert Njenga, Coordinator of the Freedom of Information Network (Nakuru) and KHRC Monitor and Partner in managing actions around the Solai Dam Tragedy*

## **a) Introduction**

The Milmet dam was one of five earthen embankment dams belonging to Mansukul Patel on the private property of his 1,400-hectare (3,500-acre) commercial rose farm and business, Solai Roses. The dam burst in the evening of 9 May 2018, just as many area families were beginning their evening meals.

Residents reported hearing a loud bang immediately followed by the rushing of "a sea of water" 70 million litres (18 million US gallons) of water were unleashed, creating a wall of water about 1.5 metres (4 ft 11 in) high and 500 metres (1,600 ft) wide.

The resulting flood carved a chasm through a hill, washed away power poles, destroyed buildings (including a school), and submerged the villages of Nyakinyua and Energy. Homes over a radius of nearly 2 kilometres (1.2 mi) were submerged. Further, caused enormous damages in the farms in Endao and Nyandarua villages approximately 25Km downstream.

Since The Solai dam tragedy that happened on 9<sup>th</sup> May 2018, the Kenya Human Rights Commission has been having activities with Victims of Solai dam tragedy in the process of seeking remedy. Upon learning of the tragedy, KHRC in partnership with the Mid Rift Human Rights Network(Mid Rift) and Freedom of Information Network(FoI Network) visited the victims to assess any human rights and humanitarian violations which culminated to a fact finding mission to establish the cause and extent of damage as a result of the tragedy.

### **b) The Fact Finding Mission, its Findings and Recommendations**

As a result of the fact finding mission, KHRC and its 2 partners published a report titled *Damned Dam: Exposing Corporate and State Impunity in the Solai Tragedy*<sup>6</sup> that established the following:

*On the causes;*

- Non compliance with the existing laws and regulations and impunity on part of the dam owners
- Negligence on the part of government authorities more particularly National Environment Management Authority(NEMA) and Water Resources Authority(WRA).

Further, we noted gross misappropriation of humanitarian support and consequently, on 28<sup>th</sup> May 2018 we wrote to the agencies seeking information.

*On the part of NEMA and WRA, we sought the following:*

- Annual Audit reports of the 8 dams with Solai Coffee Estate for a period starting 2015 to 2018 both years inclusive.
- Environment Impact Assessment of the 8 dams
- Copies of receipts as evidence that requisite fees have been paid for the period starting 2015 to 2018 both years inclusive.
- Copies of the returns and internal assessment reports for the 8 dams filed by Solai Coffee estate with your office for the period between 2015 to 2018 both years inclusive.

*To dam Owners we sought*

- Annual Audit reports of the 8 dams for a period starting 2015 to 2018 both years inclusive.
- Copies of licences issued by NEMA and WRA or any other government agency.
- Environment Impact Assessment reports of the 8 dams
- Copies of receipts issued by NEMA and WRA or any other government agency as evidence that requisite fees have been paid for the period starting 2015 to 2018 both years inclusive.
- Copies of the returns and internal assessment reports for the 8 dams filed by Solai Coffee estate with various authorities or government offices notably; NEMA and WRA for the period between 2015 to 2018 both years inclusive.

*On humanitarian support and documentation, we sought to know*

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<sup>6</sup> <https://khrc.or.ke/publication/damned-dam-exposing-corporate-and-state-impunity-in-the-solai-tragedy/>;

- List of all victims listed in their respective categorization for humanitarian assistance and compensation purposes.
- List of all farms that were damaged by the dam listed together with land registration numbers and names of owners.
- List of victims given different types of support and assistance
- List of victims who lost key documents (professional and academic certificates, land documents) and progress of replacement.
- List of business and residential plots/premises within Solai trading centre together with the list of owners that were damaged.
- List of businesses that and the names of business owner.
- List of victims that were hosted at Solai boys' secondary school.
- List of victims that were integrated within the community.
- A statement of funds raised through paybill number 10000.
- Policy and criteria adopted and used in the distribution of food and material support.
- List of victims together with various categories of injuries.

*On the part of National government role in accountability and responsiveness, we sought the following information from the Deputy County Commissioner – Rongai;*

- List of all victims listed in their respective categorization for humanitarian assistance and compensation purposes.
- List of all farms that were damaged by the dam listed together with land registration numbers and names of owners.
- List of victims given different types of support and assistance
- List of victims who lost key documents (professional and academic certificates, land documents) and progress of replacement.
- List of business and residential plots/premises within Solai trading centre together with the list of owners that were damaged.
- List of businesses that and the names of business owner.
- List of victims that were hosted at Solai boys' secondary school.
- List of victims that were integrated within the community.
- A statement of funds raised through paybill number 10000.

### **c) Legal, Policy, Media and Pscho-Social Actions and Impacts**

All the above requests were ignored and or disregarded as there were no responses. We did a physical visit to the government agencies where were received by hostile and uncooperative public officers. We also visited the Nakuru County Commissioner Mr. Joshua Nkanatha who was even more hostile.

As events were unfolding, a conspiracy between Solai dam owners, National Government Administration and security agencies was hatched to obstruct victims not to seek justice where victims were deceived of a meeting by local administration. While in the meeting, the dam owners came some cheques purporting to "compensate victims" and while at it, they sneaked in an indemnity deed that victims will never claim or blame the Solai dam owners.

This prompted a request to the Director of Public Prosecution to investigate the convenors with a view of establishing possible individual criminal culpability for the offences of;

- abuse of office
- conspiracy to defeat justice and other conspiracies
- procuring execution of deeds
- Contravention of conduct for public officers

- Misleading the public under Section 19 of the Public Officer Ethics Act read together with Section 32
- Breach of Public trust within the meaning provided for under Section 8 of Leadership and Integrity Act read together with Section 43(1) and 47 of the same Act.

*The Public officers to be investigated are:*

- Joshua Nkanatha – Nakuru County Commissioner
- Julius Kavita – Rongai Deputy County Commissioner
- Vicky Munyasia – Solai Assistant Deputy County Commissioner
- Charles Kiragu – chief Solai
- Simon Murage – Assistant Chief Solai
- Hon. Onesmus Kimani Ngunjiri – MP Bahati Constituency

The requests were not responded to but on 5th July 2018 vide Police Case No 760/384/2018 and Court file CR. No 977 of 2018 Solai dam owners and 7 public officers were charged with 48 charges of manslaughter contrary to Section 202 as read together with Section 205 before a Naivasha Court. In the case, KHRC sought to watch brief for the victims. At some point, KHRC assisted Office of Director of Public Prosecution in mobilizing witnesses who due the frustrations by government agencies the only body they could trust was KHRC.

The case dragged in court back and forth where at one point the case was terminated only for KHRC to approach the High Court and the case was reinstated and after the court delivered a case to answer verdict, at the request of the victims an out of court was allowed and through the intervention of KHRC, a compensation was executed where minors were awarded Kshs 800, 000 and adults Kshs. 1,200, 000. While the case was ongoing, KHRC supported victims to attend court proceedings.

While all this was going on, other activities were ongoing simultaneously. One of the activities was psycho-social support where KHRC organized several counselling Sessions. This started with an assessment and victims were categorised based on their psychological and emotional impact. The psycho-social report was produced and was later filed in civil case that we will refer to later in this report.

The second activity was victims mapping. This involved categorizing victims in the following categories;

- Those who lost lives
- Those who suffered bodily injuries
- Those who lost property

The property category had the following sub categories

- Those who lost building & business
- Those who were tenants in the building
- Land & land owners
- Tenants in the affected land
- Institutions including churches

The above mapping culminated to a valuation report dated 29<sup>th</sup> August 2019 containing 412 victims that was filed in the civil case that will speak to shortly.

The other activity was to pursue a civil suit that was seeking compensation to the victims. KHRC has support the victims/plaintiffs with legal fees, representation as well as supporting victims to attend court.

Ingredients of the civil case No. 29 of 2020 (Stephen Kuria Kagwi & Others Vs. Perry Mansukhalal Kansagra & Others) were

- The Valuation Report
- Psychosocial support report
- Petitioning for limited letters grant for the deceased victims

Plaintiffs supported by KHRC have only one expert witness (Valuer) remaining to close their case. The case has 249 plaintiffs while efforts are being done to incorporate the remaining 176 victims who have signed consent with KHRC.

The above activities have not gone without challenges and frustrations from the security agencies. At this point it is worth to note that the Solai dam owners are well weaved in the government. One, they fuel all security agencies vehicles, houses local security and government official in his farm and therefore as a result, they came out defending the dam owners and one of the threat they identified was KHRC. As a result, all KHRC meetings with victims were banned.

One of the incidences was a meeting that was scheduled for 30<sup>th</sup> January 2019 where on arrival, we were met by a very hostile and fully armed anti riot police who in the process disrupted the meeting, teargassed the meeting including the neighbouring school. Consequently, the security agents stage managed an arson in the property of the Solai dam owners.

Thereafter, the area Member of County Assembly was arrested together with 8 other victims and charged in court via Misc No 37 of 2019 which latter transited to CR No. 468 of 2019 (Republic Vs. Peter Mbae & 8 others).

In the case, KHRC supported the accused person with legal fees and aid and further supported them with cash bail as the accused persons were released on a cash bail of Kshs. 200, 000 each amounting to Kshs. 1, 800, 000. The case was later terminated by the Director of Public Prosecutions.

The other challenge was interference and intimidation of victims. As KHRC was organizing the victims, some would be intimidated and others were heavily bribed to abandon the course.

*The success in the activities can be attributed to KHRC to bring on board allies and a media strategy as crosscutting.*

One of the allies was the senate. KHRC support victims to visit the senate and also convinced the senate to visit the victims.

*KHRC further filed submissions before the senate with the following recommendations;*

- Legal action based on the doctrine of strict liability espoused in the ***Rylands v Fletcher*** case.
- Administrative Actions by authorities on the urgent/ pertinent issues to the victims among them a crucial review of the list of victims in order to identify and support those who were omitted from the initial list, prosecution of those threatening representatives of victims demanding accountability in the support process and Kenya Red Cross to undertake conclusive and transparent disbursements of the all financial assistance earmarked for the victims.
- Investigative actions and reports by the state institutions
- Policy and legislative actions

*Other recommendations demanded:*

- Further investigations and prosecution of the officers of the National government including Mr. Joshua Nkanatha, Mr. Julius Kavita, Charles Kiragu be conducted for abuse of office and obstruction of justice
- Investigation of the public officers cited in this report for contravening Article 232 of the Constitution, The Public Officers Ethics Act and The Public Service (Values & Principles) Act for conspiracy to mislead the public, their respective authorities and the committee

- Investigations of National Government officers who were involved in the attempted payoff of victims by causing them to sign indemnity forms in the pretext that it was consolation money. These were Mr. Joshua Nkanatha, Mr. Julius Kavita, Charles Kiragu.
- That for the enforcement of the restoration order of Solai to succeed, all national government administration officials stationed at Solai be suspended. These were Mr. Joshua Nkanatha, Mr. Julius Kavita, Charles Kiragu.
- That the DPP conducts further investigations into the interference of the tragedy site against his orders and that any further action related to the site of the tragedy.
- Investigations of assistant County Commissioner (ACC) M/s Victoria Munyasia and Officer Commanding Police Station (OCS) Solai Police Station a Mr. Hussein

The other ally was United Nation (UN) Business and Human Rights Working Group who on invitation of KHRC visited the victims and shared their findings with the government.

Media (print, social media and audio-visual) has been an instrumental in the activities. Each and every activity was properly covered and publicized. This included securing and facilitating talk shows for the victims and newspaper articles.

## ANNEXTURE 8:

## KEY REFERENCES/ BIBLIOGRAPHIES AND RESOURCE MATERIALS

- 1) **The monitoring and research reports and tools by KHRC and the human rights movement in Kenya and beyond from 1992 to date.** KHRC's topical and state of human rights reports and press statements capture the key patterns and trends monitored and considered, with critical policy actions and recommendations Referenced see the latest<sup>7</sup>.
- 2) <https://www.ohchr.org/sites/default/files/Documents/Publications/Chapter02-MHRM.pdf>;
- 3) <https://www.ohchr.org/en/instruments-and-mechanisms>;
- 4) <https://www.unfpa.org/resources/human-rights-principles>;
- 5) <https://huridocs.org/wp-content/uploads/2020/12/whatismonitoring-eng.pdf>;
- 6) <https://emm.iom.int/handbooks/international-migration-law/united-nations-monitoring-mechanisms>;
- 7) <https://www.ohchr.org/sites/default/files/Documents/Publications/training7Introen.pdf>;

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<sup>7</sup> <https://khrc.or.ke/press-release/2023-a-year-of-deepening-regression-in-governance-and-human-rights/>;  
<https://khrc.or.ke/storage/2024/10/LETTER-OPPOSING-THE-APPLICATION-OF-KENYA-TO-THE-UN-HUMAN-RIGHTS-COUNCIL.-MM-edits-to-Final-copy-3.pdf>;

- 8) [https://ennhri.org/wp-content/uploads/2020/05/undp\\_trainers\\_guide\\_on\\_fact\\_finding\\_and\\_monitoring.pdf](https://ennhri.org/wp-content/uploads/2020/05/undp_trainers_guide_on_fact_finding_and_monitoring.pdf);
- 9) [https://pdf.usaid.gov/pdf\\_docs/PBAAE633.pdf](https://pdf.usaid.gov/pdf_docs/PBAAE633.pdf);
- 10) [https://www.ohchr.org/sites/default/files/documents/issues/HRIIndicators/AGuideMeasurementImplementationChapterIII\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/issues/HRIIndicators/AGuideMeasurementImplementationChapterIII_en.pdf);
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- 13) <https://sudan-justice-hub.wayamo.com/information-sheet/monitoring-documenting-and-reporting-on-human-rights/>;
- 14) <https://huridocs.org/wp-content/uploads/2020/12/whatismonitoring-eng.pdf>;