

## Chapter 7

# Monitoring the Administration of Justice

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# 1. Introduction and background

Human rights abuses often flow from the failure of a legal system to protect rights and punish perpetrators of human rights violations. Understanding how the justice system works, its flaws, the roles of the various actors – judges, lawyers, police, prison officials – is essential both to monitor human rights conditions and to promote efforts to strengthen local institutions' capacity to protect rights. The mandate of most human rights field operations (HROs) have these twin purposes of monitoring and institution building, so observing and evaluating the administration of justice is crucial to the success of a human rights mission.

Law is at the core of a HRO's mandate and work. International human rights law sets requirements for how a state must treat people within its boundaries. Local law and the national legal systems must also establish and protect international human rights. Most HROs to date have made monitoring the administration of justice a priority task as set out in the HRO's mandate or terms of reference. For example, the terms of reference for the UN Human Rights Field Operation in Rwanda stated that "The Mission shall carry out activities related to the promotion and protection of human rights and the investigation of the human rights situation in Rwanda. These activities shall include ... [t]o implement programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice."

There is an intimate connection between monitoring and institution building. While human rights field officers must monitor human rights conditions, this monitoring is not only to amass evidence for reports to denounce those responsible. Sound monitoring is necessary to understand the strengths and weaknesses of the justice system so that projects aiming at reform are based on a thorough understanding of actual practice. Efforts to reform the judiciary are doomed to failure unless the HRO knows the strengths and weaknesses of the legal system; this knowledge results from intense, ongoing observation and interaction by the field officers with all those working in the judiciary.

Monitoring the administration of justice is also important as a way to test a government's good faith and intentions. If a human rights mission presents the authorities with an analysis of the justice system and the response is either denial, obfuscation or inaction, then it is safe to presume that any government statements extolling a free and fair legal system are empty rhetoric. A government's true commitment to upholding human rights guarantees can be determined by its willingness or refusal to implement legal reforms when presented with solid, substantiated information and recommendations by a human rights field operation.

Efforts by the Organisation of American States/United Nations (OAS/UN) International Civilian Mission to Haiti (MICIVIH) to assess the administration of justice provide an illustrative example. In 1993, MICIVIH's legal department conducted a national survey of the justice system at the request of then Justice Minister Guy Malary. Tragically, Minister Malary was assassinated soon after and MICIVIH was evacuated from Haiti. While in exile, the legal department completed its study, a 100-page report with some 50 recommendations for reform. For eight months observers from the MICIVIH were eyewitnesses to the Haitian legal system in action. From MICIVIH offices in every departmental capi-

tal and several key provincial towns, mission observers attended pre-trial hearings, trials, informal conferences between judges and litigants, and prosecutors and defendants; observers visited prisons and detention centres. MICIVIH observers, some of whom were trained lawyers, many with substantial experience, had extensive meetings with lawyers, judges, prosecutors (*commissaires du gouvernement*), notaries, *greffiers* (court clerks), government officials, military officers and human rights workers to discuss the problems plaguing the Haitian justice system.

Following the evacuation of MICIVIH from Haiti to the Dominican Republic on 15-16 October 1993, a working group of mission observers who had the most experience monitoring the Haitian justice system was formed. This Working Group on the Haitian Justice System included lawyers from each of the mission's 13 base offices and from the mission's headquarters in Port-au-Prince. A series of meetings was held and it was decided that each base office would produce a written evaluation and analysis of the justice system's operations in the area covered by their respective offices. This summary would include an evaluation of the judicial personnel based on the observers' first-hand observations and experience. The observers would then identify the principal problems facing the administration of justice in their area. Concrete examples of the variety of problems facing the Haitian justice system drawn from the experience of each base office appear in this report.

Once the summaries for each regional office were produced, a smaller working group drafted a set of recommendations based on the mission's experience as reflected in the summaries to improve the legal system, with particular emphasis on protecting basic fundamental rights and prosecuting those responsible for rights violations.

In formulating these proposed reforms, the working group also identified numerous areas of the law that require further study, preferably by a body of legal experts, including Haitian practitioners, such as fundamental reform or modernisation of the Haitian penal code and code of criminal procedure and the implementation of alternative dispute resolution mechanisms. MICIVIH presented this report to the Minister of Justice after the restoration of constitutional government in Haiti in 1994. MICIVIH and its successor UN mission, MICAH, continued working with the Haitian authorities and major international donors who have funded legal reform projects until MICAH was terminated in February 2001. Thus the Mission's analysis of the Haitian justice system has guided both the government and the international community's efforts to improve the administration of justice. Mission field officers with legal training monitored court proceedings, visited prisons, and assessed the performance of the judiciary, prison officials and the police. Extensive reports on the justice system and the police have been submitted. Members of the Mission's legal department met frequently with the Minister of Justice and have helped the Ministry draft guidelines for prosecutors and judges that explain Haitian and international law governing arrest procedures, search warrants, pre-trial detention and access to lawyers for defendants. MICIVIH and MICAH jurists also taught courses on international human rights law to judges and prosecutors at the National Judges' School and to police officers and prison officials at the National Police Academy. The current UN peace operation in Haiti which began in 2004, known as MINUSTAH, has built on the work of its predecessors in Haiti, training judges and prosecutors, assessing the legal status of detainees and helping the Minister of Justice formulate strategic plans for judicial reform.

The UN Human Rights Field Operation in Rwanda (HRFOR) undertook a similar study of the Rwandese justice system and monitored reform efforts. HRFOR produced a detailed analysis of the justice system called “The Administration of Justice in Post-Genocide Rwanda” for the Geneva round-table meeting of donors, UN agencies and Rwandese government officials on 20-21 June 1996. This report was based on HRFOR’s 18 months of work in the field, observing and participating in legal and police training, efforts to equip the legal system with material and means necessary to function, and regular prison visits. This report played a key role in the donors’ deliberations and in the government’s planning for future legal reform projects.

HRFOR lawyers met frequently with Justice Ministry officials to discuss problems like prison overcrowding, illegal arrests and the failure to investigate crimes quickly and thoroughly. HRFOR also taught human rights courses at the National Gendarmes School and participated in workshops for judges, prosecutors and police inspectors on arrest and detention procedures and the treatment of detainees. HRFOR had to end its judicial monitoring programme when the mission itself left Rwanda in July 1998. The Rwandese authorities wanted only technical assistance from HRFOR and objected to further monitoring; the High Commissioner for Human Rights correctly refused to accede to the government’s demand. Technical assistance that is not based on sound, accurate and impartial monitoring is useless, so the mission was terminated.

UN human rights missions in Guatemala (1994-2004) and Cambodia in the early 1990s also established units specifically to work with the local judiciary. In Cambodia, UNTAC (the UN Transition Authority in Cambodia) set up training programmes for public defenders, prosecutors and judges. This programme continued under the direction of an international NGO with assistance from the UN’s Office of the High Commissioner for Human Rights (OHCHR), several years after UNTAC ended. However, the international community failed to provide the necessary funds to conduct a broad effort to help rebuild the Cambodian judiciary.

Adequate funds have been available in Guatemala, where human rights observers have provided detailed critiques of the justice system. With funding from the UNDP, the HRO has established courses and ongoing training for Guatemalan jurists and human rights monitors on legal issues. Early on, MINUGUA (United Nations Mission in Guatemala) assigned staff to work in the Attorney-General’s office and help plan investigations and prosecutions. Regular meetings are held with UNDP and bilateral donors to avoid waste and duplication of efforts.

The United Nations Observer Mission in El Salvador, ONUSAL (1991-1996), had a more mixed record on monitoring the Salvadorean legal system and promoting judicial reform. The San José Accord gave ONUSAL a broad mandate to monitor due process violations and work to reinforce Salvadorean institutions charged with protecting human rights. The European Union provided a US\$500.000 grant to ONUSAL for its work with the Salvadorean legal system. The funds were used for training judges and police and for preparing two practical manuals for use by judges, lawyers and the police. ONUSAL also worked to strengthen the new Human Rights Ombudsman’s Office. Yet many ONUSAL staff believe that promoting institutional reform began too late and only became a priority as ONUSAL neared its end.

Ideally, the lessons learned from human rights missions in El Salvador, Cambodia, Haiti, Guatemala and Rwanda would have been assimilated and applied in the former Yugoslavia. Unfortunately, that was not the case at the outset. With so many actors on the ground (OSCE, UN, EU, election observers, and a host of others like the American Bar Association), coordination was ineffective, mandates overlapped causing confusion, and the emphasis at the outset was on monitoring abuses, past and present, and preparing for elections. Recruiting was very hasty. Training for human rights field officers, especially those who might be charged with monitoring the justice system with the goal of reforming and strengthening the administration of justice, was inadequate. The situation improved gradually and by 1999 the UN Mission in Bosnia and Herzegovina had a judicial system monitoring unit in place. Coordination with OSCE field staff was still spotty, but at least a dedicated unit with a clear reporting line was deployed throughout Bosnia to feed information and analysis back to headquarters so that reform could be targeted and analysed. This unit, along with OSCE human rights field officers, identified a variety of problems which included ethnic bias, lack of material resources, low morale, corruption and in certain sections of Bosnia, police brutality.

The Judicial System Assessment Programme (JSAP) was established by UN Security Council Resolution 1184 of 16 July 1998. JSAP was mandated to monitor and assess the court system in Bosnia and Herzegovina as part of an overall programme of legal reform under the overall coordination of the High Representative. International and national lawyers form part of the teams that have been carrying out assessments of the legal institutions in BiH and making recommendations for action. JSAP has worked in all regions of Bosnia. The unit was disbanded in 2000, however, resulting from some pressure by the USA which resisted the notion of judicial reform as part of peacekeeping.

In Sierra Leone, the small human rights component of the United Nations Mission in Sierra Leone (UNOMSIL which later changed into UNAMSIL) dedicated some of its scarce resources and personnel to assessing and assisting the courts. In 1998 UNOMSIL field officers set up training workshops, which featured international human rights law for lawyers, judges, police and local NGOs. Courts functioned only in some of the major cities during the horrific conflict in Sierra Leone. In Freetown, the observers monitored high-profile trials of rebel leaders and offered the judiciary the latest information on fair trials and the legality of the death penalty under international law. Later, in 1999, UNOMSIL officers provided important information on the legal status of amnesty provisions and encouraged a wide-ranging discussion among jurists, the Bar Association and the general public on accountability for war crimes and crimes against humanity, amnesty and truth commissions.

Kosovo has one of the largest peacekeeping operations in modern times. Arriving in mid-June 1999 following the end of the NATO air campaign, the United Nations Mission in Kosovo (UNMIK) soon deployed throughout the province. The OSCE has responsibility for monitoring the human rights situation and for 'institution building', which includes revitalising the justice system. The OSCE's Rule of Law Division organises training for all members of the judiciary. The Legal System Monitoring Department, which is part of the OSCE's Human Rights Division, has field officers throughout Kosovo who monitor the legal system. Similar to the MICIVIH observers in Haiti, the OSCE's Legal System Monitors gathered information and wrote a 90-page report in November

2000 filled with recommendations for improving the administration of justice in Kosovo. OSCE Legal System Monitors compiled comprehensive statistics on the number of indictments, conviction rates for the various ethnic groups and the length of pre-trial detention. Through their daily interaction with local lawyers and judges, the police and NATO troops, the OSCE Legal System Monitors uncovered a host of problems. These included ethnic bias where Serb suspects were treated more harshly than Albanians, intimidation and threats directed against judges, corruption, prolonged pre-trial detention, lack of access to defence counsel and a near universal ignorance of applicable international human rights laws. OSCE monitors, together with UN officials, have as a result increased oversight over the judiciary and adapted training and recruitment to respond to these systemic problems. On the OSCE's strong recommendation, for example, international judges and prosecutors have been brought to Kosovo to work in ethnically sensitive cases to overcome biased treatment by local jurists.

The UN Transitional Administration in East Timor (UNTAET) had staff dedicated to establishing a free and fair judiciary. The immediate challenge in East Timor was to create a system from the ashes of destruction and violence committed by pro-Indonesian East Timorese militias and the Indonesian army in the wake of the vote for independence in August 1999. Virtually all the judges, prosecutors, lawyers and police left East Timor following the vote. Courts and judicial offices were destroyed while vehicles and basic office equipment was looted. UNTAET officers spent a lot of time training newly recruited East Timorese judges, lawyers and police and in seeking funding from donors to provide the basic equipment essential to a functioning judiciary. UNTAET also created a Special Panel for Serious Crimes. The Special Panel had two international and one East Timorese judge. Cases involving war crimes, crimes against humanity and other grave offences were prosecuted and tried by the Special Panel, within the Dili District Court, to ensure the degree of specialisation and expertise required. The international prosecutor filed the first indictment before the Special Panel in December 2000 charging ten militia members and one Indonesian soldier with various serious offences.

The Special Panel held its first serious crimes case in January 2001 and had concluded 12 cases by the time East Timor gained its independence in May 2002 and became Timor-Leste. The panel convicted 22 individuals, and held numerous preliminary hearings and detention review proceedings. At the completion of its mandate in June 2005, the Special Panel had convicted approximately 80 persons out of about 325 who had been indicted. Many indictees are believed to be in Indonesian West Timor, especially many of the militia leaders responsible for the 1999 violence. The Special Panel was hampered by lack of adequate resources, judges who had no training in international criminal law and severe language challenges. Sometimes six languages were used in a single trial, requiring significant interpretation help from an overworked translation unit.

In Rwanda and Haiti, OHCHR staff worked closely with the HRO in each country in creating a plan for legal reform and human rights education. In Haiti, OHCHR, MICIVIH and the UN Crime Prevention Branch in Vienna devised and implemented a project to register all detainees and provide training to prison guards and administrators.



## 2. Principles for monitoring the administration of justice

### *Mandate*

The HRO's or the peacekeeping operation's mandate should explicitly provide for monitoring the justice system and when appropriate, to assist in efforts to enhance its independence and effectiveness. The terms of reference for the human rights mission in Rwanda provided that the Mission shall carry out activities including "[t]o monitor the ongoing human rights situation, and through their presence help redress existing problems and prevent possible human rights violations from occurring (...) To implement programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice." Similar language can be found in the terms of reference for most HROs or in the relevant Security Council or General Assembly Resolutions, including those for Haiti, El Salvador, Guatemala and Cambodia.

### *Implementing the mandate*

An experienced human rights and international lawyer should supervise the Mission's work in the administration of justice. The Mission structure should provide for a Legal Department headed by such a lawyer and staffed by lawyers with relevant experience in international human rights or humanitarian law. Ideally, each field office of the HRO or peacekeeping mission should have a lawyer responsible for monitoring and reporting on the administration of justice in the region covered by the field office. He or she should be in regular contact with local judicial officials.

Regular field officers cannot and should not attempt to become experts in all aspects of local law, but should try to become conversant with the elements of the law and legal system relating to the Mission's work. These would most likely include arrest and detention; treatment of prisoners and detainees; access of lawyers, doctors and relatives to detainees; any laws governing demonstrations, the press and the freedom to organise and form associations; freedom of movement; and the possibility of holding government officials, including police and military, accountable in court for human rights violations. Recent missions, especially in Kosovo and Bosnia, have seen an increase in trafficking in women and young girls, so knowledge of international and local laws governing this problem is essential.

Gender-based violence has become another terrible development in many countries where HROs work. In Liberia, approximately one-third of the women and young girls have been raped during the course of the 12-year conflict (1991-2003) and the war's aftermath. Similarly, women and girls in Darfur and the DRC experienced massive levels of rape and sexual violence. The International Criminal Tribunals for the former Yugoslavia and for Rwanda have held that rape is a war crime and have convicted perpetrators who have received long sentences. The ICC statute also defines rape as a war crime and crime against humanity. So HROs should have the requisite expertise to analyse gender-based violence and how the national courts and police treat the issue. For the first time in the history of international criminal justice, victims have the possibility under the Rome Statute of the International Criminal Court to present their testimony to the court, so HROs should be aware of this possibility when working on rape cases and other crimes that may be within the jurisdiction of the ICC or if local laws allow similar opportunities for the victims of human rights violations. (See [www.icc-cpi.int/victimissues.html](http://www.icc-cpi.int/victimissues.html).)



Child soldiers have participated in many conflicts, especially in Sierra Leone, Liberia, the Democratic Republic of the Congo, Nepal and Sri Lanka, so it is important to observe how the local judiciary handles this delicate problem. A Mission should be ready to provide guidance based on applicable laws, especially the First Optional Protocol to the Convention on the Rights of the Child which raises the minimum age for combatants from 15 to 18. Also, the Rome Statute that defines the substance, procedure and jurisdiction of the International Criminal Court makes recruiting and deploying child soldiers a war crime.

All field officers should become familiar with provisions in the national constitution that define basic rights or prohibit certain acts by the government or by people acting under its authority. Constitutional provisions guaranteeing free speech, freedoms of assembly or association, prohibiting torture, arrests without a warrant or prolonged pre-trial detention, should become part of the field officers' daily discourse. This knowledge is best obtained during in-country pre-deployment training. Local lawyers should be found who can provide this training to the observers. The need for such expertise reinforces the importance of extensive training early in a HRO, before observers are deployed in the field. The Missions in Haiti, Rwanda, Darfur, Liberia, Nepal and Sierra Leone successfully used local lawyers to provide focused, in-depth training to newly arrived international field officers.

### ***Know the type of legal system of the host country***

There are several types of legal systems that predominate around the world: Anglo-Saxon or Common Law, Civil Law based on the Napoleonic Code, Islamic Law, and traditional law (frequently found in Africa and Asia but also in Kosovo where an ancient code still governs many aspects of life). A HRO should try to have some personnel trained in the legal system that prevails in the host country.

Observers should have a basic understanding of the national and local court system, particularly its structure and personnel. What kind of cases can a town judge hear (in legal parlance: What is the court's 'jurisdiction')? Is there a court that hears appeals? What kinds of cases does the Supreme Court hear? How many judges are there in the region/country? Who names them? How long do they serve? How can a judge be fired? What role does the prosecutor or district attorney play in criminal investigations? Are there deadlines for completing investigations and are there penalties for failing to complete investigations or reports on time? Who appoints the prosecutor/district attorney? Where does the Ministry of Justice fit into all this?

These kinds of questions come up frequently and while every field officer should not devote huge amounts of time to mastering the intricacies of the local legal system, the legal officer in each HRO field office should be responsible for understanding and explaining to his/her colleagues on an 'as-needed' basis the workings of the legal system. Most HRO or peacekeeping missions have established a 'Legal Unit' in the central office (Haiti, El Salvador, Guatemala, Rwanda) to field questions from base offices on legal matters and to discuss these questions and the larger issue of legal reform with senior government officials. In some of the more recent UN peace operations a 'Rule of Law Unit' has taken up many of the tasks connected with monitoring and reporting on the local judicial system. For example, in the DRC, Liberia, Timor-Leste, Haiti (MINUSTAH) and Côte d'Ivoire, rule of law officers monitor trials, train judges and work with local NGOs to create popular education initiatives on the role of the judiciary. The rule of law officers and

the human rights officers often need to delineate clear lines of responsibility and division of labour because the overlapping areas of interest could create misunderstandings and wasteful duplication.

Each Mission should get to know the local legal system officials (judges, prosecutors, prison wardens) and seek regular meetings with them to raise specific cases, discuss system-wide problems, work on institution building and human rights education/promotion efforts. A roster of all judges, prosecutors and military and police commanders in the region should be kept up-to-date. Any transfers should be noted so that information about a specific judge or prosecutor can be shared with colleagues in the region receiving the transferred official.

Field officers usually do not have the authority to appear in local courts, as lawyers, witnesses or parties. If it is safe and possible, Mission officers should identify local lawyers who are willing to represent victims of rights abuses or their families. The OAS/UN Mission in Haiti had agreements with six lawyers in different cities in Haiti who agreed to take cases referred to them by the Mission. The Mission received funding from a European country to pay these lawyers for their time and expenses so that the client did not have to pay anything. These lawyers succeeded in having charges dropped, getting people released from prison and obtaining medical care for detainees who had been mistreated. The lawyers were able to force the courts to follow proper procedures where they rarely had in the past, for example, people arrested were brought before a judge within 48 hours which is required under Haitian law, but was rarely ever observed. This programme had to end as the violence in Haiti increased in late 1993 and the Mission was evacuated. But it serves as a model of what is possible. The Mission saw this project as a way to reinforce, not replace, the Haitian justice system and to help Haitians make the system work according to the country's own laws. The mere knowledge that they were being watched emboldened some officials to follow the law and resist pressure from the military.

Similar programmes to build the capacity of local lawyers to represent defendants in criminal cases have been created by HROs in Kosovo, Sierra Leone, Timor-Leste and the DRC. A goal of every HRO or peacekeeping mission should be to strengthen national institutions, particularly those charged with protecting rights like the justice system.

### ***Relations with judicial officials***

Judges, prosecutors, lawyers, court clerks, notaries, bailiffs, all segments of the personnel of the state's legal system will be crucial interlocutors. Observing trials, monitoring pre-trial procedures to insure adherence to international and national guarantees on limits to pre-detention, access to counsel and speedy trials, are integral to a Mission's work. Seeking such information must be balanced against certain constraints on the justice system's ability to make public details about an investigation, the general principle of 'confidentiality of judicial proceedings'. Creating a solid working relationship with justice officials, from the Minister of Justice down to the lowest level trial judge or court clerk, is also important for any work a HRO or peacekeeping mission may do on legal reform and institution building.

In general, HRO headquarters, and in particular the head of the Legal Division, should be in regular contact with the Minister of Justice and senior ministry officials. The Legal

Division should also establish working relations with the private bar and with law school faculties.

For work in the field, once each team has a legal officer, a 'Legal System Unit' could be formed. If numbers permit, this unit could have two or three people; its main responsibility would be to monitor the performance of the justice system, note problems, instances of interference or intimidation from outsiders attempting to influence a jurist's behaviour or the outcome of a case. Corruption, bribery or extortion undermine the rule of law and members of the Legal System Unit should investigate and document any instances of financial impropriety in the administration of justice. Any threats, attacks or other violence directed at anyone working in the legal system should be thoroughly investigated and reported. For example, when a prosecutor was beaten up and suspended for failing to follow a local politician's order to arrest people, the human rights mission in Rwanda investigated the case and issued a public statement calling for an official inquiry. The prosecutor was deeply grateful to the Mission and felt that his case would have been ignored without the Mission's intervention. Similarly, the OSCE in Kosovo has denounced interference in the judiciary based on ethnic hatred and this has led to increased international involvement and in some cases greater protection for judges and prosecutors.

The Legal System Unit should also evaluate the physical and material state of the justice system. Are the courthouses in disrepair? Are there vehicles for judges or prosecutors to travel to conduct investigations, visit prisons or examine the crime scene? Are there enough pens, paper, forms and other basic office necessities? HROs in Haiti and Rwanda have uncovered cases where judges, court clerks and prosecutors were charging people to fill out forms or issue judgements when they were not legally authorised to do so. The reason: The officials were buying the paper, forms and other supplies with their own money because the Justice Ministry was not supplying their needs. This practice generated great scorn for the justice system from the population who viewed it as just another example of corruption and venality. So it is important for HRO field officers to dig deep to understand the causes of problems plaguing the administration of justice.

### ***Interlocutors with donors***

In many countries where there is a HRO or peacekeeping mission, bilateral and multi-lateral donors will frequently have significant programmes geared to legal reform. These programmes usually involve providing material assistance to the judicial system (equipment, rehabilitating courts and prosecutors' offices, building new training centres, providing vehicles, computers, and upgrading communications systems). Training is also a large component of international assistance, with training programmes for judges, prosecutors, prison administrators and guards and police the main focus along with setting up courses for law schools. Sometimes experts are seconded to work inside the Justice Ministry, the police, prisons and prosecutor's office and offer their expertise on a daily basis in a work setting, a type of 'on-the-job training'. France sent two officials from the French Ministry of Justice to work inside the Haitian Ministry to provide expertise in case management, administration and personnel issues. In Rwanda, the Dutch, Belgian, German and Canadian governments have sent officials to work in the Rwandese Justice Ministry on a wide range of issues, including general management, administration, drafting legislation and managing information systems. In Timor-Leste, Australia and Portugal have loaned officials to help the Ministry and the Appeals Court establish personnel policies, discipli-

nary procedures, codes of conduct and budgetary oversight. These so-called 'back office programmes' can determine the success or failure of reform efforts. HROs should include experts in institutional development from UNDP, the World Bank and others who have expertise in these areas. Successful efforts to build a new police force in Kosovo used this model of combining technical police and human rights skills with those experienced in running an organisation.

Whether bilateral (US AID, Canadian CIDA or British DFID) or multilateral (UNDP, World Bank, European Union), the donors often do not have first-hand information about the exact problems of the legal system in the host country. The government itself often lacks the resources to conduct inspections of its own courts, prisons and prosecutors' offices so it too may be unaware of all the problems facing the administration of justice. The government often does not know which donors are best equipped to provide assistance.

A HRO or international peacekeeping mission is uniquely well-placed to act as an intermediary between the donor community and the host government. The Mission's primary advantage is the presence of human rights field officers throughout the country who have daily contact with the workings of the justice system. With teams of observers living and working in every region, the Mission can observe the functioning of the justice system and identify weaknesses and opportunities for improvement. Over time, professional relationships should develop between the field officer responsible for justice questions and the local justice officials (prosecutor, judge, military, police, prison officials). Through ongoing discussion and observation, problems in the administration of justice can be raised with the appropriate authorities, both local, and if necessary, by the Mission's leaders with the Ministers of Justice, Defence and the Interior.

The Mission can inform the government and the donors which problems need addressing and advise them on structuring their assistance programmes. Once programmes are underway, the Mission field officers are best placed to assess the impact of the assistance and communicate their findings to the donors and the government. The Mission can then suggest modifications to the programmes after such an assessment. For example, HRFOR prepared a comprehensive study of the Rwandese justice system and evaluated the impact of assistance projects for a round-table meeting of donors in Geneva in June 1996. This study was used by the donors and the government to plan future projects. In Haiti, MICIVIH observers noted that even after receiving training at the National Judges' School, many judges continued to charge the public for issuing warrants or judgements. Thanks to the MICIVIH's information, training in this area was reinforced and the government realised it needed to make sure that basic supplies were regularly delivered to the courts which was really a logistics and management problem.

Coordination of legal assistance has been a serious problem in several countries with human rights field operations. In Haiti, Liberia, Timor-Leste, Angola and Rwanda, the human rights and/or rule of law officers have convened meetings of donors and government representatives so that everyone knows what everyone else is doing to minimise duplication or waste and to ensure that no key problem is overlooked. The Mission in Rwanda, for example, proposed a first meeting of donors at the offices of US AID to address concerns about coordination and communications. The donors agreed to meet monthly and the Mission maintained this regular forum to present its findings and recommendations

on the various assistance projects to the legal system. In both countries, the Legal Division prepared a chart to show donor activity in regard to a specific issue. Similar regular donor meetings now take place in most international peace operations.

The relationship between a peacekeeping mission or a HRO and the UNDP is particularly important. Traditionally, lines of responsibility and expertise dictate that the Mission identify needs and the UNDP secure and manage the funds and provide the requisite accounting oversight and financial reporting. More recently, UNDP has taken a more active interest and role in implementing legal reform in post-conflict states. The need for HROs and UNDP to coordinate carefully their activities has never been more important.

### ***Balance between monitoring and assistance***

It is difficult for a Mission to balance its activities as a monitor of human rights and the justice system with its perceived role as a 'funder'. Government officials may come to see the Mission as a source of money and goods; they will understandably not like to hear that the Mission cannot always promise material assistance and furthermore, that the Mission will report on the administration of justice, sometimes negatively. Fulfilling these dual roles is not easy, but if explained carefully, it can be accomplished. The Mission leadership should make clear that it is not 'monitoring' for monitoring's sake, or simply to create dossiers to denounce government malfeasance. Rather, judicial officers in the field will be observing the justice system to pinpoint problems and note successes. This information will be conveyed to the Ministry of Justice, other government authorities and the international donors so that they can take appropriate action to rectify problems and reward and reinforce improvements. The work is truly 'diagnostic': Identify the problem (disease), propose a solution (cure) and then monitor the results to see if the problem has ceased or identify additional steps to achieve successful reform.

### ***Guidelines to observe the legal system***

The following is a list of guidelines for any HRO field officer or member of a peacekeeping operation (including international military or police where appropriate), whether part of a Legal System Unit or not, to follow in attempting to monitor and report on the local legal system. These guidelines are not rigid rules, but rather seek to orient and guide the judicial field officer in his/her work with representatives of the legal system and with international donors. The underlying principle of these guidelines is that the Mission's primary objective regarding legal reform is to reinforce the legal system, not substitute for it.

1. Each regional or base office should designate one or more observers as being responsible for evaluating the performance of the judicial system in the area covered by the office. Preferably, the team would include at least one lawyer.
2. This team should then meet with every local judicial official and introduce themselves and explain that they will be observing the working of the justice system with the goal of identifying ways to improve and reinforce the administration of justice. The tone should not be confrontational or judgemental, but rather one of concern, interest and willingness to help.
3. The team should establish a regular pattern of attending court sessions, talking to judicial officials and local lawyers.

4. The team should also, either directly or by talking to other observers, ascertain the views of local human rights groups, legal professionals or other organisations about how the justice system functions: its weaknesses and problems or its strengths and successes.
5. If the members of the 'Judicial System Team' and the 'Prison Team' (see below) are different, then close coordination and communication are essential, since there will be overlap, especially in determining the legality of arrests, the judicial status of prisoners and whether judges and prosecutors are visiting prisons regularly and submitting reports as required. If the Mission contains an international police component (UNPOL), then similar lines of communication must be established with them.
6. The team, after gaining an overview of the system, should pick one or two cases to follow. These cases should contain several basic elements that illustrate the system's problems and also stand for many similar cases. Such cases could involve prosecutions for human rights abuses or violations of the laws of war.
7. The Judicial System Team should send information regularly to the Legal Division at Mission headquarters (the exact nomenclature will vary according to the peace operation, but usually the people needing to see this information will be in a Rule of Law and/or Human Rights Department). These reports could be incorporated into the Mission's regular reporting (daily, weekly or monthly) or could be published separately when enough information has been gathered. If any questions arise, the Judicial System Team should contact the Legal Division and a lawyer working in the Division who will try to provide guidance.
8. At the appropriate moment, and this depends on the judgement of the Judicial System Team and the leader of the specific field office, a meeting or meetings with local judicial officials should be requested to convey the Mission's concerns, questions or suggestions. This should be done in a way that seeks to reinforce the proper application of the law. If the response to this initiative is negative or hostile, this should be conveyed immediately to the Legal Division at headquarters.
9. The Legal Division will then seek a meeting with the Minister of Justice and other officials in the Ministry to discuss issues raised by the Judicial System Teams. The Mission will seek to provide immediate feed-back to the Minister based on information from the field. This will prove especially valuable as various training efforts begin with the goal of improving the capacity and performance of judicial officials. The Mission will be uniquely placed to evaluate whether the training of judges and prosecutors is taking root or whether adjustments need to be made. The Mission also can assess whether any ongoing problems in the administration of justice arise principally from a failure of will or from outside interference/intimidation, or whether problems originate in a lack of knowledge, resources, personnel or material necessary to fulfil the state's obligations.
10. It is important to note any progress in the administration of justice. If the courts are working more efficiently, if judges are truly free to decide cases on the merits, and if the prosecutors and police are following the law on arrest and detention, then the Mis-



sion and the Legal Division should make this known. If the system has improved, then recognising this will increase the Mission's credibility because it cannot be accused of only looking for problems or to criticise the host government (or as was the case in East Timor and in Kosovo, the UN itself since it was in effect the government). More importantly, it should reinforce those in the government desiring change and encourage them to take even further measures to improve the administration of justice.

### ***Periodic reports on the justice system***

Judicial field officers should prepare periodic (weekly or monthly) reports on the functioning of the justice system. Reports from the field reflect the Mission's assessment of the material needs of the legal system, personnel and the impact assistance efforts are having, positive or negative. Reports should focus on substantive issues and seek to identify the problems that prevent the proper functioning of the justice system in each region. Reports should contain specific examples with as much detail as possible to describe the real state of the justice system. Some potential issues to be spotlighted in the periodic reports include:

1. Lack of trained judicial officials; assess the impact of any training given to judicial officials: performance improved, same, worse. Try to identify reasons for any change or failure to change.
2. Lack of materials necessary to perform duties and/or have the materials arrived and been used in the proper fashion; are they the appropriate materials, e.g. have computers been sent to a court that does not have electricity?
3. Lack of will to fulfil obligations, conduct investigations, create dossiers, show up for work on time.
4. Interference by the military, police, local officials or other government agents in judicial matters.
5. Corruption/extortion.
6. Evidence of bias (ethnic, religious, racial, national, gender, age or social class) in any judicial decisions.
7. Threats against judicial officials, from whom and for what reasons.
8. Access for defence lawyers to their clients: immediate, in conditions respecting confidentiality.
9. Ability to challenge pre-trial detention decisions in a court and to have this decision reviewed by a higher court.
10. Conduct of trials and other public judicial proceedings.
11. Programmes to address protection needs of victims and witnesses; are victims eligible for some form of reparations and/or restitution?



12. Assess whether arrest warrants are legally issued and executed.
13. Number of judges and prosecutors serving, vacancies, transfers.
14. Does anyone from the Ministry of Justice ever come to inspect the courts, prosecutor's office or prisons? Is there any sign of the Inspector General from the Ministry of Justice exerting some control or oversight of judicial officers' performance? Have any judges, prosecutors or lawyers been punished for failing to perform their professional duties?
15. Is there a code of conduct governing judges', prosecutors' or lawyers' behaviour and if so, is it well known and observed by legal professionals?
16. Do judges cite international human rights law either in court proceedings or in their written opinions? Does the judiciary demonstrate a thorough understanding of human rights law and the laws of armed conflict?

Members of a Mission's Legal Division at Mission headquarters should analyse the information submitted in the periodic reports and prepare a synthesis and summary for submission to the Minister of Justice, other appropriate ministries or government officials, and if necessary and useful, to bilateral and multilateral donors. These reports should also be shared with the relevant permanent human rights mechanisms of the United Nations and the regional human rights body (see Chapter 2).

### **3. Law enforcement officials /police officers**

#### ***Introduction***

Police officers or any law enforcement official with the power and authority to arrest and detain play a central role in the administration of justice. Human rights monitors must develop a professional working relationship that allows them to monitor the performance of law enforcement officials, raise issues of concern with government officials and report on any problems to Mission headquarters.

#### ***Mandate***

Most HRO and peacekeeping operation mandates include the obligation to monitor the rights to physical integrity and liberty (freedom from torture or cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest and detention, the prohibition on 'disappearances', and most crucial of all, the right to life; see Chapter 5). These rights are found in the major international human rights treaties (International Covenant on Civil and Political Rights, Convention Against Torture) and in domestic law. Thus the right to be free from illegal or arbitrary arrest and detention and the right to humane treatment if detained are core rights that should receive priority attention from human rights field officers.

Since these rights are most often violated as a result of illegal actions by the police or others charged with law enforcement, human rights observers should make monitoring police behaviour and the conduct of other core law enforcement agencies a priority activity.

### ***Implementing the mandate***

Human rights observers should become knowledgeable about the international standards governing police practice concerning arrest and detention. These issues should be covered in pre-deployment training and every Mission office should have a complete set of the major human rights treaties and instruments. The UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms, and the UN Standard Minimum Rules on the Treatment of Prisoners should be covered in all pre-deployment and induction training.

Observers should also become familiar with relevant provisions in domestic law governing police practice. For example, who has the power to arrest? Are written arrest warrants necessary in all cases or are there exceptions? When are searches legal? In Haiti, arrests and searches cannot be made between the hours of 18:00 and 6:00, unless the police witness a crime being committed. MICIVIH observers, because they knew of this provision, were able to point out to the police that certain arrests were illegal and obtained the release of the victims. Another example from Haiti involves the principle of '*flagrant délit*'. Under Haitian law, a written warrant is required for every arrest except in the case of *flagrant délit* which means 'in the course of committing a crime or immediately after', in which case the police can arrest the suspect without having to go to a judge for an arrest warrant. When human rights observers found that most people had been arrested without a warrant, they pointed this out to the police. The police started releasing people, but then soon started claiming that all these arrests were made under the *flagrant délit* exception. When pressed further by human rights observers to specify the exact crime (*délit*) the person was in the course of committing when arrested, the police then had to admit that there was no such crime and once again released some detainees.

The law on pre-trial detention should also be familiar to observers. Most domestic legal codes specify strict limits on the time a person can remain in pre-trial detention. If the person arrested is not brought before a judge for charge or trial within this specified period, the person should usually be released or a judge must rule that an extended detention is legal. In Haiti, the detainee must be brought before a judge within 48 hours of arrest to determine the legality of the arrest and detention. Rwandese law and the criminal procedure code in Timor-Leste also impose strict limits for the police investigators to submit a report and the judge must then rule on whether to keep the person in prison. The detainee's lawyer and family should have regular access and if the detainee needs medical care, then adequate provisions to deliver such care should be assured. In Kosovo, the time limits on appearing before a judge and for completing a criminal investigation were frequently violated. In response, and because of the emergency situation facing the police and the judiciary, UNMIK extended the time for pre-trial detention.

To carry out the task of monitoring police performance, once the observers are conversant with the relevant international and national legal standards, a Mission should assign certain human rights monitors the responsibility of establishing contacts with police officials. At Mission headquarters, this job should fall to members of the Legal Department since the questions of police practice and the functioning of the justice system are closely related. In the field, all observers should be aware of the issues but most likely it will be the members of the Justice System Unit who will have primary responsibility.

The approach to monitoring the police or law enforcement officials should emphasize the systematic evaluation of the police as an institution: the effectiveness of the police command structure, its ability to conduct internal investigations, relations with judicial authorities and relations with the population it is supposed to protect. This type of approach allows a Mission to understand the functioning of the police and enhances the Mission's capacity to identify problems and propose solutions so that the police respect human rights. If the Mission has a UNPOL component, as in Haiti, Bosnia, Kosovo, Liberia, DRC, Timor-Leste and Sierra Leone, then human rights officers and UNPOL need to work closely together and exploit the comparative knowledge and expertise that each side brings. UNPOL units now frequently have 'human rights liaison officers' who are the most natural link with the human rights field officers. Peace operations in Liberia and Kosovo have UNPOL gender liaison officers also, responsible for ensuring that gender issues like recruiting female police officers and police practices regarding gender-based violence are being addressed.

### **Guidelines to observe police performance**

A check-list or set of guidelines to fulfil this task should include the following:

1. Know the names of all police commanding officers in your region. Keep an accurate and up-to-date list of all police and law enforcement officers and also keep available a list of addresses and phone numbers of all police stations in the region.
2. Request a meeting with the local police commander as soon as possible. Clearly describe the Mission's mandate (terms of reference) and give the commander a copy. Explain what the Mission will be doing and seek to establish a regular time and place for meetings with the commander or his/her deputy.
3. Check to determine the ethnic/religious/racial/gender composition of the police and note any tendencies that decrease or eliminate diversity on the police service. Are the police truly representative of the population they serve?
4. Get statistics on arrests, detention and crimes; analyse trends and encourage the police to keep good data.
5. Are the police effectively addressing gender-based violence (sexual assaults, domestic violence, trafficking, forced marriages etc.)? Do they take these crimes seriously? Are there specialised units trained to investigate gender-based violence?
6. Visit police stations on a regular basis. Try to get to know the police officers in your district. But never become too 'friendly'; rather, establish a cordial yet professional dialogue. Remember, if you are seen to be too 'close' to the police this may undermine the Mission's credibility with the local population and human rights organisations. (The Mission in Haiti had this problem with one field officer who was perceived as being the friend of the local police commander and human rights organisations stopped cooperating with the Mission until this field officer was transferred.)
7. If possible, offer to give training sessions to the police on international standards governing arrest, detention, use of force and firearms and treatment of detainees. The hu-

man rights missions in Rwanda, Haiti, Liberia, Sierra Leone and Guatemala have given such training courses to the police, using the international instruments and case studies drawn from actual events. The Senior Advisor on Human Rights in UNMIK gave similar courses at the Kosovo Police School. At a minimum, the police can no longer say that they were not aware of the existence of international rules governing their behaviour and at best this training may lead to a real improvement in police behaviour.

8. Assess the impact of police training: Has the performance of the police improved? Are any problems persisting which indicate a need for further training? In Haiti, the new Haitian National Police resorted much too quickly to their firearms, had great difficulty in crowd control and wrecked the brand new vehicles provided by international donors. MICIVIH observers submitted detailed reports on these failings and the Police Academy adjusted its training curriculum to allow more time for driver training, crowd control and when the use of force is appropriate. In Kosovo, Sierra Leone and Liberia, workshops on domestic violence were included in the police training curriculum when this issue emerged as a major problem. Courses on organised crime and trafficking in women are now a permanent part of the police training in Bosnia.
9. When meeting with local human rights organisations or other community groups, always ask them how they view the police, what problems they see and seek concrete examples from them. If they agree, these cases can be used in later discussions (omitting names and other information that might identify your source) with the police commanding officers to show that problems exist and that corrective action should be taken.
10. The head of the Legal System Unit should always be present at any meeting with police commanders; if necessary, the team leader from the relevant regional office should also attend. Before meeting with the police to discuss current problems, make sure that the cases you intend to raise have been checked for accuracy and that the sources/witnesses/victims do not object to having their cases presented to the police. If in doubt, do not raise the cases and wait for further clarification.
11. If the police commander is uncooperative or threatening (denies any wrongdoing by his/her officers, accuses the victim or promises action that is never taken) then communicate this information with suggested recommendations to mission headquarters, attention to the Legal Department.
12. Human rights observers should determine whether the internal police investigation unit, usually an 'Inspector General's office', has been informed of any incident of police misconduct and if so, whether any investigation or disciplinary action (including suspension, confiscation of weapons or transfer pending the completion of an investigation) has been taken. Has the police investigation included conducting an exhumation, autopsy, ballistics tests, forensic investigations, collecting DNA specimens, gathering testimony from witnesses etc.?
13. Indicate the outcome of any official investigations into police misconduct, note any sanctions imposed (expulsion from the force, suspension, transfer, demotion, loss of

pay) and the date such sanctions take effect. Also note whether the case is referred to the justice system for possible prosecution and the results of any action taken by the judiciary.

14. Periodic reports on police practices (including analysis of whether limits on the length of pre-charge or pre-trial detention are being observed and allegations of the unlawful use of force) should be sent to the Mission's headquarters. Based on this information received from the field, the Mission's directors will report its findings to the UN, the press, or any other appropriate audience. The Mission's directors can also decide when to meet with senior government officials to discuss specific cases or a pattern of police behaviour leading to violations that emerges from the periodic reports received from the regional offices.

## 4. Prisons and detention centres

### *Prison visits and inspection*

Prisons and detention centres<sup>1</sup> pose particular challenges to human rights field officers. Detainees are often at great risk in prison, cut off from family, lawyers and doctors in many cases, with the risk of torture and mistreatment constantly present. Conditions in detention centres are often inhumane, with overcrowding, poor or little food, dirty water and disease the main dangers to prisoners' health. Even greater dangers exist when prisons do not keep accurate records of who is in detention and in secret or unofficial detention centres where detainees are held incommunicado; the risk of torture or mistreatment is very high where the outside world has no knowledge of or access to the detainee. These are in effect 'disappearances', a serious human rights violation.

Human rights observers must monitor the treatment of prisoners and prison conditions without endangering the lives of prisoners or making their conditions or treatment even worse than it already may be. There are certain techniques and guidelines that have been tested over the years and have been shown to be effective ways to monitor prisons.

### *Mandate*

A HRO or peacekeeping mission's mandate should include broad and clear authorisation to visit all prisons and centres of detention. The terms of reference for MICIVIH in Haiti provided that the "Mission is authorised to proceed immediately to any place or establishment where human rights violations have been reported and to make recommendations based on their conclusions regarding the case or situation brought to their attention." The Rwanda Mission's terms of reference were even stronger, stating: "[T]he Mission shall enjoy unrestricted freedom of movement throughout the territory of Rwanda (...) Such freedom of movement shall include freedom of enquiry, in particular as regards: (a) Access to all prisons, detention centres and places of interrogation without prior notification (...) Members of the Mission shall have the possibility to speak in private with any person detained or present in such places." The newer peace operations that began since 2000 (e.g. Timor-Leste, DRC, Liberia, Sierra Leone, Côte d'Ivoire, Sudan/Darfur, Nepal) also provide for access to all places of detention.

The key elements are the right to visit every place, official or unofficial, where anyone is being detained and the right to make these visits without prior approval from the govern-

ment or prior notice from the Mission. Once in the prison, the observers must have the right to visit every part of the prison; there must not be any corner, cell or area that is declared 'off-limits'. And the observers must be able to speak with any prisoner that they wish in conditions that ensure that prison officials cannot hear what is being said in the interview; the confidentiality of such interviews must be guaranteed. The prison authorities must also guarantee that there will be no reprisals against any prisoner interviewed by the Mission or against any prison guard or officer who agrees to provide information to the Mission.

Usually a Mission's mandate does not include providing humanitarian aid to prisoners. Yet in most Mission countries the need for such aid will be all too evident. If observers receive requests from either prisoners or prison officials for humanitarian aid (food, medicine, beds, clean water) the observers must politely explain the limits of their mandate and offer to transmit such requests to the relevant humanitarian organisations such as the International Committee of the Red Cross (ICRC) which specialise in this field and especially to the relevant government agencies. The government is primarily responsible for the humane treatment of everyone in its custody and the Mission should never fail to remind state officials of this. The Mission can and should, however, make recommendations to the authorities and humanitarian agencies on what type of assistance is most urgently needed, and, if necessary, remind them of their responsibilities in this field. Inhumane prison conditions in themselves can constitute cruel treatment in violation of international law.

For example, in Rwanda, HRFOR insisted that the Rwandese government take steps to alleviate the horrendous overcrowding in Rwandese prisons and police lock-ups that led to deaths and the rapid spread of infectious diseases. At one point in 1995, eight people each day died in Gitarama prison; some prisoners had to have their feet amputated because of gangrene they contracted from being forced to stand for days in dirty water because there was no room in the cells. Working closely with the International Committee of the Red Cross, which is the preeminent agency in the field, the worst excesses of overcrowding were somewhat alleviated due in some part to the Mission's regular visits and reporting on prison conditions.

### ***Primary objectives***

Based on the Mission's mandate, some primary objectives for prison monitoring emerge. They should include:

1. End torture, cruel, inhuman or degrading treatment or punishment, beatings, psychological pressures (threats, intimidation) or any form of mistreatment, physical or mental.
2. Secure the release of persons arbitrarily or illegally detained.
3. Obtain access to the justice system for detainees in accordance with procedures and time limits provided for by law.
4. Assure that the victims of human rights violations, especially victims of beatings, ill-treatment or torture, receive medical treatment immediately.

5. Inform the appropriate government officials of any documented cases of torture or mistreatment and insist that the government investigate and punish those responsible for such grave human rights violations.
6. Ensure that the prison authorities establish and maintain an accurate register of detainees, with the name of every detainee, the date of arrival at the place of detention, the legal status of the detainee and the date of the next court appearance.
7. Ensure that adult male and female detainees are kept in separate facilities or sections.
8. Ensure that all detained juveniles are separated from adults (except in the case of young infants and their mothers); juvenile detention should be the exception, not the rule.
9. Promote, with the competent authorities and specialised organisations (International Committee of the Red Cross, Doctors of the World, World Food Programme), improvement of the material, physical and psychological condition of the detainees.
10. Train, if appropriate, prison guards and administrators in international human rights law and standards governing the treatment of prisoners, with particular emphasis on the Convention against Torture, the UN Standard Minimum Rules on the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Constantly assess the impact such training has on the actual performance of prison officials and recommend modifications in prison training to address any persistent problems. If the problem is not lack of knowledge, then senior officers in the Mission should be informed so that they can take up the issue at the highest level with state officials.

### ***Guidelines for prison visits***

Prison visits are crucial to the work of a Mission and are also very complex, difficult and potentially shocking to the human rights observer. It is not unusual for the observer to be deeply affected by the visit, seeing human beings incarcerated in abominable conditions with clear signs of torture and mistreatment. Observers should carefully prepare for every visit and should be fully briefed on what to expect from members of the team who have already visited the site. In many states, the International Committee of the Red Cross (ICRC) will also have a prison monitoring mandate. The ICRC has vast experience in visiting prisons and in some cases they will and should take the lead role. In other situations, the ICRC and a HRO or peacekeeping mission can share the work. For example, in Rwanda and Haiti the ICRC and the human rights missions agreed to visit prisons on fixed days to avoid congestion and confusion. They also agreed to split priority issues, with the ICRC focusing on prison conditions and the human rights mission focusing on the judicial status of the prisoners.

The following is a compilation of several guidelines that have proved successful in numerous human rights field operations.



### General Guidelines

1. The Prison Unit team of the field office should carefully plan each visit. Each person's role should be clearly defined and the team should have a thorough knowledge of the UN Standard Minimum Rules and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. There should be at least two observers for every prison visit. One person should take note of the name of the officer in charge and check the register, the map and the condition of cells while the other can conduct interviews out of the hearing of prison officials and other prisoners. Observers should never be left alone with detainees or warders.
2. If the situation requires, the Prison Unit should be accompanied by staff from Mission headquarters, e.g. the Legal Department or Medical Unit.
3. If possible, visits should take place with no prior notice to the prison; if this is not possible either because the mandate does not permit or because the authorities refuse to cooperate, then minimal notice should be provided. However, never turn down the chance to visit as long as the conditions for a proper visit described above are present. Even if the prison administrators have 'cleaned up everything' knowing you are coming, this at least benefits the prisoners temporarily.
4. Once at the prison, the Prison Unit leader should present him-/herself to the guard and ask to see the commanding officer or the official responsible for the prison. Note the name, rank and function of the person in charge.
5. Remind the person in charge of the Mission's Terms of Reference and request politely that they cooperate with the visit. In case of refusal or non-cooperation, if you judge that further insistence will not be productive, leave and report the incident immediately to Mission headquarters where the matter can be taken up with senior government officials by Mission directors.
6. Ask the officer in charge to produce the prison register. If such a document does not exist, remind the officer that it is required under international standards (and possibly national law as in the case of Haiti). Examine the register and calculate how many prisoners are in the prison. Observers, or the Prison Unit, over the course of several visits, should prepare a census of all prisoners to verify whether the official register is accurate.
7. Use a previously prepared prison map to ensure that all sections of the prison are visited.
8. Individual interviews (up to one-half hour each) should be conducted with any detainee who appears to have suffered a violation of the right to physical integrity or security of the person. If in carrying out an investigation of a specific victim, the observers learn of other similar violations, they should investigate these additional cases immediately if possible.
9. Do not take any photographs or use a video camera. If possible, do not allow yourself or your colleagues to be photographed or to have a video of the visit taken.

**Key issues to note/investigate**

In addition to the general guidelines, observers visiting a prison or detention centre should pay close attention to certain key indicators that must be included in any eventual report on the prison situation. All reports should include the following information:

1. An updated list of prisoners with their full names, age, civil status, occupation, address, legal situation, date of imprisonment, circumstances of their arrest, name and function of the person who made the arrest, the duration of pre-trial detention, court appearances to date and any future dates for court hearing.
2. Prison personnel: How many were on duty, their attitude (professional, hostile, indifferent).
3. Conditions in the prison: Number of detainees per cell, bedding, windows, light, ventilation, temperature in the cells, sanitary facilities, access to water, food, presence of insects or vermin.
4. Segregation of prisoners: Men, women, minors (this is required under current international standards), pre-trial detainees and condemned prisoners, military and civilian, the mentally ill.
5. Ability to exercise: Walk outside of cells, in open air, participate in sports.
6. Evidence of any cruel, inhuman or degrading treatment when arrested or while in prison. What types of evidence, how many prisoners so treated and any information on who is responsible. (These questions must be handled with utmost caution and in strictest confidence. In Rwanda, an observer left a questionnaire for prisoners to fill out asking them if they had been mistreated; some prisoners responded “yes” when completing the questionnaire and were later beaten by the prison warders when they collected the forms from the prisoner. This type of inquiry should be avoided at all costs.)
7. Punishments imposed by warders: Type, circumstances, intensity, frequency and consequences and whether these are consistent with the Convention against Torture and the UN Standard Minimum Rules for the Treatment of Prisoners.
8. Health conditions of detainees: Illness, related to unhealthy conditions in the prison, lack of hygiene, presence of communicable diseases (tuberculosis, AIDS), nutritional deficiencies (in Haiti an outbreak of beri-beri which is a vitamin deficiency was spotted by human rights observers and changes were made to the prison diet), regularity of doctors’ visits, availability of medicine.
9. Extortion or bribes demanded by the prison authorities from prisoners or their families in exchange for basic services or what is required anyway; intimidation by other prisoners.
10. Access of lawyers, medical personnel and family to the detainee: Are visits regular and private?

***The prison visit report***

Upon returning to the office after a visit, the Prison Unit should go over all the information gathered, compare notes and observations, and immediately begin to write a report of the visit. The report should include all information related to the issues discussed in the previous section. Special attention should be given to individuals who have been tortured or mistreated and whose physical condition is serious; also prolonged pre-trial detention should be highlighted.

Once completed, the report should be sent to the Mission headquarters, most likely to the attention of the Legal Department. Once the department has received reports from all base offices, those responsible for prisons should analyse the reports and determine whether there are any widespread and persistent problems that should be raised with senior government officials. In Rwanda, for example, reports of serious overcrowding and the presence of infectious diseases were brought up with the Ministers of Interior, Defence and Justice and some action to relieve overcrowding and remove people with infectious diseases and the elderly was taken. In Haiti, the Mission presented the military with detailed evidence of systematic beating of detainees by army officers; for a short period the Mission documented a decrease in beatings after this intervention.

As part of the follow-up work to visiting and writing reports, meetings should be sought with the authorities. Once the Mission's findings have been communicated, the authorities should be given a reasonable time to respond or take corrective measures. Further visits should focus on whether the Mission's recommendations have been followed. If there are improvements, the observers should try to discover the reason: Change of prison director or prison personnel, punishing warders for ill-treatment of prisoners, shortening the time of pre-trial detention, are all possible reasons for improvements. Any positive changes should be publicly noted by the Mission.

The Prison Unit should verify that no detainee interviewed was subsequently punished, mistreated or questioned by any government official about their statements made to the Mission. If any detainee was so treated, this should be protested most vigorously by the Mission and the state must take steps to prevent any recurrence and to punish those responsible.

***Specific guidelines for investigating allegations of cruel, inhuman or degrading treatment inflicted by police or while in detention***

In many Missions, the issue of mistreatment at the hands of government officials is one of the most common and serious human rights violations. Beatings, torture and other forms of mistreatment can occur in a variety of settings, from demonstrations, to meetings, during the arrest or while the person is at the police station being questioned. Ill-treatment often occurs in police stations, prisons, detention centres and military bases.

The following sets forth some guidelines for human rights field officers who are investigating allegations of cruel, inhuman or degrading treatment. While it may be difficult to carry out detailed and extensive interviews in the field, especially in prisons or in military bases, as many as possible of the areas highlighted below should be covered. Some of the questions may seem unrealistic, particularly given the probable hostile reaction of the authorities, but even asking the question notifies the government that their actions are being

monitored and will not go unnoticed, that they have obligations and should take steps to prevent or punish those responsible for mistreatment.

1. Interview the victim:
  - take detailed information of arrest, detention and ill-treatment (names, dates, places);
  - note any marks, injuries, symptoms related to ill-treatment;
  - obtain consent from the victim to raise the case with the government, if appropriate;
  - obtain consent from the victim to seek appropriate medical treatment.
2. Interview the witnesses:
  - corroborate the victim's account; if there are inconsistencies, note them.
3. Interview medical personnel who have treated the victim:
  - obtain medical corroboration of the evidence of mistreatment;
4. Interview prison authorities if the victim is still detained:
  - obtain information about the victim's medical condition when transferred from police custody to the prison;
  - if the detainee had been mistreated prior to arriving at the prison, note any steps the prison officials took to seek medical care or inform judicial authorities about the apparent mistreatment;
  - in cases where the prison guards are responsible for the cruel, inhuman or degrading treatment, obtain the account of the prison authorities and find out what steps, if any, have been taken to investigate or punish those responsible.
5. Interview local police authorities directly responsible for the alleged ill-treatment:
  - obtain the 'official' version of events;
  - find out what steps have been taken to investigate the allegations;
  - if there are reasonable grounds to suspect that a specific police officer is responsible, ask whether the officer has been suspended until the investigation is completed.
6. Interview judicial officials who may have seen the detainee or who have jurisdiction over him/her:
  - determine whether the judge or prosecutor is aware of the ill-treatment;
  - did the judge issue a finding on the condition of the detainee;
  - did the judge or prosecutor investigate any allegations of mistreatment;
  - are the police and/or the corrections department aware of any allegations of mistreatment and have they begun an investigation? (have they taken statements from the victim/authorities/witnesses);
  - find out whether the judge or prosecutor intends to prosecute those responsible.
7. Meet with medical personnel, both governmental and non-government, whenever possible. Try to learn from them if they are seeing evidence of physical mistreatment of prisoners.

***General points regarding instances of violations of the right to the security and physical integrity of the person***

1. Since cruel, inhuman or degrading treatment is a human rights violation central to most Mission mandates, and directly involves the administration of justice and its representatives (police, security forces, judges, prosecutors and prison officials), all cases should be reported to Mission headquarters, even if the investigation has not been completed. These are always high priority cases.
2. If during a visit to a prison or a police station, you learn of a case of mistreatment, you should stop whatever you are doing and take a detailed testimony; this case becomes a priority.
3. You should ask the person making the allegation for permission to raise the case with the authorities. You should be aware that if the person is still in the custody of the person alleged to be responsible for ill-treatment, there is a risk of reprisal against the victim. This risk is serious and should be explained to the victim. The victim's informed choice should always be respected in this matter.
4. Except in exceptional circumstances, do not raise cases with the authorities until you have confirmed the basic information about when/where/what happened and who was allegedly responsible.
5. Do not be accusatory when you meet the authorities. Be firm, courteous and professional. The aim of your initial meeting is to get information and obtain their account of what happened. You should explain that you are investigating allegations of ill-treatment, that you would like to hear their version of what happened.
6. You may need to conduct several visits to the authorities to find out whether investigations have started and what progress, if any, has been made.

## 5. Conclusion

Monitoring legal systems, police and prisons is a complex task, requiring thorough preparation, training, teamwork, sound negotiating skills, and judgement. No other part of a Mission's work holds so much potential for helping to effect lasting improvements in the respect for human rights. This field also offers tremendous possibilities to work with local jurists, human rights advocates and the general population, which is always one of the most rewarding aspects of human rights field work.

This discussion of how to monitor and reinforce efforts to improve the administration of justice and penal administration can only offer some key principles and guidelines; it cannot and should not be viewed as a 'blueprint' or rigid set of rules. Every situation cannot be anticipated and much will depend on the exact context and local issues. Thus there is a premium on recruiting qualified observers, providing them with excellent training and briefings on the current situation, and establishing a sound mission structure where reporting lines are clear and guidance can be sought quickly and with confidence in all involved. No manual can replace the human rights observers' sound judgement, maturity and understanding of the situation and its context; we only hope that this discussion can help them in their challenging work.

### *Note*

<sup>1</sup> 'Prison' usually means the place where a person who has been convicted of a crime, a 'prisoner', is kept while 'detention centre' is where someone who has been arrested but not yet tried or convicted, the 'detainee', is held. The terms are used interchangeably in this chapter.

**Annex I: *Relevant human rights instruments***

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. Optional Protocol to the International Covenant on Civil and Political Rights
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Standard Minimum Rules for the Treatment of Prisoners
7. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
8. UN Rules for the Protection of Juveniles Deprived of their Liberty
9. Code of Conduct for Law Enforcement Officials
10. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
11. Basic Principles on the Role of Lawyers
12. Guidelines on the Role of Prosecutors
13. UN Standard Minimum Rules for the Administration of Juvenile Justice
14. Basic Principles on the Independence of the Judiciary
15. Convention on the Prevention and Punishment of the Crime of Genocide
16. Geneva Convention relative to the Protection of Civilian Persons in Time of War
17. Protocols I and II to the Geneva Conventions relating to the Protection of Victims of International and Non-International Armed Conflicts
18. Convention on the Elimination of All Forms of Discrimination Against Women
19. Convention on the Rights of the Child
20. First Optional Protocol to the Convention on the Rights of the Child (on the involvement of children in armed conflict)
21. Second Optional Protocol to the Convention on the Rights of the Child (on the sale of children, child prostitution and child pornography)



22. Optional Protocol to the Convention against Torture

23. Rome Statute establishing the International Criminal Court

This list of international texts attempts to highlight those treaties and other instruments that set minimum standards relating to the administration of justice. The two Covenants, the Genocide Convention and the Conventions covering women's and children's rights, along with the Geneva Convention and its Protocols, have the force of law and arguably apply even to those states which have not ratified them based on the principle that these treaties now reflect international customary law. The practitioner should acquaint him- or herself with the relevant provisions on arrest, detention, right to fair trial and the treatment of prisoners and detainees, especially historically vulnerable categories like women, children and ethnic, racial or religious minorities. It is important to note that the Geneva Conventions and the Additional Protocols offer broad protections that are never suspended, even in time of war, whereas one weakness of the Covenants and other conventions is that important rights, such as the rights to assembly and association, can be suspended "in time of public emergency" or to protect "national security, public order or public health or morals", and it is the state that decides whether such an emergency exists.

The other instruments, for example the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners, are not treaties. But it has been argued that these instruments also reflect a core minimum of rules of behaviour that the vast majority of the international community has approved. Others maintain that these instruments provide necessary detail to the somewhat sweeping provisions of the treaties and therefore elucidate pre-existing treaty obligations. While perhaps not yet having the full force of a treaty obligation, the practitioner in the field should cite these instruments whenever possible and try to introduce these standards to the jurists and law enforcement officials in the mission country and urge them to comply with the various provisions.

**ANNEX 2: *Selected articles from some of the relevant instruments***

- Covenant on Civil and Political Rights: Articles 4, 6, 7, 9, 10, 11, 14 and 16.
- Convention Against Torture: Articles 1, 2, 4, 5, 10, 11, 12, 13, 14, and 15.
- Standard Minimum Rules for the Treatment of Prisoners: Rules 7, 8, 9, 27, 33, 44, and 46.
- Code of Conduct for Law Enforcement Officials: Articles 3, 5, 7 and 8.
- Basic Principles on the Role of Lawyers: Articles 1, 3, 5, 7, 8, 16 and 18.
- Guidelines on the Role of Prosecutors: Articles 4, 5, 10 and 15.
- Basic Principles on the Independence of the Judiciary: Articles 1, 4, 5, 7, 8 and 15.
- Convention on the Rights of the Child: Articles 3, 19 and 40.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War: Articles 3, 33 and 34.









*The Norwegian Centre for Human Rights* aims to contribute to the realisation of internationally recognised human rights, through research and reporting, teaching, advisory services, information and documentation. The Centre was founded in 1987 and is organised as an interdisciplinary centre under the Faculty of Law at the University of Oslo. Since 2001 the Centre has been designated as the National Institution for Human Rights in Norway.

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