**Documenting Incidents** 4

**of Abuses**

The ﬁrst chapter of this manual identiﬁed some of the abuses perpetrated in armed conﬂict situations. The fol- lowing is a list of some of the types of abuse that are most likely to affect women.

* Killings of civilians and non-combatants;
* Deliberate or indiscriminate attacks;
* Torture and CID treatment;
* Hostage taking;
* Sexual and other crimes based on gender, including rape, sexual slavery, enforced prostitution, forced preg- nancy, enforced sterilization, other forms of sexual violence, gender-based persecution and enslavement;
* The use of child soldiers.

This list is, however, far from complete, and you should refer to the Geneva Conventions and other instruments identiﬁed in the ﬁrst chapter of this manual for a complete list of prohibitions.

It is beyond the ability of most individuals and organiza- tions to document allegations of all abuses in armed con- ﬂict situations. You may be obliged to focus your efforts on those abuses that you are best equipped to investigate and/or which meet the mandate of your organization.

This chapter recommends approaches to some of the steps involved in the documentation of speciﬁc abuses, namely,

recording allegations, identifying patterns, fact-ﬁnding and assessing the allegations.

It begins with some suggestions regarding your own secu- rity and that of the contacts and witnesses you meet with and interview. Security concerns should remain a constant concern throughout the monitoring and documentation phases, and especially in the context of fact-ﬁnding.

SECURITY SUGGESTIONS

These suggestions are minimal ones. If you are working in a conﬂict zone or planning to travel to one, you should consult the security manuals and security guidelines developed by humanitarian organizations, local organizations and media, United Nations agencies, and others.

1. **Conduct a thorough risk assessment**
   * List all possible security concerns for yourself, your team, your contacts, victims and eyewitnesses.
   * Develop contingency plans to deal with each one of them.
   * If possible, provide yourself with special communica- tion and protective equipment (i.e. satellite phone; ﬂak jackets).
   * Develop an evacuation plan.
   * Establish clear lines of communication within the team, including emergency contacts outside the coun- try or area.
   * Ensure that your insurance policy covers the risks involved.
2. **Seek up-to-date and informed advice**
   * **Local knowledge** is key. Sources of such knowledge may include contacts in the area or country, local

journalists, humanitarian NGOs, UN agency ﬁeld of- ﬁces, the ICRC ﬁeld ofﬁces, embassies and consulates. In addition, you should also contact the international ofﬁces or headquarters of organizations and agencies present in the ﬁeld.

– **Ensure that your information is up to date.** Situa- tions can change rapidly and you must ensure that the information you are receiving is up to date. For instance, if you decide to travel to a speciﬁc area, make sure that the itinerary proposed is the safest at the time you wish to travel.

1. **Identify alternatives**
   * If access to and your presence on the scene entails many risks, identify alternative means of carrying out the research. For instance, you may be able to rely on a conﬁdential local contact to bring possible witnesses outside the area. In addition, you may be able to interview people who have recently ﬂed the areas where the abuses have taken place. They may be in refugee or IDP camps, where access may be easier.
2. **Precautions when planning to travel**
   * Find up-to-date information on the hierarchy of mili- tary and political authority in the area.
   * Find up-to-date information on the level of hostili- ties (with respect to aerial bombing, indiscriminate attacks, landmines, etc.).
   * Find up-to-date information on the locations of con- ﬂict and how it is spreading.
   * Make sure that the proposed itinerary is safe.
   * Find out how many check-points you will have to go through, whether or not you need to disguise yourself, people’s reactions and feelings, whether it

would be safer to send someone of a different ethnic group or political proﬁle, etc.

* + - Be prepared with responses regarding the reasons for your visit and what you are doing, in case people ask you difﬁcult questions or appear suspicious of you.
    - If necessary, get ofﬁcial written authorization.
    - Assess the implications of going to the scene as part of a convoy (it may be safer but you may not be able to conduct interviews as you wish).
    - Respect curfews.
    - Never travel after dark.

1. **Precautions to take when meeting sources**
   * Do not pressure sources into meeting with you if they are afraid.
   * Let your sources know you may be under surveillance.
   * Ensure that your sources are aware of the risks in- volved in meeting with you.
   * Be careful about choosing where to meet your sourc- es; let the contact suggest a meeting place.
   * Never keep conﬁdential information in a hotel room or divulge such information over a hotel telephone.
   * When going to meet your sources, ensure to the best of your ability that you are not being followed — use more than one taxi, walk part way, etc.
   * Discuss security risks with your sources; do not make promises you will not be able to keep.
   * Alert trusted individuals or organizations (i.e. the ICRC, international human rights organizations) of possible security risks to your sources.
2. **Precautions with information**
   * Carry information and interviews with you.
   * Ensure that the sources of your information are never mentioned or revealed.
   * Be prepared to destroy information and ﬁlms.
   * Memorize conﬁdential information, encrypt others.
   * Use technology to transmit encoded and encrypted data.

### **Recording and Monitoring Allegations of Abuse**

Once the focus of your work has been established, it is important to monitor all cases of abuse that come to your attention through the media, witnesses’ accounts, survivors of incidents or refugees. You will not always be able to investigate all these incidents. In fact, it may only be pos- sible to collect evidence long after the conﬂict has ended. However, keeping track of all allegations of abuse is an essential task. It enables you to assess the evolution of the conﬂict, to assess whether the allegations or cases of abuse are increasing or decreasing, to understand the patterns of incidents (see below), to alert the international com- munity of allegations, to build cases that may be useful for investigators when the circumstances allow for proper fact-ﬁnding to take place, in addition to aiding national or international trials against perpetrators.

To facilitate systematic recording, it is a very good idea to design a form to record individual cases of alleged viola- tions of international humanitarian law that are brought to your attention through the media, family members, witnesses, etc.

You will ﬁnd an example of such a form below. You will need to adapt it to the speciﬁc abuses being recorded, the circumstances of the incident and the nature of the conﬂict.

1. **Victim identification information (one for each victim)**

Name (last and ﬁrst names, nickname):

Date of birth or age:

Gender:

Occupation:

Family status:

Address:

Nationality:

Religion:

Ethnicity:

Other identiﬁcation markers:

Physical description or photograph:

1. **Time and location of the incident**

Date, time and year of the alleged incident: Province:

District:

Town/village or nearest town/village:

Street address if applicable:

1. **General circumstances surrounding the incident** Which armed faction was in control of the area? What is the proﬁle of the local population?

Are they more aligned to one faction than another? Did any speciﬁc incidents precede the reported abuses?

Did the incident happen at a time of hostilities between armed factions?

If so, what form did these hostilities take?

Was it at a time of negotiations between factions?

ABUSE REPORT FORM

1. **General data**

Date:

File number:

Information compiled by:

Type of incident (rape, killing, abduction etc): Primary source of information:

Visit to the scene: No Yes Carried out by on Witness interviews: No Yes Carried out by on

1. **Nature of the incident**

Number of victims:

Precisely what happened to them?

Was anyone

* + killed?
  + raped or the victim of other forms of sexual violence?
  + a victim of other forms of torture?
  + taken hostage?
  + abducted?
  + a victim of other abuses?

Was any property

* + damaged?
  + destroyed?
  + stolen?
  + conﬁscated?

1. **Alleged perpetrators**

Who is allegedly responsible for the incident? Reported evidence supporting this allegation:

1. **Evidence**

Are there any witnesses? If yes, get names, addresses, etc.:

Forensic evidence:

Photographs (for instance, from a newspaper): Other:

1. **Official responses**

Has either of the armed forces made any statements about the incident?

How did they react?

Were any measures subsequently taken? Did they promise any investigation?

Has anyone been arrested?

Have you been able to contact representatives of the al- leged perpetrators to encourage a response?

### **Identifying Patterns**

Patterns constitute one or several typical features of the abuses you have recorded. You identify patterns by review- ing and analyzing a number of cases over a given period of time and identifying the common elements among all cases, such as where the abuses took place, data and time and circumstances.

The identiﬁcation of patterns serves three main purposes. First, it allows you to build a ‘typical’ picture of how, why and where certain types of abuses are taking place, which

helps you to assess whether allegations reported to you are consistent with what you know of such abuses. Second, it permits more informed interviews of witnesses and victims: if you know that certain types of abuses are likely to follow a given scenario, you may ask (more) relevant questions. Interviews are always easier when you have an idea of what you are looking for (Beware, however, of guiding the interviewee towards speciﬁc answers). Thirdly, it allows you to assess the evolution of a conﬂict: you may record more abuses, or more speciﬁc abuses occurring at certain periods; You may notice that public advocacy has an impact on the incidence of some forms of abuses; etc. This section provides some examples of patterns.

#### Patterns respecting the identity of the victims

The victims themselves may have aspects in common, such as the type of political activities they are involved in, their professional activities or occupations, ethnicity, age group, gender, sexual orientation, or whether they are residents of clearly deﬁned areas.

#### Patterns respecting the locations abuses are committed

The abuses that have been reported may overwhelmingly take place in speciﬁc places, such as regions, cities, villages or localities, neighbourhoods, speciﬁc detention centres, national borders, refugee or IDP camps and certain sites within the camps, marketplaces, ﬁelds, roads, wells, and other locations where women are likely to go in the course of their domestic activities.

#### Patterns respecting the methods used to commit the abuses

Quite often, the methods used by the perpetrators are consistent, in that the same or similar methods may be used to commit killings, sexual and gender-based crimes, other forms of torture, arbitrary arrests, etc.

For instance, all killings reported to you may have been preceded by similar forms of torture or mutilation, or the same weapons may have been used.

Acts of sexual violence may involve a similar ‘scenario’: acts, rituals, threats, behaviours and statements, all of which must be recorded.

#### Patterns respecting the circumstances of abuses

The circumstances immediately preceding or following abuses may also be quite similar and, as such, present a pattern. For instance, they may especially take place during, after or following the declaration of a state of emergency, elections, curfews, declarations by the leader- ship of one or the other parties to the conﬂict, media reports of abuses or incitements to violence, military pres- ence nearby (especially important in the investigation of indiscriminate attacks), troop movement, military opera- tions or reprisals in or around the location abuses were committed, military victory or defeat.

In some cases, the time of the year (season or month) in which abuses have been committed may also present a pat- tern. For instance, during rainy seasons or in winter, you may notice a decrease in some instances of abuse, linked in part to the difﬁculties in moving, travelling, and escap- ing. You may also notice that farming cycles may effect

the incidence of abuse: armed forces may wish to prevent farming activities or they may wait until after harvest time, so they can loot food.

#### Patterns respecting the identity of alleged perpetrators

By systematically recording abuses, you may also be able to identify a pattern with respect to the identity of the alleged perpetrators, including speciﬁc troops or forces, speciﬁc individuals, speciﬁc ranks (i.e. commander or sol- dier), individuals with or without uniforms and the number of individuals involved in the abuses.

#### 2.6. Patterns respecting ofﬁcial responses to alleged cases

A pattern may emerge over time in terms of the responses of the armed forces to the allegations of abuses, including statements following the allegations, ofﬁcial investigation or lack of investigation, nature of the investigations, na- ture of the procedures, the absence or nature of prosecu- tions, the identity of the courts responsible for the prosecu- tion and the absence or nature of the verdict.

### **Conducting Fact-ﬁnding55**

Fact-ﬁnding consists of investigating a speciﬁc incident or allegation of human rights violations, collecting or ﬁnding a set of facts that proves or disproves the occurrence of an incident and how it occurred and verifying allegations or rumours. You should ask yourself the following four questions in your investigation of the alleged abuses:

1. This section is based on: Agnès Callamard, Ukweli: *Monitoring and Documenting Human Rights Violations in Africa*, Amnesty International Dutch Section and CODESRIA: Amsterdam and Oxford, 2000, pp.11- 14.

* Is it safe to go to the scene, and if not, are there alter- native places where I can gather further information and evidence?
* What kind of evidence do I need in order to assert that an abuse took place?
* Who is most likely to give me access to this evidence?
* How can I assess the reliability of my data?

#### Risk-assessment

Carrying out a thorough assessment of risks is primordial. For details on what steps you should take, you should refer to the box at the beginning of this chapter.

#### Information and evidence required

As highlighted in the ﬁrst chapter of this manual, IHL provides for many prohibitions, each one of them with a speciﬁc deﬁnition and standard of proof. Consequently, the evidence required differs, depending on whether you are investigating a deliberate killing of a civilian, an indis- criminate attack, rape, sexual slavery, or any other types of abuse.

One of the most difﬁcult aspects of the investigation consists of establishing responsibility: victims may have been killed, there may be several armed forces in the area, victims may be unable to identify the individual perpetrators by name, etc.

In order to prepare for fact-ﬁnding, you must therefore ask yourself the following questions:

* What do I already know about the case?
* What do I know about the patterns of such types of abuse?
* What information is missing?
* What kind of evidence do I need to demonstrate that such abuses have taken place?
* How can I get the information and evidence?
* Who is most likely to give me the information and evi- dence required?

#### Background preparation

You must be knowledgeable about IHL and more speciﬁ- cally, the IHL standards (and others as appropriate) related to the abuses you are going to investigate. A thorough knowledge of the patterns related to the allegations under investigation is also essential. To that end, a useful plan of attack consists of listing everything you already know about the abuses, and everything you already know about the particular location or region, recent military incidents, security questions, etc. Before arriving on the scene, be prepared by gathering all necessary information. It is also a good idea to seek expert advice. To that end, consult with forensic pathologists, military experts, and lawyers. Prepare your interview format and seek input from contacts and experts. If possible, have pictures or sketches of the uni- forms used by various parties to the conﬂict, and informa- tion on how ranks are displayed. Eyewitnesses may be better able to identify who the perpetrators were.

#### Preparing a delegation

The investigative team should not be constituted of indi- viduals who may be perceived as partial by the informants because of their ethnicity, religion, or known political afﬁli- ation. As far as it is possible, identify team members who are impartial but who will also be *perceived* as impartial by the informants.

Your delegation should be formed of experienced people. Send trained and credible researchers.

Identify the type of expertise that will be most needed during the investigation. For instance, to investigate at- tacks, you may need the assistance of a military or weapon expert. To investigate sexual violence, you may need to be accompanied by women with expertise in such forms of violence.

Your delegation should be gender-balanced, including both women and men.

As far as possible, you should also seek delegates who are representative of the various ethnic and language groups in the area you are investigating. If you have little resources and few delegates, identify the person who will be best equipped to deal with ethnicity, language, or other impor- tant factors.

#### Contacts and sources of information

Before departure, list all possible contacts and sources of information you may need to interview and meet in order to investigate and corroborate the information.

Identify who it may be more appropriate to meet ﬁrst, provided, of course, that you have the luxury of setting up and organizing meetings. In any case, you should decide whether and at which point in the investigation you will meet with security ofﬁcials. (See below for a general list of contacts and material evidence. This list can be adjusted depending on the nature of the abuses being investigated and the local circumstances.)

For information on interviewing victims and witnesses, please refer to Agnès Callamard, *Methodology for Gender-*

*Sensitive Research*, ICHRDD: Montreal, 1999, Chapter 5, entitled “Gender-Sensitive Approach to the Gathering of Information.”

#### Knowledge and awareness of the situation

* Rely on local knowledge, ‘read’ the overall mood, be on your guard and do not hesitate to leave the scene whenever you feel that something is wrong.
* Be observant of your surroundings.
* Be prepared to respond to requests or questions regard- ing your presence and activities.
* Seek all necessary permission (i.e. from the refugee or IDP camp authorities); pay courtesy visits to ofﬁcials when it is strategic and safe to do so.
* Inform someone you trust of where you are going and your plans.
* Ensure that you can guarantee conﬁdentiality and ano- nymity.
* Ensure that you can refer victims and witnesses of abuses to the organizations or individuals in the region that can provide them with the attention, support and services required. If possible, you should organize such services and/or inform relevant organizations.

### **Assessing Allegations**

**Individuals and/or groups**

* Victims
* Eye witnesses
* Other witnesses
* Relatives
* Community leaders
* Religious institutions
* Lawyers
* Journalists
* Medical personnel
* Civilian personnel, such as Red Cross/Red Crescent personnel
* ICRC personnel
* Local human rights activists
* Members of political parties, civil rights groups, trade unions, ethnic groups, etc.
* Members and ofﬁcials of the police force
* Prosecutors
* Other police/judicial representatives
* Members and ofﬁcials of the military forces
* Members and ofﬁcials of armed opposition groups

**Material Evidence**

* Hospital and/or autopsy records
* Court records
* Police reports
* Ofﬁcial acknowledgement or response to the alleged viola- tions
* Report of independent investigative bodies
* Weapons and ammunition left behind, bullet shells
* Documents
* Photographs, videos, etc.
* Scars and wounds

After you have recorded abuses, identiﬁed patterns and possibly conducted fact-ﬁnding missions, you must then assess the information, determine the likelihood that the reported abuse took place and identify possible responsibil- ity for it. Once you have reached a conclusion regarding the validity of the allegations, you may decide to go public, launch advocacy campaigns, or seek redress and repara- tions. Some of the issues guiding your assessment are discussed in this section.

#### Violations of international humanitarian standards and/or human rights standards

In order for you to decide whether the allegation or inci- dent violates humanitarian or human rights standards, you need to know the legal standards deﬁning the abuse and the evidence required. You then need to assess how the evidence you have gathered meets the standards estab- lished in the legal texts.

For instance, not all killings are prohibited under IHL. Armed forces are not prohibited from killing individuals taking a direct part in hostilities, such as soldiers and members of armed opposition groups. As long as those taking part in hostilities are not prisoners or have not put down their arms, they may be lawfully killed, according to the laws of war (Articles 43-47 from Optional Protocol 1). Whenever you investigate killings in armed conﬂict situations, you therefore need to ask yourself whether the victims could be considered as ‘legitimate’ targets according to the laws of war.

The previous chapters, and Chapter One in particular, pro- vide information regarding the type of evidence required

under IHL and/or human rights law and the assessment required to prove speciﬁc abuses.

#### Reliability of primary sources

The allegations of violations of humanitarian or human rights standards will often come from organizations and individuals who have conducted their own fact-ﬁnding, or from the media. You should establish a record of these contacts with respect to the consistency or accuracy of information they have provided in the past, their political agenda and whether it may have affected the nature of the allegations.

#### Consistency of the allegation

You should compare an allegation with the information you have and your knowledge, i.e. whether an allegation ‘ﬁts’ with what you know about the speciﬁc aspects of these types of abuse.

#### Validity or consistency of medical and other evidence

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

Whenever possible, you should get the assistance of medi- cal experts.

#### Reliability of testimony

If you have interviewed eye-witnesses, you must assess the interviews and cross-check the facts. Ask yourself if the testimonies are similar, or if they contradict each other.

Pay special attention to the following:

* The witnesses’ accounts of the circumstances, location, procedures, individuals involved, etc. Are they consis- tent with what others who witnessed similar events at the same time and place say or with the patterns known to you?
* The witnesses’ accounts of the sequence and timing of the events.
* Whether the testimony is consistent with other testi- mony and with any previous pattern of political killings in the country/region. Whether the witnesses contradict each other when asked the same or similar questions.
* If there are inconsistencies in testimonies, whether they are the result of the witnesses’ dishonesty or of memory lapses, exaggeration, unsubstantiated rumours, cultural differences and misunderstandings between the interviewer (or interpreter) and the interviewee.

#### Assessment of responsibilities and identiﬁcation of perpetrators

This section discusses the various aspects involved in as- sessing the responsibility of the armed forces.

#### The context

You should investigate whether there are indications of increasing targeting of civilians, speciﬁc individuals or groups by the armed forces. Information about this is often available from the following sources:

* + - * Statements made by the leadership of armed forces and media reports;
      * New laws or decrees or police measures suggesting that speciﬁc individuals are targeted or activities are prohibited;
      * Declaration of a state of emergency;
      * Previous attacks and/or killings of speciﬁc individuals (i.e. patterns);
      * Targeting of members of certain social or political groups, or people in a particular geographical area.

#### The circumstances

There are often circumstances that point to the involve- ment of specific armed forces or troops. The following questions are useful in guiding your investigation:

* + - * Were speciﬁc troops seen around the location of the abuses? Where? When?
      * Were ‘strangers’ seen around the scene? What were their characteristics (motor vehicle, clothes, etc.)?
      * Did the perpetrators operate with apparent impunity, for example, by travelling during curfews or driving vehicles through check-points without difﬁculty?
      * Was the area where the abuse took place under the authority, surveillance or control (formal or informal) of a speciﬁc troop?
      * Have victims been detained, then ‘disappeared’ for a period and ﬁnally been found dead? Has there been any formal or informal acknowledgement of detention?

#### The method

Abuse often occurs in a particular manner or speciﬁc meth- ods are used. You can use knowledge of patterns to dis- cern whether it suggests the involvement of speciﬁc secu- rity forces or opposition groups. You should investigate whether a particular method of abuse had been used before by a speciﬁc branch of security forces or opposition groups

and whether the methods of sexual violence or other forms of torture are ordinarily used by speciﬁc forces.

#### The victim(s)

In some cases, you may be able to discern whether there was something about the victims that suggests speciﬁc armed forces may have targeted them. For instance, there may be an apparent motive for the abuse. You should verify if these individuals had been previously threatened or targeted and by whom. You should also verify whether the victims had been subject to regular short-term detention or questioning by police or military forces and whether they were killed shortly after a visit to a police station or army camp.

#### Responses of military or political authorities

In situations of abuse, the response of military or political authorities can give you insight into whether these au- thorities condone the abuse. Questions that you can ask yourself include the following:

* + - * Did the political or military leadership try to ‘justify’ the abuses in any way, or vilify the victims?
      * Did it claim responsibility for the abuse? Did it deny any responsibility for the abuses?
      * Did it admit or agree to carrying out an internal inves- tigation?

In the case of killings or attacks, did it claim that the target was ‘legitimate’ according to the laws of war? Did it claim that all precautions had been taken to avoid unnecessary civilian casualties but that collateral dam- ages can never be fully avoided?