



UGANDA HUMAN RIGHTS COMMISSION



INVESTIGATORS' HANDBOOK

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
APT	Association for Prevention of Torture
DCILs	Directorate of Complaints, Investigations and Legal Services
JLOS	Justice Law and Order Sector
NGOs	Non-Governmental Organizations
NHRIs	National Human Rights Institutions
OHCHR	UN Office of the High Commissioner for Human Rights
PWDs	Persons with Disabilities
UHRC	Uganda Human Rights Commission
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UPDF	Uganda Peoples Defence Forces

FOREWORD

The Uganda Human Rights Commission (UHRC) was established in 1996 with a general mandate of protecting and promoting Human rights in Uganda. One of its core functions is to investigate at its own initiative or on a complaint made by any person or a group of persons against the violation of any human right. Such complaints can be made at any of its ten regional offices including Arua, the Central Region in Kampala, Fort portal, Gulu, Hoima, Jinja, Masaka, Mbarara, Moroto and Soroti.

In the performance of its functions, the Commission exercises powers of court to issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigations by the Commission; question any person in respect of any subject matter under investigation before the Commission; require any person to disclose any information within his or her knowledge relevant to any investigation by the Commission; and commit any persons for contempt of its orders. However, throughout this period, the Commission has not had a specific document to guide its investigations hence the need for the Human Right's Investigators' Hand book. The handbook has been developed drawing on the Commission's vast experience and long practice in conducting investigations, research and training. The specific objective of the hand book is to provide a guiding tool for receiving and investigating complaints at the Commission.

I would like to acknowledge and appreciate all the staff of the Commission who participated in putting this handbook together. Special thanks go to Ms Ruth Ssekindi, the Director Complaints, Investigations and Legal Services and the members of the working group that put together this piece of work (including Mr Kamadi Byonabye, Mr Wilfred Asiimwe, Ms Ida Nakiganda, Ms Rebecca Tino and Ms Moreen Kiiza); all Regional Human Rights Officers and Human Rights Officers in-charge of Complaints and Investigations; and the former Director of Regional Services – Mr. George Paliel Ufoyuru. My appreciation also goes to the Office of the High Commissioner for Human Rights (OHCHR) and the Association for the Prevention of Torture (APT) which provided financial and technical support towards the development of this handbook.

I urge all Staff of the Commission to familiarize themselves with the contents of this handbook so as to effectively conduct human rights investigations – one of our core mandates.



Med S.K. Kagga

Chairperson, Uganda Human Rights Commission

1.0 INTRODUCTION

1.1 Background and justification for the Hand book

The Uganda Human Rights Commission was established in 1996 with a general mandate of protecting and promoting human rights in Uganda. One of its core functions is to investigate at its own initiative or on a complaint made by any person or a group of persons against the violation of any human right. Over the years, the UHRC has continued to receive and investigate complaints of human rights violation but it lacked a guide on how to effectively conduct investigations.

The handbook is a guide for UHRC human rights investigators. It is a practical tool that will serve as an essential guide on how to effectively conduct investigations. Through this handbook, the UHRC provides its staff with practical knowledge necessary for investigating human rights violations and abuses.

The handbook is not intended to replace the Commission's general guidelines on complaint handling and investigations as contained in the Complaint Handling Procedures Manual; but rather to complement them with modifications to suit the handling and investigation of complaints on alleged human rights violations.

1.2 Definition of key terms

In this handbook, unless otherwise specifically stated or the context otherwise requires;

“Act” means the Uganda Human Rights Commission Act Cap 24, Laws of Uganda 2000.

“Administrative decision relating to complaints” means a conclusion reached regarding a human rights complaint on issues such as admissibility, mediation, referral or closure.

“Admissibility Criteria” means standards or principles used to determine whether the complaint falls within the Commission's jurisdiction under Articles 52 and 53 (4) of the Constitution and Sections 8 and 25 of the Act.

“A fact” means something that actually exists; an aspect of reality.

“Allegation Letter” means a letter from the Commission to the Respondent, giving notice of a complaint lodged and seeking a response to the same.

“Commission” means the Uganda Human Rights Commission.

“Complainant” means a person, a group of persons, an organization or an association who alleges a human rights violation and reports to the Commission.

“Complaint handling procedure” means the mechanism for handling an allegation of human rights violation or abuse at the Commission.

“Complaint” means an allegation of a human right violation addressed to the Commission.

“Constitution” means the Constitution of the Republic of Uganda, 1995 as amended.

“Human right” means any right guaranteed under the Constitution and or any international human rights instrument ratified by Uganda.

“Human right abuse” occurs when a non-state actor breaches the rights of any person, or group of persons that are guaranteed by national, regional or international human rights law.

“Human right violation” occurs where state actors breach the rights of any person or group of persons, guaranteed under national, regional and international human rights law. It also includes acts and omissions directly attributable to the State, involving the failure to implement legal obligations derived from human rights standards.

“Incident scene” means a place or location where a human rights violation is alleged to have occurred.

“Investigation” means a process of establishing facts to determine whether there has been a human rights violation.

“Investigations Officer” means a person charged with the responsibility of investigating a complaint.

“Investigations Report” means a report on findings of an investigation

“Physical evidence” includes documentary evidence, photographic or video evidence which supports or otherwise a complaint.

“Respondent” means the person or entity against whom a complaint of violation of a human right has been lodged with the Commission.

“Systemic Investigations” means an in-depth examination with a wide impact into an emerging trend or pattern or practice as a result of legislation, policy, practice or strategies that are either non-existing or if existent, defective or unimplemented.

“Witness Statement Form” means a form approved by the Commission used to record statements from witnesses.

2.0 LEGAL OBLIGATIONS TO INVESTIGATE

2.1 The Constitution of the Republic of Uganda.

Article 51(1) of the Constitution establishes the Commission as an independent national human rights institution. The Commission is specifically mandated under Article 52 (1) (a) of the Constitution to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right.

Under Article 53(1) of the Constitution, it is provided that in the performance of its functions, the Commission shall have powers of court to:-

- a) Issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigations by the Commission;
- b) Question any person in respect of any subject matter under investigation before the Commission;
- c) Require any person to disclose any information within his or her knowledge relevant to any investigation by the Commission; and
- d) Commit any persons for contempt of its orders.

However, under Article 53 (4), the Commission shall not investigate the following:

- (a) Any matter which is pending before a court or judicial tribunal;
- (b) A matter involving the relations or dealings between the government and the government of any foreign state or international organization; or
- (c) A matter relating to the exercise of the prerogative of mercy.

3.0 HUMAN RIGHTS INVESTIGATIONS

3.1 Human Rights Investigation

Every investigation attempts to uncover the truth of a specific event or incident. Most investigations are initiated in response to the receipt of an allegation that some wrongdoing has occurred. As such, human rights investigations are intended to collect evidence in an alleged human right violation. Each allegation poses key questions which the investigator should attempt to answer through thorough investigations into the matter. These questions include “what, who, when, where, why and how.” For example:- what right was violated?, who violated the right?, When was the right violated?, Where did the incident occur?, Why was the right violated?, and how was the right violated?.

3.2 Who is a Human Rights Investigator?

A Human Rights Investigator is a person assigned to find out facts about an alleged human rights violation in order to establish on a balance of probabilities whether a human rights violation occurred or not.

3.3 Purpose of Human Rights Investigations

Human Rights Investigation is a process of establishing facts to determine whether there has been a human rights violation. It is an objective evaluation of information against a framework of human rights standards.

The purpose of investigating alleged human rights violations is to:

- a) Clarify facts
- b) Establish and acknowledge individual and State responsibility for Victims and their families (Identify the Perpetrator)
- c) Identify measures to prevent reoccurrence
- d) Facilitate prosecution or disciplinary sanctions
- e) Demonstrate the need for redress for the victims from the perpetrator, including the State.

Therefore, at a minimum, a human rights investigation should seek to:

- a) Identify victims of human rights violations where they are absent,
- b) Obtain statements from the victims,
- c) Recover and preserve evidence – such as medical evidence if any, lock up registers, court bail/police bond forms, photographs etc.
- d) Identify possible witnesses and obtain statements from them,

- e) Determine how, when, and where the alleged violations occurred as well as any patterns or practice that may have caused it.
- f) Obtain statements from Respondents and their Witnesses.

Therefore, investigations may take the form of case by case investigation, systemic investigation, desk research, field investigations, surveys, public hearings or Commissions of inquiry.

3.4 When to Investigate

Investigations may commence in any of the following circumstances;

- (a) Upon lodgement of a complaint,
- (b) Upon reasonable suspicion of a human right violation,
- (c) Upon a Whistle-blower's complaint, or
- (d) On notification by a third party.
- (e) On notification from media reports.



3.5 Steps in handling human rights violations

Human rights investigations should be conducted in accordance with the following steps.

Step1: Complaint receipt

- a) This may be lodged by any person or group of persons or institution or initiated by the Commission.
- b) Record as much information as possible about all complaints that are reported. This is not only for purposes of investigating individual complaints but also for purposes of analysing trends in reporting human rights violations.
- c) Establish if the facts presented indicate an allegation of a violation of a human right (by analysing the elements of the violation vis-à-vis human rights standards) and if so, whether it falls within the mandate of the Commission to investigate.
- d) Determine the next course of action; whether to pursue field investigations or rely on physical evidence and witnesses provided by the alleged victim.

The Investigator should align his or her approach to investigations according to the available technical expertise or skills, resources, type of Respondent, vulnerability of the victim and type of violation.

Step 2: Develop an Investigations plan

- a) Identify the objective of the investigation
- b) Determine the scope of investigation - Strictly fact-finding or fact-finding with conclusions
- c) Be aware of procedural requirements
 - Review Rules, Policies and Regulations
 - Review institution policies and guidelines
- d) Take any necessary interim steps
 - Requisition for funds;
 - Schedule changes if any,
 - Halting any related processes likely to affect the investigation
- e) The Investigator should in consultation with his or her Supervisor explore the option of facilitating Witnesses to record statements at UHRC office other than conducting field investigations. This is more cost effective and enhances prompt investigation of complaints.

The Investigator should also consider and prepare to handle the following factors that may affect the outcome of his or her investigations:-

- a) Protecting him or herself from threats and intimidation;
- b) Witness protection and support in view of intimidation from the implicated Respondents;
- c) Gender, cultural, religion and language diversities and sensitivities;
- d) Authenticity of the information in relation to information given in expectation for money payment;
- e) Timeliness of the investigations to preserve the cogency of the evidence.

Step 3: Gather Relevant Evidence including:

- a) Documentary evidence;
- b) Physical evidence;
- c) Conduct interviews and take statements (Do not forget to properly document your investigation);
- d) Keep files in safe custody.

Step 4: Identify Potential Witnesses such as,

- a) Complainant (if there is one);
- b) Respondent;
- c) Eyewitnesses or Bystanders;
- d) Experts or Persons with knowledge;
- e) When identifying witnesses, one can use focus group discussions.
- f) All the witnesses identified must be credible.

Step 5: Prepare for Interviews

- a) PREPARE, PREPARE, PREPARE - Preparation is the most important part of the interview;
- b) Review policies, laws and guidelines that form the basis of the issue at hand;
- c) Understand what facts are necessary for you to reach any conclusions or make resolutions;
- d) Prepare an outline of questions;
- e) Establish the general order of witnesses prior to starting the interview;
- f) Start the interviews.

4.0 EVIDENCE

4.1 Role of Evidence

Evidence is the most important aspect of any investigation. In terms of definition, evidence is anything that can provide information about the incident being investigated. It may include physical objects; the investigator's observations, testimonies of witnesses and respondents or suspects; documents and scientific analysis. In other words, evidence may come in many forms from a wide variety of sources.

The investigator should know that there is always evidence in every case. It is impossible to commit a wrongdoing and leave no trace of evidence. The task therefore is on the investigator to collect the evidence and document it. If the investigator fails to find the evidence, it is not because there is no evidence but it simply means that the investigator could not find it.



4.2 Types of Evidence

Every piece of evidence directly or indirectly proves a fact. Any evidence that directly proves a fact without the need for logical deduction is called direct evidence. On the other hand, evidence that indirectly proves a fact is called circumstantial evidence. Indirect evidence, when considered in light of the circumstances and common sense, indirectly proves a fact. As such, in most cases, there will be both direct and circumstantial evidence. The investigator should try to gather all the evidence regardless of type.

All evidence can be classified into three groups of either physical evidence, testimonial evidence or documentary evidence.

1. **Physical evidence:** - refers to any physical object that can provide information about an event. It may include weapons that were used, clothing, or the area where the violation occurred.

2. Testimonial evidence: - includes statements of victims, witnesses and respondents or suspects. The accuracy of the facts testified to depend completely on the honesty, perception and communication skills of the victim, witness or respondent.
3. Documentary evidence: - refers to letters, forms, documents, reports, receipts, business records, public records, media accounts such as printed, radio and television accounts, government edicts, rules of procedures etc. Documentary evidence is a combination of physical and testimonial evidence in that although the document itself is a piece of physical evidence, the information contained in the document is testimonial in nature.

5.0 STANDARDS FOR CONDUCTING EFFECTIVE INVESTIGATIONS

5.1 Standards of effective investigations

For an investigation to be effective, it must be prompt, impartial, thorough and independent.

- a) **Prompt** – promptness does not only relate to the time within which the investigation is commenced, but also the expediency with which it is concluded.
- b) **Impartial** – Impartiality means free from undue bias. It relates to the proceedings or deliberations of the investigating body in respect of any suspicion of, or apparent bias that may arise from the conflict of interests. An Investigator must therefore remain professional; and he or she should be explicitly required to disclose any relationship with the parties involved.
- c) **Independent** - Independence denotes that the investigation is not in the hand of bodies or persons who have close personal or professional links with the alleged Perpetrators. Some of the principles that guarantee independence include legal independence (investigating Agency established through a Constitution or Legislation), operational independence (freely determine its priorities, programs and projects), policy independence (determine practice and procedures), financial independence and independent members.
- d) **Thorough and effective** – Whereas the term “thorough” generally relates to the scope and the nature of the steps taken in carrying out an investigation, “effective” relates to the quality of the investigation. Investigations must seek to ascertain the facts and establish the identity of any alleged Perpetrators.



5.2 Planning for effective investigations

In order to conduct effective investigations, an investigator should consider the following:

- a) Plan an investigation;
- b) Understand the culture and environment in which they operate;
- c) Identify issues that require investigation;
- d) Frame issues to ensure that the investigation can be completed within the shortest time possible using available resources;
- e) Identify potential sources of evidence;
- f) Use resources judiciously;
- g) Identify, obtain, examine and preserve documentary, physical and digital evidence;
- h) Assess evidence fairly;
- i) Write clear and comprehensive reports, as concisely as possible.

6.0 SKILLS IN DEALING WITH VICTIMS, WITNESSES AND RESPONDENTS

6.1 What is required to deal with victims, witnesses and respondents?

- a) **Patience:** An investigator needs to be patient to locate, collect and review large amounts of evidence and to deal with the inevitable obstacles and challenges that may be encountered during an investigation.



- b) **Curiosity:** A good investigator should be curious to know what happened, when, where, how and why in order to establish the truth.

- c) **Objective and open minded:** An investigator should be open-minded, objective, unbiased and honourable. The investigator needs to show that he or she is concerned not only with knowing the truth about what occurred, but also who was involved and the motive for the action.



Working with victims and witnesses can either be rewarding or frustrating. It is rewarding where the investigator helps in exposing the injustices endured by victims. It may however be frustrating and can present pitfalls that the investigator must be alert to.

This is especially true where the investigator fails to retain an objective perspective where he knows the victim and has seen the effects, suffering or injuries suffered. It is therefore important for the investigator to always maintain a professional distance from the witnesses and victims in a case and a seasoned objectivity of their claim.

In all this, the Investigator should always act fairly in the circumstances of each case.

- d) **Follow the evidence:** An Investigator should not assume anything. He or she should be prepared to deal with anything that may emerge. He or she should not accept or reject any possible explanation until they have the evidence to do so.
- e) **Scepticism:** A good Investigator should not necessarily accept evidence from anyone at face value. He or she should look for corroboration (confirmation or support by additional evidence or authority) wherever possible.
- f) **Persistence:** A competent investigator never gives up without a very good reason. He or she seeks to get to the truth and does not take 'no' for an answer. He or she should pursue the evidence unless there is a reasonable explanation as to why it cannot be provided.
- g) **Adaptability:** An investigator has to be flexible in approach. Since each investigation presents unique challenges and opportunities, an Investigator should be good at identifying both challenges and opportunities and develop strategies to deal with them.
- h) **Empathy:** An investigator needs empathy and compassion to enable him or her to better engage with and understand the perspectives of the people he or she is dealing with. Empathy can also help build rapport with the parties to a complaint. *Empathy is the ability to relate to the circumstances of the other person, to see things through another's eyes.*
- i) **A thick skin:** An investigator should develop a thick skin to deal with criticism that may arise from those under investigation, those who are culpable, or who may be embarrassed by the outcome of an investigation and seek to undermine the investigation by attacking the credibility, impartiality or professionalism of the Investigator.
- j) **Courage:** An investigator needs a great deal of personal courage to conduct human rights investigations, especially in conflict areas. He or she should be courageous to overcome fear of physical harm or retribution to him or her and the family members.
- k) **Judgment and common sense:** Good judgment and common sense are much underrated qualities. Investigators sometimes have to make difficult decisions, including what issues to investigate, what investigative avenues to pursue and to what extent. As such, they have to be able to justify why they chose to – or choose not to – interview someone. That takes sound judgment, based on common sense.
- l) **Strategic thinking:** An investigator should be able to think ahead and strategically. He or she should be able to answer a range of challenging questions to ensure an effective investigation. Such questions include:
 - What approach will work best?
 - What are the possible obstacles?

- How should a failure to cooperate be dealt with?
- Is it possible to resolve or avoid a potential problem, before it arises?
- How should responsibility for a lack of cooperation and delays be dealt with in order to address the difficulties encountered?

m) Honesty: An investigator should have the integrity to resist the temptation of corruption and act fairly. This is because investigations place Investigators in positions where people, especially those that are subject to investigation try to corruptly influence their behaviour in order to avoid facing legal accountability.

In addition to the above, victims often feel justified in telling lies against their oppressors. However, no matter how much the victim has suffered, the investigator's task is to uncover the truth. The suffering of victims can never justify an investigator's lies, exaggeration of accounts, or failure to eliminate false information. The greatest assistance an investigator can render a victim is a credible, reliable investigation that can be relied on. The investigator must sieve out exaggerations and inaccurate information, and develop evidence based on credible and reliable sources.

n) Live exemplary life: An investigator should seek to be exemplary in upholding the rights that he or she seeks to enforce. As such, he or she should not use illegitimate means to achieve the desired end.

o) Confidentiality: An investigator should maintain discretion and secrecy in all dealings. He or she should safeguard the information they receive in the course of their work. Professionalism also dictates that victims and witnesses should never be part of the investigations team and should not be made part of the any discussion regarding evidence. A witness must also never be used to collect evidence or ask other witnesses questions about the facts of the case.

p) Recognition: – An investigator must recognize that people have differences; physical, generational or cultural, and should not pretend that these barriers have been broken down. He or she should celebrate the differences during the investigation and encourage the victim or witness to let their individualities show. For example, an Investigator should not hesitate to ask someone from another culture about their cultural etiquette and practices useful in your investigation.

q) Fairness: An investigator should treat people fairly and respect the differences that make them who they are. For example, he should not schedule a mandatory meeting or interview on a religious holiday. It demonstrates insensitivity and may breed resentment and foster feelings of disrespect against the investigator.

r) Effective communicator: The investigator should, in all communications be polite and courteous. This increases the chances of getting cooperation from the persons he or she deals with, and the information being sought.

Professionalism also requires that an investigator chooses words carefully. Witnesses and victims are not colleagues or friends; they are people who by virtue of the investigation have a professional relationship with the investigator. It is therefore best for the Investigator to avoid jokes, sarcasm, pithy observations about respondents or other witnesses.

- s) **No empty promises:** The investigator should avoid making empty promises to witnesses and victims. Learn to commit to only those things he or she can surely guarantee. The primary measure a witness or victim will use to assess an investigator is the value of his or her word. An investigator may be harshly judged if he or she fails to keep a promise even if such a promise was not expressly made. *For example in some cultures, even a statement like "I will try..." is likely to be interpreted as a promise;*
- t) **Avoid offering material support to victims and witnesses:** Many of the victims investigators meet or encounter are often needy or have urgent material needs. Whether or not one should offer direct assistance is a difficult question. Often times, the investigator is in the best position to help someone who has suffered a significant loss. Unfortunately, rendering such assistance can affect the integrity and credibility of the investigation itself. Once a victim receives a benefit as a direct result of speaking to the investigator, the victim's credibility is placed into question. In this regard therefore, investigators should always inform victims and witnesses that the information sought is free and solely for the purpose of resolving whether there is a human rights violation.

6.2 DEALING WITH WITNESSES

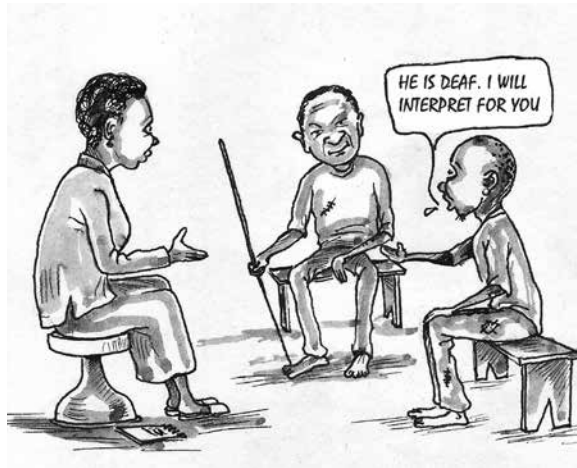
A person identified as a Witness must be competent, mentally fit and physically accessible except in cases of a dying declaration. The Investigator should establish whether a probable Witness is on medication, particularly if it may have affected their recollection of what happened. One should also determine whether a person has a vision or hearing impairment that might impact on their testimony. Witnesses often include:

- People who were present when an incident took place – for example Complainants, Victims, Perpetrators and third parties;
- People who were present during events which are apparently related to an incident such as people who were present when a person, who later died in custody, was arrested;
- Expert witnesses – Medical personnel, Psychiatrists, Ballistic experts, Pathologist and so on;
- People who were not present but may have information to help make an informed judgment about an incident etc.

6.3 WITNESSES REQUIRING SPECIAL ATTENTION AND APPROACH

6.3.1 Vulnerable Witnesses: A Witness may be vulnerable because of situations including, sex, experience, social and emotional maturity, disability, dependency, misplaced sense of guilt, anxiety to please or general fears of unknown consequences.

The Interviewer should therefore be more sensitive to vulnerability issues, and take into consideration their individual rights and dignity in order to enhance cooperation from the Witnesses. *For example the investigator or interviewer should conduct a needs analysis and take into consideration cultural and religious issues, gender, literacy levels, intimidated witnesses, retaliation and the use of support persons and interpreters in addressing vulnerability.*



6.3.2 Mental illness: A witness must be competent. Therefore, in dealing with a witness who has learning disability or mental health issues, a decision should be made whether or not to interview him or her. This decision could be based on the following considerations:

- a) What competent issues does the witness have and what impact does that have on short and long term memory as well as the ability to communicate;
- b) Is the evidence that he or she is likely to give available from some other sources;
- c) Will medical records have to be obtained and if so, is there a possibility that they will be disclosed to third party with or without consent.

If the decision to proceed is made, extra caution should be taken on how to obtain the statement from this person. Expert assistance on approaches and techniques that may be appropriate in the circumstances may be sought. Corroboration of the evidence obtained should also be sought.

6.3.3 Juvenile witnesses: Children are competent witnesses. However, interviewing children can be a very sensitive and difficult process, and hence like any other vulnerable witnesses, the investigator should not do harm or add further trauma. While making decisions that affect children, the investigator should note the best interest of the child is paramount and the child's views should be considered. Some of the factors to consider while interviewing children include:-

- a) **Age:** The younger the child, the more difficult it will be to conduct the interview.

The Investigator needs to ask whether the child is mature enough to understand and respond to the questions that will be asked. A further aspect to be considered is how much weight should be given to his or her evidence.



- b) **Physical and mental capacity:** The Investigator should determine whether the child has any disabilities, including any impediments to communication. Here, the investigator should consider the child's level of language and conceptual development; relationship with people in authority, how used they are to having their views heard and respected, and their dependency on adults; ability or inability to relay, postpone or inhibit their reactions to discomfort or distress; and the need to corroborate their testimonies.
- c) **Location of interview:** The investigator should give thought to where a child will be interviewed. It is important to find a place where the child will be comfortable and not feel threatened by the surroundings. Wherever possible, disruption to the child should be minimized or avoided altogether. An appropriate location should be chosen and kept as private as possible. For example, a child should not be interviewed at his or her school.
- d) **Support person:** The child should be made to feel comfortable and secure. Depending on various circumstances, it may, or may not, be appropriate to have a parent or relative present. The presence of a parent may facilitate the interview by sitting the child at ease. However, before parents sit in with the child for an interview, establish whether the parent is a witness or perpetrator. If so, identify another adult who can sit in the interview to comfort the child.
- e) **Vocabulary:** The child's lack of adult vocabulary necessary to describe events, may present a problem during the interview. If the child is unable to articulate something, the interviewer should never suggest words for the child because the child may willingly adopt a suggested word or concept without fully understanding what he or she is saying. The interviewer should use other ways to help the child communicate this information.
- f) **Medical needs:** The immediate health and safety needs of the child are paramount. Any immediate concerns must be addressed before any thought is given to conducting an interview.
- g) **Routines:** If possible, the interview should fit in with the child's routine, rather than the requirements of the investigation or the Investigator.

- h) **Keep it brief:** The interview should focus only on those areas that have to be covered. As far as possible, avoid having to re-interview the child later. If a second interview is necessary, it should cover only new areas or essential clarification. This applies equally to all Interviewees.
- i) **Get help if needed:** There are various interview techniques and strategies that can be used both to gather information and to avoid – or, at least, minimize – harm. They include play as an interview technique. Unless the interviewer is experienced in this approach, he or she should seek expert assistance from someone with experience in conducting interviews with children. As a general rule, more help will be needed when interviewing younger children.
- j) **Avoid making suggestions or leading child witnesses:** Children can be very susceptible to suggestion and eager to please. An Investigator should be very careful about asking leading questions.

CHILDREN'S SPEECH AND LANGUAGE AT DIFFERENT STAGES

The investigator should know the common characteristics in children's language, speech and understanding when interviewing them as vulnerable witnesses. Below is a list of children's language characteristics at different stages, which are key in guiding the investigator on how to interview and deal with children at the different stages.

18-24 MONTHS

At this stage, children try out new things and explore the world around them more actively. They will often choose their own activities and may not always like being told what to do.

Children develop skills at different rates, but by 2 years, usually children will:

- *Concentrate on activities for longer, like playing with a particular toy.*
- *Sit and listen to simple stories with pictures.*
- *Understand between 200 and 500 words.*
- *Understand more simple questions and instructions. For example 'where is your shoe?' and 'show me your nose.'*
- *Copy sounds and words a lot.*
- *Use 50 or more single words. These will also become more recognizable to others.*
- *Start to put short sentences together with 2-3 words, such as 'more juice' or 'bye.'*
- *Enjoy pretend play with their toys, such as feeding dolly.*
- *Use a limited number of sounds in their words- often these are p, b, t, d, m, and w. Children will also often miss the ends off words at this stage. They can usually be understood about half of the time.*

2-3 YEARS

Children develop skills at different rates, but by 3 years usually children will:

- *Listen to and remember simple stories with pictures.*
- *Understand longer instructions, such as 'make teddy jump' or 'where is mummy's coat?'*
- *Understand simple 'who', 'what' and 'where' questions.*
- *Use up to 300 words.*
- *Put 4 or 5 words together to make short sentences, such as 'want more juice' or 'he took my ball.'*
- *Ask lots of questions. They will want to find out the name of things and learn new words.*
- *Use action words as well as nouns, such as 'run' and 'fall'.*
- *Start to use simple plurals by adding 's', for example 'shoes' or 'cars'.*
- *Use a wider range of speech sounds. However, many children will shorten longer words, such as saying 'nana' instead of 'banana'. They may also have difficulty where lots of sounds happen together in a word, e.g. they may say 'pider' instead of 'spider'.*
- *Often have problems saying more difficult sounds like sh, ch, th and r. However, people that know them can mostly understand them.*
- *Now play more with other children and share things.*
- *Sometimes sound as if they are stammering or stuttering. They are usually trying to share their ideas before their language skills are ready. This is perfectly normal, just show you are listening and give them plenty of time.*

3-4 YEARS

Children at 3 to 4 years will usually be actively learning language and asking many questions.

Children develop skills at different rates, but by 4 years usually children will:

- *Listen to longer stories and answer questions about a storybook they have just read.*
- *Understand and often use color, number and time related words, for example, 'red' car, 'three' fingers and 'yesterday/tomorrow'.*
- *Be able to answer questions about 'why' something has happened.*
- *Use longer sentences and link sentences together.*
- *Describe events that have already happened for example 'we went park'.*
- *Enjoy make-believe play.*
- *Start to like simple jokes.*
- *Ask many questions using words like 'what' 'where' and 'why'.*
- *Still make mistakes with tense such as 'runned' for 'ran' and 'swimmed' for 'swam'.*
- *Have difficulties with a small number of sounds-for example r, w, l, f, th, sh, ch and dz.*
- *Start to be able to plan games with others.*

11-17 YEARS

Language development at this stage is a gradual process. Changes still take place but they are harder to see. Children need to learn to develop relationships and join in social activities on their own.

What to expect between the ages of 11 and 14

At this stage children will:

- *Use longer sentences: usually 7-12 words or more.*
- *Know how to use sarcasm. Know when others are being sarcastic to them.*
- *Be able to change topic well in conversations.*
- *Use more subtle and witty humor.*
- *Show some understanding of idioms, such as 'put your money where your mouth is!'*
- *Know that they talk differently to friends than to teachers.*
- *Understand and use slang terms with friends. They keep up with rapidly changing 'street talk'.*

What to expect between 14 and 17 years

As they get older, young people can:

- *Follow complicated instructions.*
- *Know when they haven't understood. They will ask to be told again.*
- *Easily swap between 'classroom' talk and 'break-time' talk.*
- *Tell long and very complicated stories.¹*

6.3.4 Difficult, Hostile or Un-cooperative witnesses

Witnesses may sometimes seem hostile, uncooperative, abusive or hesitant to speak to the Investigators. This may be attributed to the fact that many witnesses and Respondents feel threatened by being subjected to scrutiny, while others may be intimidated by the judicial process, fear of retribution or other prejudices unknown to the Investigator. It is therefore upon the Investigator to win their confidence and trust by;

- a) Evaluating the situation to find out whether he or she is best suited to conduct the interview with a particular witness.
- b) If a witness is being confrontational, the investigator must choose words carefully and avoid statements or words that will worsen the situation.
- c) Empathize with the person, as this will shift the focus of the interaction from the investigator to the witness.
- d) Be as understanding as possible of the person's concerns and frustrations.
- e) Being as polite and accommodating as possible. When an investigator remains pleasant and undisturbed, it makes it hard for the other person to continue being combative. Keeping oneself calm will often have a calming effect on others. However, one should not go overboard by being too soft as it may be interpreted as just masking true feelings.
- f) Listen attentively, using good, normal active listening techniques. It is tempting to just tune out a difficult person since he or she may talk and argue more forcefully. Listen attentively and do not argue.
- g) Where a witness demands for financial favours in relation to the interview, the Investigator should explain that UHRC does not pay witnesses for the information they avail.
- h) The investigator should be aware that a witness may be evasive and hide his or her true identity. In such circumstances, the investigator should use a third-party known to the witness to convince him or her to consent to the interview.
- i) If, after all efforts, the investigator deems the interviewee to be negative and uncooperative, the interview should be discontinued.



6.3.5 Respondents or alleged Perpetrators

While dealing with respondents or alleged perpetrators, the investigator may in addition to the general guidelines of dealing with witnesses, explore the following techniques;

- Appeal to their conscience;
- Identify and point out contradictions in the Respondent's denial and story;
- Listen to their moral justifications or psychological excuses for the violations;
- Use praise and flattery.
- Build rapport with them by acknowledging their power and authority for example; In case of institutions, a Junior Officer may cooperate with investigations if his or her superiors are kept out of know while a superior Officer may corporate with investigations if his or her authority is acknowledged.

It should however be noted that securing the cooperation of Police or other Security Agencies as witnesses will generally be difficult and in most cases they may provide an account of the events that misrepresents what actually happened. This therefore means that the potential to successfully pursue an investigation against security agencies may depend substantially on availability of other witnesses and corroborative evidence.

Nevertheless, it may be a mistake to regard all security agencies as having the same attitudes and motivations as there may be situations where an individual may be motivated to cooperate with an investigation, even though other members of the group that he or she was part of are not willing to do so.

The perceived circumstances in which Police or members of other security agencies may act as witnesses against their colleagues include:-

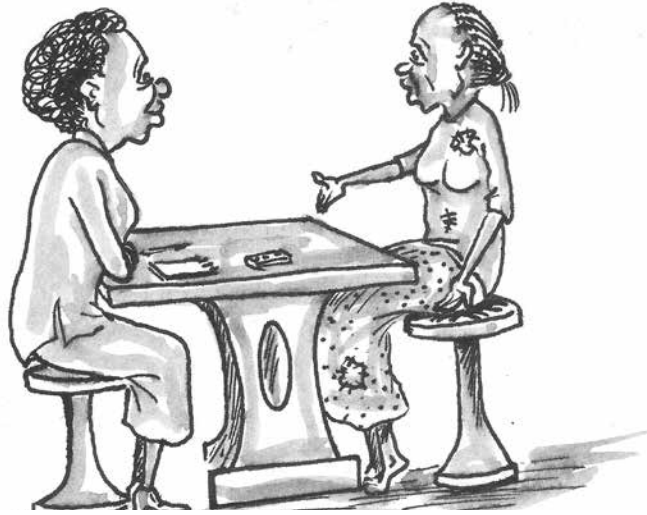
- Where one of them has been killed or victimized by another member;
- When the complaint is taken seriously by senior officials within the agency and there is a concern that their jobs or careers might be jeopardized if they do not cooperate with the investigation;
- In situation where a higher ranking officer gives evidence against a lower ranking Officer. The reverse may occur if the higher ranking officer is unpopular or has mistreated the Juniors;



- If the member does not perceive his or her testimony to be damning, although in the context of other available evidence it may contribute to proving the case;
- If there are killings related to personal arguments, or took place off-duty;
- Where the witness is obliged by the nature of his or her work, say he or she is the investigating Officer within the Agency;
- Where members are not from the same unit;
- In situations where they are confident that they acted within the law and have nothing to cover up.

7.0 CONDUCTING INTERVIEWS

Most of the investigators' time is often spent locating and interviewing witnesses who form the most critical part of any case. No matter how much physical evidence is gathered, without witnesses to explain its relevance, it is unlikely that the investigations will



be successful. In this regard therefore, interviewing witnesses well is often one of the most challenging tasks for the investigator. If done well, an interview yields compelling and truthful testimonies about events, yet if done poorly it may compromise the truth and undermine the entire investigation.

7.1 Purpose of an Interview

An interview allows an Investigator to:

- a) Gather different pieces of information from an Interviewee;
- b) Respond to information that the Interviewee gives;
- c) Cross-check information that is already in his or her possession;
- d) Assess whether the interviewee is credible, and
- e) Provide the interviewee with the chance to tell his or her story.

However, an Investigator should note that his or her purpose for conducting the interview may not be the same as the reason a person agreed to be interviewed. As a result, a person may want to give information that is not relevant to the investigation. In these situations the Investigator should strike a balance between achieving the objective of the interview and allowing the Interviewee's wish to share information that is important to him or her.

7.2 Types of interviews

There are two basic types of interviews which are used depending on the circumstances surrounding the interview. These include;

- a) **Preliminary interview:-** This is a short interview designed to obtain important information to establish relevant facts as to whether there was a violation to warrant an in-depth or comprehensive investigation.

- b) Comprehensive interview:-** This is a complete interview designed to obtain information a witness knows about an event; to learn of additional evidence; to gather sufficient information to help assess the truthfulness and accuracy of the witness's statement; and to get enough information to locate the witness in future.

7.3 Guiding principles for interviewing

The following principles provide a useful guide when interviewing.

- a) Let the Interviewee narrate his or her story. They know what they want to say. Do not dominate the conversation and do not talk too much. Even if you want to probe for information – or if you do not believe the story you are being told – it is important to respect the interviewee and allow them to tell their story in their own words and at their own pace;
- b) Listen to the person. Good listening means hearing what the Interviewee is actually saying, not what you think he or she is saying;
- c) Ask questions that respond to what the person is telling you. Do not simply move through a set list of questions and ignore what you are being told;
- d) Be sensitive to how the Interviewee feels about the information they are sharing with you and be sensitive to non-verbal signs, such as body language;
- e) Allow moments of silence in the interview – do not rush the person;
- f) Be aware of your own body language;
- g) Maintain a friendly, polite and sympathetic attitude towards the Interviewee;
- h) Be sensitive to cultural differences in questioning and being questioned;
- i) The presence of an additional person at the interview can be considered, although this should be done with the Interviewee's consent. This person can confirm that the interview was freely given and that the Interviewee was not subjected to any pressure from the interviewer. This is especially important for women, children and victims of serious violations.

7.4 Key considerations for conducting an effective interviews

The following should be taken into account while conducting an interview;

7.4.1 Selecting an investigator or interviewer

An Investigator may be selected by the Supervisor depending on the circumstances of each case taking into consideration factors such as: preferences of the Interviewee, gender, knowledge of the issues or the case, language skills, staff competence and sensitivity to cultural and religious differences. In some cases, there may be no choice about who may conduct the interview.

However, it is always important to reflect on how the Interviewee may perceive the Investigator or Interviewer and whether this could create some barriers to conducting an effective interview. If there is no option, the Investigator should describe his or her experience in dealing with such cases and reassure the person that he or she is sensitive to the difficulty of talking about a traumatic experience.

7.4.2 The location of the interview

An interview should be conducted in a comfortable and private place with no or minimum potential for eavesdropping or retaliation and without negative associations or distractions for the Interviewee. For example, if the interview is conducted in office, its surroundings should be as comfortable and welcoming as possible, with a glass of water or a cup of tea or coffee to offer the person.

The Investigator should provide an alternative place in case the security of the Interviewee is likely to be compromised.

In places of detention, the interview should be conducted in a location where the detainee feels confident that the conversation cannot be overheard. It is therefore upon the Investigator to ask the person if he or she feels comfortable and safe in the selected place or location.

7.4.3 Communication skills required during an Interview

Investigators should be good communicators. Communication is not only about using words, but involves non-verbal communication such as the tone of voice used which may convey the attitude, the voice inflection (where one's voice goes up or down at the end of a word or phrase), voice volume and pauses, gestures, posture, hand, head and eye contact or movement or lack thereof. All these are relevant in building trust, showing empathy to the Interviewee or may also indicate mistrust or lack of interest.

The Investigator should therefore be aware that the person being interviewed is assessing his or her communication and should control his or her non-verbal communications and behavioural clues.

7.4.4 Active listening

In addition to knowing which questions to ask to elicit relevant information, it is equally important to listen actively. This involves focusing on the person talking to understand what they are saying. An active listener should therefore be able to repeat what the person says. This does not mean that you agree with them but that you understand it. While listening however;

- a) Consider if the speaker is tired, nervous, traumatized or emotional. Some Interviewees may become upset or emotional during the interview. If this happens, you may have to:

- Stop the interview;

- Offer them a glass of water if any;
 - Give them a chance to relax and calm down; and
 - Ask them whether they would rather continue or postpone the interview (although in normal circumstances you should encourage them to continue);
- b) Think about the non-verbal clues that show the speaker's frame of mind;
 - c) Make eye contact with the speaker;
 - d) Give the speaker time to respond. Do not show impatience;
 - e) Do not agree or disagree or even argue;
 - f) Let the speaker answer in full. Do not interrupt;
 - g) Summarize what the speaker has said to show that you understand;
 - h) Express appreciation to them so that you can build trust; and
 - i) Make sure that your body language is not threatening or intimidating.

7.4.5 Duration of the interview

Witnesses, Interviewees or Respondents need to be allocated sufficient time to tell their story without being rushed or interrupted. However, it is also a fact that some people talk too much and may provide information that may not be related to the matter being investigated. In this regard therefore, the interviewer or investigator should strike a balance between the competing demands to ensure that the session is not too long or too short.

7.4.6 Using Translators

Investigators will at times need translators to interview witnesses, speak with officials or review documents. The necessity of using a translator always complicates the investigative process. Not only do interviews take twice as long, but also the investigator's ability to assess the reliability of the witness is limited. In this regard therefore, the investigator should choose an experienced translator with whom he or she can communicate comfortably. An interpreter should be a neutral person and should only be a means of communication. It is important to talk to the interpreter beforehand to make clear his or her role and explain the purpose of the interview. Just because being able to speak two languages does not qualify one as a translator. It should be noted that regional accents and local idioms can hamper clear communication. It is a great advantage for a translator to have some familiarity with words and concepts the investigator is likely to encounter in an investigation.

7.4.7 Confidentiality and security

The issue of confidentiality should be clarified at the beginning of the interview and must be respected by the Investigator. He or she should clearly explain how the information will be used (such as in an internal report, external report or communication with authorities) and whether it will be necessary to use the name and personal details of the interviewee. During the interview, the Investigator should not mention sources of any other information (unless the source is public) and should keep the identity of other Interviewees confidential.

7.5 How to conduct an interview

- a) Carefully prepare prior to the interview; this includes being aware of the conditions that might affect the perception of the witness and dressing appropriately to suit the status of person to be interviewed as well as selecting a suitable time and location for the interview.

- b) Get the consent and cooperation of the interviewee.

Upon meeting the Interviewee, he or she should freely consent to be interviewed and to have their statement recorded or written down. For this reason, the Investigator should explain the purpose of the investigation, recording and taking statements of the Interviewee in a language the Interviewee understands and in a way that is appropriate to their understanding. The Investigator should:-

- Introduce him or herself by stating the name, position and the Institution, say UHRC. This shows respect for the Interviewee;
- Explain the mandate of UHRC;
- Explain clearly the purpose of the interview. It is important not to make threats or promises that create false expectations. It is essential to clearly explain what you can do and what you cannot do.
- Explain who may use or see the recorded interview or written statement;
- If the witness is reluctant, the investigator may try to convince the witness by giving the advantages and disadvantages of having and not having the interview respectively. For example, that the evidence will help in achieving a remedy for the victim or punish the Perpetrator.



- c) Establish rapport with the Interviewee; treating him or her with respect and

demonstrating gender and cultural sensitivity;

- d) Be responsive to the needs of the vulnerable. Vulnerable interviewees (like children, pregnant women, persons with disabilities) must therefore always be treated with special considerations;
- e) The Investigator should approach the interviewee with an open mind and test the information obtained against what is already known or what can be reasonably established;
- f) Allow the Interviewee to provide an account without interruption, also known as 'free recall';
- g) Listen to the interviewee. Victims of human rights violations often feel that they have been neglected, marginalized and forgotten or suffer stigma and isolation from their communities. Often they will not have had the chance to tell their story to authorities and hence the interview might be the first opportunity for the person to talk about their experience;
- h) During interviews, the investigator is free to ask questions to ascertain the truth except in complaints of child victims;
- i) Conclude the interview on a positive note and leave the interviewee with an invitation to provide additional information that could have been forgotten;
- j) Investigator should not anticipate the outcome of the complaint or form pre-conceived conclusions, even if the evidence looks strong and the outcome seems likely. The investigator should not make promises that he or she cannot fulfil for example regarding things that he or she has no control over in order to get people's cooperation. The Investigator has to emphasize to the Interviewees that the results cannot be predicted and that you cannot guarantee an outcome.

7.6 Information that should be captured from an interview

The actual questions asked may vary according to the circumstances. You may also ask the questions in a different order, remembering that people are not always able to recall or tell their story in a logical sequence. Before you start the interview, record the following details:

- a) Name of the Interviewee (first name, family name and nickname. It is important for you to record the nickname because in most cases some people are popularly known in the area of locality by their nicknames);
- b) Age and gender of the interviewee; (The age, especially of the minor should be indicated since it helps in determining how such evidence will be treated in law);
- c) Prisoner identification number if applicable;
- d) Nationality, ethnicity, religion and occupation;
- e) Personal contacts and details; including Address and contact details outside the detention facility if applicable;

- f) Time and date of the interview (if the interview is conducted over several sessions, each session must be recorded);
- g) Place of the interview for example Prison section, Police Station, Police Post or Army Barracks where they are being held in custody, and
- h) Name of the Interpreter if any or the assistant interviewer;
- i) Name and contact details of closest family member(s);
- j) Any other people present at the interview.

On the other hand, this information may be obtained at the end of the interview in order to avoid turning the session into an interrogation.

7.7 Interviewing victims of torture

Interviewing victims of torture is an extremely delicate process. As an investigator, you must be prepared to deal with difficult emotions and be able to empathize and not sympathise with the Victim.

Individuals should not be forced to talk about their experience if it makes them feel uncomfortable. Further, torture survivors may have difficulties in remembering specific details and inconsistencies may arise.



People who have survived extreme torture events will often suffer psychologically, usually called post-traumatic stress disorder (PTSD). PTSD is usually divided into two phases: an acute phase and a chronic phase. An acute phase presents symptoms like flashbacks, nightmares and intrusive thoughts. If treatment is not provided, the acute phase develops into the chronic phase and can present symptoms such as depression and lack of concentration.

When a person is in the chronic phase of PTSD they may not realize that the symptoms they are experiencing are related to the trauma he or she has suffered.

Other characteristics that a person who has gone through a traumatic event might display include:

- Constantly recalling the event;
- Trying to avoid remembering the event;
- Physical symptoms, such as insomnia, irritability or hyper-vigilance.

All of these factors can pose challenges while conducting an interview. For example, if someone is short of sleep or has difficulty concentrating it may be hard for them to sustain an interview over an extended period of time.

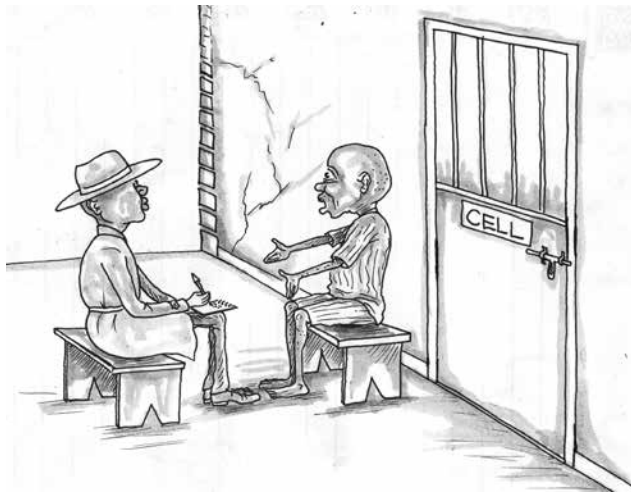
In this situation it might be preferable to have several short interviews.

It will also be challenging to conduct an interview with a person who is trying to avoid remembering the event. In some situations, it is not a conscious decision to block the memory. It can be common for people who have gone through traumatic experiences to suffer amnesia. The interview process, while painful, may actually help someone overcome this response, although this must be handled in a sensitive and sympathetic way

In some circumstances, an Interviewee may also begin to re-experience the traumatic event. As an Interviewer (Investigator), one must be alert to this possibility and if it appears, stop the interview immediately and discuss this with the person to express your concern and awareness of what the person is experiencing and clarify the confidential nature of the interview.

7.8 Interviewing people in detention or under incarceration.

Interviewing people who are still in prison or in similar situations in which reprisals are possible can be challenging because it may put the life of the interviewee or witness at risk. The interviewer should therefore use care not to put the interviewee in danger. The possibility of endangering the safety of detainees or witnesses under incarceration is very real and hence the Investigator should:



- a) Be aware that his or her choice of language and attitude will greatly affect the alleged Victim's ability and willingness to be interviewed;
- b) The Investigator should leave the interview if the interviewee feels a high danger of reprisals and does not want to be interviewed;
- c) Not expect to get the whole story in one interview. Questions of private nature may be traumatic to the alleged victim;
- d) Be sensitive in tone, phrasing and sequencing of questions given the traumatic nature of the alleged victim's story;
- e) The witness must be told of the right to stop the questioning at any time, to take a break if needed or choose not to respond to any question.
- f) If possible, the investigator could consider using group interviews instead of individual interviews

8.0 QUESTIONING TECHNIQUES

8.1 Types of questions

The investigator will receive answers from the Interviewee depending on the way he or she frames and asks the questions. For example each of the questions below will give different answers.

Inviting questions: Tell me about.....	Specific questions: What specifically did you notice.....
Open – ended questions: What do you know about.....	Closed questions: Did you see.....

8.2 Principles to consider while questioning:

After the interviewee makes a recap of events, the Investigator needs to follow up with the other questions to clarify and confirm information so as to weed out contradictions, inconsistencies and gaps. Below are some of the principles the investigator should consider during questioning.

- Do not be tempted to fill pauses by asking additional questions or making irrelevant comments. Sometimes silence is the best clue for eliciting further information.
- Do not interrupt the interviewee or witness. Interrupting the Interviewee may be disempowering to him or her and may suggest that only short answers are required.
- Keep your questions as short and simple as possible. Avoid complex questions.
- The younger the Interviewee, the shorter and more simply phrased the question should be.
- Each question should contain only one point.
- Avoid double questions (such as; Did you go next door and was Mukasa waiting for you?)
- Avoid double negative questions (such as; Did Okot not say that he had not meant to hurt you?)
- Avoid unfamiliar vocabulary. Try and use the language and terminology of the victim, and seek clarifications when a particular terminology used by the victim is not clear.



- i) Young interviewees (children) may have problems with words denoting location (such as behind, in front of, beneath and above). If there is any ambiguity, ask the Interviewee to demonstrate what they mean.
- j) Merely asking the interviewee whether they understand a given word is insufficient. They may be familiar with a word but still not understand its real meaning. Probe to ensure that the Interviewee understands your question and its intended meaning.
- k) In the event of inconsistencies, probe to ascertain the truth. Be reminded that most witnesses may have difficulty in remembering dates, time, length and frequency of events, weight, height or age estimates.
- l) If you are suspicious of an answer, phrase your question in a clear way to enable the Interviewee clarify. Never voice your suspicions to the Interviewee or call them liars. There may be a perfect explanation for any inconsistency.

8.3 Questions to use

- a) **Open-ended question:** An open ended question is one that is worded in such a way that enables the Interviewee to provide more information about an event in a way that is not restrictive, leading, suggestive or putting them under pressure. Open ended questions allow the interviewee to control the flow of information and minimize the risk of the interviewer imposing their views. Open-ended questions may start with phrases such as; "Tell me", "Describe", "Explain", "Tell me everything you remember."
- b) **Specific-closed questions:** Specific-closed questions are used in such a way that is non-suggestive and non-leading. They provide for extension or clarification of information previously supplied by the Interviewee. They are used to explore whether the Interviewee is giving an account of an incident for the first time or whether they have told other accounts beforehand. *For example; you said the man entered your house. What was he wearing at the time?*
- c) **Focused-choice questions:** As a last resort, you may ask focused choice or selection questions. This type of question proposes fixed alternatives and the Interviewee is invited to choose between them. *For example; were you in the bedroom or in the sitting room when this happened?*

8.4 Questions to avoid

Leading questions: These are questions which provide a hint to the Interviewee as to what the answer should be. They amount to a form of suggestion on the part of the Investigator which influences the evidence or response of the Interviewee (perhaps intentionally or unintentionally). *For example the question 'was the car blue?' is a leading question.* A person being interviewed merely has to say yes or no and they do not have to come up with their own answer. A professional investigator would simply ask *'what colour was the car?'* Similarly it would be better to ask *'did the man have a weapon in his possession?'* and then *'what kind of a weapon?'* Rather than asking *'did he have a gun?'*

Leading question	More open – ended question
Was the car red?	What colour was the car?
Did the man have a gun?	Did the man have a weapon in his possession? and What kind of weapon was used?

8.5 General observation of the Witnesses' demeanour

Observe and take note of the Interviewee's demeanour; for example, shifty eyes, shaky voice clenching and unclenching hands or other nervous behaviour. This information may come in handy in future findings and may inform or guide the Investigator on future findings.

It should be noted that nervousness and body language may not necessarily indicate dishonesty. It may however be attributed to the Interviewee's cultural background (*Baganda women are not supposed to look at a man in the eyes*), religious beliefs (*Male Muslims may not shake a woman's hands and vice-versa*), fear of reprisals, past experiences and habits.

8.6 Verbal and non-verbal clues to detect dishonesty

There is no guaranteed way to determine dishonesty or that an Interviewee is lying and there are no typical non-verbal behaviours that are associated with deception. It is also important to note that not all liars display the same behaviour in the same situation and behaviour may therefore differ across deceptive situations. Any one word or behaviour on its own should not be considered an indicator of dishonesty or deception. Behaviours should be consistent with the questions and deceptive signals typically occur in clusters.

Investigators need to use their experience, instincts and training to evaluate the verbal and non-verbal clues that might inform if the Interviewee is lying or concealing information.

Below are some of the indicators.

8.6.1 Verbal indicators of dishonesty

- Skipping around in sentences or leaving off the end
- Inappropriate laughter
- Repeating the Investigator's question
- Giving short answers
- Over-exaggeration
- Disconnects between words and behaviour
- Disconnects between words and emotions

8.6.2 Non-verbal indicators of dishonesty¹

Area of the Body	Behaviour
Posture	Slumping over or leaning back in the chair
	Sitting in a way that protects the abdomen
	Shifting position in chair
Hand and Arms	Placing the hand over the mouth to muffle words or hide expressions
	Arms crossed with the thumbs extended
Legs and Feet	Movement of legs and feet
	Legs crossed with the knee raised to protect the abdomen
	Legs crossed with arms holding the leg in place as a barrier
Head and Neck	Head down can indicate a negative attitude or submission
	Head back looking down the nose
	Head nodding or head shaking

¹ The African Policing Civilian Oversight Authority (2013) Training Manual: Building capacity in the civilian oversight of African policing.

9.0 COLLECTING PHYSICAL EVIDENCE

9.1 Tools necessary for collecting physical evidence

Paper and pen for writing notes and drawing sketches;

- a) Camera to document the scene;
- b) Plastic bags for collecting and carrying evidence;
- c) UHRC witness statement forms;
- d) Investigator's identification cards.

9.2 Dealing with an Incident Scene

- a) Arrive promptly at the scene where possible;
- b) Ensure that the integrity of the scene is properly preserved. You may need to establish a firm boundary on the perimeter of the scene where only authorized people can access;
- c) In case the incident scene has been tampered with or altered by natural or other factors, the investigator should take pictures and record the observations of the scene;
- d) Demonstrate that you understand the procedures involved and ensure that those conducting ballistic, forensic or searches follow the appropriate professional standards in the processing of the scene;
- e) Where an act of torture has occurred, look out for the torture equipment;
- f) Identify and record the contact details of any person at the scene who may identify probable witnesses.
- g) Ensure that the scene is searched thoroughly and that all potential evidence is located;
- h) Ensure that the overall scene and any potential evidence is documented;
- i) All evidence collected must be packaged and labelled in a way that it can be traced easily to ascertain where and when it was found or collected.



9.3 Dealing with Physical Evidence

Physical evidence includes:-

- a) Documentary evidence – for example the lock up registers kept at the Police Stations and Posts which are used to clarify issues relating to cases of detention. In most cases these are used as evidence in allegations of violations of the Right to Personal liberty.
- b) Photographic or video evidence – this may include photographs taken during or after an incident say in torture cases, video recordings.
- c) Evidence collected from the incident scene. It may include clothing, fibres, paint, glass, bullet shells or any evidence related to the use of firearms or other weapons among others.
- d) Records such as telephone call records.
- e) Forensic evidence such as hair, blood samples, semen samples, saliva, fingerprints, bite marks, broken nails; which have to be collected, handled and reviewed by a forensic expert.
- f) Shoe and tyre prints which can be matched positively to specific shoes or tyres in a Respondent's possession.

Physical evidence can sometimes be the only link to a specific violation. It can also be used to prove the inconsistency or the implausibility of a statement for example if someone says he was beaten and he lost a tooth but all his teeth are seen intact.

It is crucial that the cogency of the physical evidence be preserved. This means that it must not be tampered with or interfered with or altered from the time it is obtained to the time of its use; say during transit or storage. It should be preserved in its original form. The investigator is cautioned to always wear gloves when handling physical evidence to avoid leaving fingerprint on the collected evidence which could affect the investigation.

9.3.1 Handling Forensic Evidence

In the event that no forensic expert is at hand to help in collecting dried blood or body fluids, the Investigator should:

- a) Wear gloves
- b) Put the whole stained object in a bag if possible
- c) If the object cannot be transported, then use fingerprint tape to lift a fingerprint and place the tape on a lift back
- d) Scrape the stain into a paper packet and package it in a paper envelope
- e) If the blood or fluid is wet or moist, it must not remain in plastic or paper containers for more than two hours. It must be removed and air dried and handed over to the Forensic Expert.

9.3.2 Using Firearms Identification and Ballistics to obtain Evidence

While dealing with firearms discharged by Security Officers, taking the serial number of the firearm which has been recovered at the scene may be adequate for purposes of ballistic tests.

In addition to taking fingerprints from the firearms, most of the analysis involving firearms should be carried out by qualified people. Some of the analysis in the use of fire arms often includes;

- a) Standard firearms identification tests – whether bullets or shells were fired from a particular gun.
- b) Residue examinations – Determine whether gunpowder or Lead residues have been deposited. When a firearm is discharged, a residue is often left on the hand of the person who pulled the trigger. There could also be residue surrounding the wound or other point where the bullet entered. Residue could also be left on clothing.
- c) Trajectory analysis examinations – Determine the angle and direction of the fire and the location or position of a shooter through the geometric measurement and analysis of bullet holes.
- d) Terminal ballistics – the typical behaviour of different types of ammunition on hitting the target.
- e) Ejection pattern testing – defines the position of a shooter based on the location of spent cartridge casing in crime scene reconstruction.
- f) Shot pattern examination – help to determine the distance of a shooter from a target through analysis of the change in the speed of shot pellets after a shotgun was discharged.

10.0 TAKING A STATEMENT

A statement is a record of what a Witness has said and accurately recorded in verbatim – in the first person. An interview may culminate into statement recording.

10.1 Contents of a statement

A statement should cover all information relating to the elements of the alleged violation or violations that the witness is able to provide. Therefore, an Investigator should have the knowledge of the elements or ingredients of an alleged violation before setting out for statement recording. A statement should also cover:-

- a) The witness's involvement in the matter, if any.
- b) Basic information about the alleged violation, such as:-
 - When it took place – time and date;
 - Where did it take place - Details of arrest or detention;
 - How did it take place;
 - Why did it happen;
 - For how long did it happen;
 - Who was involved: was it just one person or more than one;
 - Who saw it;
 - What injuries were sustained if any;
 - Who the Perpetrator is.
- c) If the Witness cannot identify the Perpetrator but saw them committing the crime, he or she should describe how that person looked like, what he or she was wearing, and anything else that will help to identify them.
- d) Whenever carrying out an interview for purposes of statement recording, an Investigator should:-
 - Deal with issues such as the fear that the witness will be harmed as a result of giving evidence;
 - Try to minimize the inconvenience and stress of serving as a witness at court and supporting them in presenting their evidence;
 - A support person should be present if possible;
 - Use an Interpreter where necessary to put the person at ease and to get a more accurate statement. The interpreter could be an interviewee's relative or a person from his or her cultural group or any other person acceptable to him or her;
 - Read back the statement to the witness paragraph by paragraph for purposes of confirming whether what is written is actually a true representation of whatever he or she narrated; and
 - Ask the Witness to sign or thumb print against his or her statement upon confirmation of its content.

11.0 EVALUATING THE EVIDENCE

11.1 Applicable techniques

The following techniques should be applied in the evaluation of evidence:

- a) Look at all of the evidence and assess it to eliminate rumours, gossip, unsupported statements and opinions.
- b) Assess credibility and weight of evidence.
 - How reliable is the evidence or the person?
 - Consider direct evidence in relation to circumstantial evidence
 - Evidence should be clear and convincing
 - Consider preponderance of the evidence (What is most dominant in all the evidence collected)
 - Whether evidence was given in good faith.
- c) Burden and standard of Proof: The burden of proof lies on the complainant to prove the allegations on a balance of probability. The burden of proof is the duty to prove the allegation. The standard of balance of probabilities (also referred to as preponderance of evidence) is met if the proposition is more likely to be true than not true; if there is greater than 50% chance that the proposition is true; "that is more probable than not"².
- d) Relate findings to facts.
 - Review the institutions' policies and rules;
 - Note the ingredients of the rights;
 - Analyse each allegation in light of evidence and applicable policies and rules;
 - Do not be afraid to rely on your own experience;
 - Do not be afraid to be wrong – just make sure that your findings and conclusions are based on facts supported by credible evidence and that your conclusion is logical.

² As defined by Lord Denning in *Miller V. Minister of Pensions* [1947] 2 ALLER 372.

12.0 SYSTEMIC INVESTIGATIONS

This is an in depth examination of emerging trends, pattern or practice as a result of legislation, policy or programme that is either non-existent or if existent, defective or unimplemented. It targets human rights violations suffered by a particular class or group of people, region or country and is institutionalized, recurrent and for the same purpose or objective.



12.1 The Purpose of Systemic Investigations

- a) Systemic investigations seek to address a bigger picture which individual complaint handling cannot cover.
- b) To identify potential serial violations, and find out the underlying causes and impact of such violations.
- c) Raise awareness on what systemic violations are and how to deal with them.
- d) Cause structural adjustments for the good of all
- e) Make recommendations on possible remedies in solving the systemic violations; including review of legislation or policy.

12.2 Conducting Systemic Investigation

Step 1: Identifying the issue for systemic investigation

The Director for Complaints Investigations and Legal Services initiates the process by calling for proposals on areas that should be investigated from all the officers and members of the Commission. The proposals received should be ranked in order of frequency or urgency of the matter and the list of top five should be discussed by the UHRC management committee. The best recommended is then forwarded to the Commission for committal of funds.

An issue for systemic investigations may be identified through:-

- a) Input from stakeholders and members of the public;
- b) Review of public information;
- c) Trend of received complaints at the Commission;
- d) Research and field investigations.

Step 2: Assessing the Issue identified

This includes:

- a) Carrying out research on similar complaints, applicable rules, regulations and guidelines;
- b) Identifying relevant areas for the investigation;
- c) Allocating relevant resources;
- d) Establishing an investigative strategy;
- e) Identifying Witnesses to be interviewed.

Step 3: Conducting Investigations

This includes:

- a) Evidence gathering: through collecting all relevant documentations and conducting visits and interviews with the identified Stakeholders.
- b) Review and analysis of collected evidence by:-
 - Identifying issues of concern and deducing any legal interpretation;
 - Verifying applicable policy standards;
 - Conducting comparative research;
 - Conducting research on precedent violations;
 - Consolidating supporting evidence and verifiable facts;
 - Identifying a list of findings and recommendations.

Step 4: Report Preparation

This involves:-

- a) Determining the requirement of external consultation;
- b) Consulting with stakeholders to verify or validate the draft report;
- c) Establishing the timelines for the implementation of the report recommendations;
- d) Formatting, translation and printing of the report;
- e) A copy of the report is then given to government or relevant authority, which is allowed to review the report before it is made public.

Step 5: Follow up action

This is intended to review and assess the status of the implementation of the recommendations contained in the report, six months after it being made public. It involves:

- a) Developing a matrix of recommendations or actions to be implemented and time line for each recommendation;
- b) Obtaining and analysing documentation and information from government regarding the status of implementation of each recommendation;
- c) Conducting follow-up interviews and research;
- d) Making public any concerns or potentially launching a new investigation if not satisfied with the results of the follow-up.



13.0 INVESTIGATING PARTICULAR VIOLATIONS

It should be noted that the following violations have been highlighted because they comprise the most reported and registered complaints at UHRC³ and hence poor investigations of the same directly impacts on the performance of the Institution on its mandate.

13.1 INVESTIGATING INCIDENTS OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

13.1.1 What is torture?

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading treatment or punishment - UNCAT defines torture in Article 1 to mean:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity. It does not include pain or suffering arising only from, or inherent in, or incidental to, lawful sanctions.”

Domestically, torture is defined under Section 2(1) of the Prevention and Prohibition of Torture Act, 2012 to mean any act or omission, by which severe pain or suffering whether physical or mental is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as:

- a) Obtaining information or a confession from the person or any other person;
- b) Punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- c) Intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

13.1.2 Steps taken to investigate torture

Investigating torture consists of;

1. Gathering material evidence such as medical evidence, photographs indicating the physical injuries sustained by the Victim (always prefer coloured photos that are dated. Include the name, contact and signature of the Photographer), identifying the physical torture instruments and official documents and correspondences.

³ UHRC 15th Annual report to Parliament of the Republic of Uganda, 2012.

The Investigator must gather the victim's medical examination reports and notes which include an assessment of the injuries sustained and treatment if any, medical report indicating the victim's state of health immediately prior to his or her arrest, detention or beating.

The medical examination report or notes should indicate whether the physical and psychological findings are consistent with the allegations of torture and also list the physical conditions which contribute to these findings.

If the person died as a result of torture, then a copy of the post mortem report should be obtained by the investigator and if possible, obtain an independent assessment of this medical information.

2. Assessing the evidence to determine whether it indicates that torture has actually occurred and the alleged facts fit within the elements of torture.

The investigator should assess whether or not the acts described by the victim and Witnesses constitute torture or ill-treatment or could they be attributed to other factors or other forms of violence that occurred before the victim came into contact with the alleged perpetrators.

The investigator should ask; are the testimonies of the victim and witnesses and other evidence gathered (medical records) consistent with the allegations? Do they conform to the known patterns of torture? And then compare the evidence obtained with the known patterns of torture.

Reliability of testimonies or statements: The investigator should carefully examine the victim's version of events, his or her description of their injuries and suffering and compare it with their current symptoms and pains and the statements of their witnesses.

Inconsistencies in statements should also be looked at critically to ascertain whether they could be as a result of the victim's own confusion of events as a result of dishonesty or untruthfulness or reasonable faults in memory and recall.

13.2 Considerations in the assessment of evidence

13.2.1 Circumstances of torture:

In investigating torture or other forms of ill treatment, the Investigator should establish the following facts.

- a) Where did the alleged torture take place?
- b) What mode did it take? – The witness should describe what instruments were used and how- on which body parts; duration of the torture (for how long); frequency of the torture (how often);
- c) Why was the victim tortured; was any reason given for the torture say to get information, items, punishment?

- d) Who participated in the torture? Try as much as possible and get details of the people who participated including names, identifying details, and information on when they were present. Also find out the institution, department or body for which they worked;
- e) What were the consequences of the alleged torture? The victim should describe the results of the alleged torture – any physical or psychological effects;
- f) Whether the victim sought medical treatment before or after the torture; this will help determine whether the victim only developed health complications after the alleged torture.
- g) What happened after the torture; did the victim sign any statements? Who were these made to? Did the victim say anything or complain about the torture in court or to another official; was the victim charged with any offence? And if so, what offence?

13.2.2 What are the circumstances following torture:

- a) Get details of any attempts to obtain medical treatment, response given or time and date of treatment received if any and details of the medical practitioner;
- b) Establish the diagnosis following the medical examination;
- c) Establish whether the victim was in detention, if so details of his or her continued detention or release.

13.2.3 Current situation and symptoms:

- a) What was the victim's health status prior to the alleged torture? What are the current signs and symptoms experienced? Are there any marks, scars, bruises, fractures, deformities, burns, amputations or other distinguishing characteristics?
- b) What is the victim's current mental status;
- c) Any medical treatment the victim is currently receiving, including details of counselling received if any.



13.2.4 Any necessary action taken after the torture:

- a) Did the victim lodge a complaint anywhere or not;
- b) With whom was the complaint laid;

- c) Was the complaint followed up;
- d) What is the status of this complaint
- e) Was the victim harassed, threatened or intimidated after lodging a complaint or case
- f) If a criminal case was initiated against the perpetrator, what is the status of this case?

13.2.5 Medical evidence during investigations of torture

The purpose of medical evidence is to demonstrate that the injuries inflicted on the victim or Survivor are consistent with or could have been caused by the torture described. It should however be noted that the lack of medical records is not fatal to the allegations of torture.



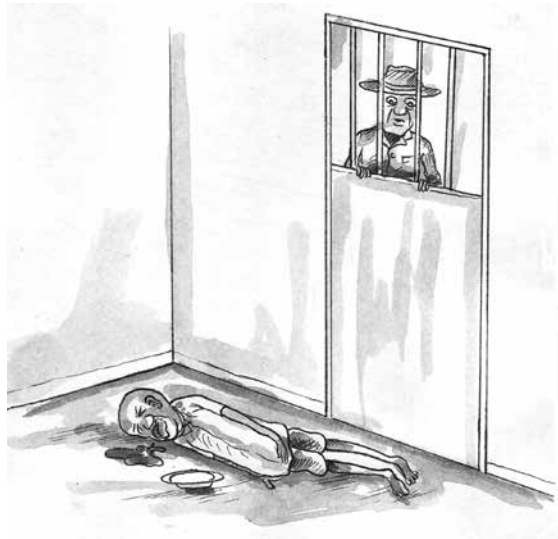
14.0 INVESTIGATING INCIDENTS OF DEATH IN CUSTODY

While investigating death in custody, the Investigator should have regard to the following:-

14.1 Mandate to investigate death in custody.

People may die while in custody like in Police, Prison, Juvenile homes or Military detention centres for various reasons including torture or natural causes such as an illness.

Every death in custody must be investigated to determine the actual cause and circumstances leading to the death. Such investigations must be carried out to determine whether it was indeed 'natural' and if so whether the Authorities took all necessary steps to prevent the death and to ensure adequate medical treatment of the deceased person.



The United Nations adopted a body of principles for the protection of all persons under any form of detention or imprisonment⁴ which require that whenever death of a detained or imprisoned person occurs during his or her detention or imprisonment, an inquiry into the cause of death must be done by a Judicial or other Authority. Such an investigation is referred to as an inquest.

On the other hand, the Commission may investigate the death of a detainee or prisoner in respect of a complaint of an alleged violation of the deceased's right to life.

14.2 Duty of the detaining authority

The detaining Authority, be it the Police or Prison has the responsibility of ensuring a person's safety and security once they are taken into custody. The detained or imprisoned person therefore becomes reliant on the State or the relevant Authority, for their everyday needs including food, water, bedding and health care.

⁴ UN General Assembly A/RES/43/173; 76th Plenary Meeting, 9 December 1988

Any complaint of death in custody therefore calls for the investigation to determine whether that Authority diligently executed their duty towards the deceased to prevent his or her death.

To determine this, the Investigator should look out for:

- a) Failure by the Authorities to protect detainees' safety while in custody leading to abuse by fellow Suspects or Inmates or other Persons.
- b) Failure to prevent the inmates or suspects from committing suicide.
- c) Excessive use of force by the Authority or torture of the deceased.
- d) Poor detention conditions, amounting to cruel, inhuman or degrading treatment or punishment.
- e) Failure to provide timely and appropriate treatment for disease.

Since the purpose of investigation is to gather facts regarding the reported death in custody in order to establish the circumstances leading to the death, to ensure accountability from the Authorities and any individual Perpetrators, the Investigator should aim at answering these questions below:

- a) What is the actual cause of the death?
- b) What is the manner of death (natural, accidental, homicide, suicide or undetermined?)
- c) What are the circumstances surrounding the death?
- d) Who are the alleged Perpetrators or people involved in the events leading to the death?
- e) What are the factors which may have contributed to the death?
- f) What measures should have taken to prevented the death?
- g) Were any such measures taken to prevent the death?
- h) Was the death reported by the Authorities for purposes of conducting an inquest?

14.3 Major steps to take while investigating death in custody

14.3.1 Gathering material evidence;

The Investigator should have a fair knowledge of the International, Regional and Domestic laws providing for the standards of treatment and conditions of people in custody. These provide for the standards to determine whether the implicated Authorities faulted in their duty. The Investigator should collect post mortem reports, photographs and statements from Witnesses to support the allegation.

14.3.2 Conducting interviews;

Identify the main sources of information and the people that you need to interview to obtain such information or corroborative evidence. These may include not only the Witnesses to the deceased's arrest, fellow Inmates, the Deceased's family members and Legal representatives but also the Officials of the detaining Authority, Hospital staff (where treatment or post-mortem was carried out; including mortuary attendants).

14.3.3 Assessing the evidence;

Assess the official version of events leading to the death and compare the same with the evidence obtained. An Investigator should assess:-

- Whether the statements obtained are reliable and consistent with one another?
- Whether there are reasons for inconsistency in statements? And if so, is it as a result of deliberate lies, mistake or fear of endangering themselves by disclosing information?
- Whether the medical examination in the post mortem report if any is consistent with the allegation?
- The state of the deceased's health before his or her death? If the person had been in custody for only a short period before his or her death, determine his or her health prior to the arrest;
- The state of the deceased's health while in detention? This should include an evaluation of what medical complaints the person may have had, whether timely and appropriate treatment was administered and whether the deceased adhered to the treatment;
- Whether there any criminal charges against the alleged Perpetrators and if so, establish the status of criminal proceedings.

15.0 INVESTIGATING KILLINGS BY STATE AGENTS



Such investigations originate from the killings by Security Agents and are based on either an allegation of a crime related to the use of force or the need for official exercises of power and authority to be subject to scrutiny.

15.1 Incidences where Police is justified to use force.

The Police or other Security Agents are authorized to use force in certain circumstances (where the force is necessary and proportional) and hence investigations into allegations of use of force leading to death of a person serve to verify whether the Agent acted within the law. Therefore, where force is required, it is necessary for the Police or other Security Agencies to exercise the **proportionality, legality, accountability** and **necessity** principles; also known as the P.L.A.N principles:⁵

- a) **Proportionality** - This refers to the relationship between the means the Police or other Agent applies in the enforcement of law and order, and the end sought to be achieved. The nature and extent of police actions must only be what is required to meet what it seeks to address.
- b) **Legality** – the Agent must be lawful and not arbitrary or based on unjustified orders. This principle requires a clear legal framework justifying intervention by the police.
- c) **Accountability** – the Agent must be responsible for their actions, especially where use of force was not necessary, or was not lawful, or was out of proportion.
- d) **Necessity** – the Agent's action must be appropriate, reasonable and justifiable in each circumstance at hand, after taking all factors into account. Force should only be used when necessary to protect the person and property of others (including police officers), and even then should be proportionate to the threat faced.

⁵ This can be found in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers

It should be noted that in cases where such force is not necessary or proportional, it is regarded to as excessive and in such incidents, the police may be charged with the criminal offences of murder or culpable homicide (where someone is killed), assault causing grievous bodily harm or common assault. Such offences may also amount to violation of the victim's right to life or freedom from torture or cruel, inhuman or degrading treatment or punishment under human rights law.

15.2 Questions to ask when dealing with killings by police or other security agencies in joint operation with the police.

- a) Was the death actually caused by the Police?
- b) Was the Police acting in self-defence? What was the conduct of the deceased person during the incident?
- c) Is there any evidence that corroborates or contradicts the Police version of events?
- d) Why did the Police believe that they were in danger?
- e) Was the deceased person armed? If so, with what weapons?
- f) If not armed with a fire arm, could the Police have overcome the threat posed to them without using lethal force? Were there alternatives open to the Police?

15.3 Questions if a person was killed fleeing

- 1) What legal provisions are there relating to the use of lethal force by police against fleeing person?
- 2) What offence was the person suspected to have committed?
- 3) What evidence do the Police have against the person whom they killed? Do they have substantial grounds for suspecting him or her of the offence in question?
- 4) Were there reasonable alternatives available to the Police to apprehend the person at this point or later on?
- 5) How many Police officers were present?
- 6) Which Police officers were actually involved in the shooting?

15.4 Questions on the use of firearms

- a) What was the nature of the wounds?
- b) Where were they located on the body of the victim?
- c) What do they indicate about the direction from which the person was shot?
- d) What do they indicate about the distance (range) from which the person was shot?
- e) Is this consistent with the Police version of what happened?

To justify a killing in self-defence, the police should prove that the deceased was armed with a potentially lethal weapon and a threat to life.

15.5 Questions to ask when dealing with investigations into the use of force by police in public gatherings

The use of force related to public gatherings present two issues; denial of the right to freedom of expression and assembly, and the excessive use of force. Therefore, in addition to the Investigator applying techniques similar to individual incidents leading to death or injury, he or she will focus on whether the Police had some justification for disrupting the demonstration or gathering. The latter depends on the laws governing such events. Some questions to ask when investigating the use of force in a public gathering are:

- a) Are there incidences that Political leaders or Government objected to the demonstration? What was the political context and what were the circumstances before the demonstration? Were any statements issued by Government Officials regarding particular political parties or Individuals or demonstrations? Did Government officials issue any warnings beforehand?
- b) Was notification required? If so, had clearance been granted?
- c) Was violence used by demonstrators (or *agents provocateurs* amongst the demonstrators)? Were armed, intoxicated, or aggressive individuals present? Were gunshots fired from within the crowd?
- d) How many police were at the location? Which branches? Who had overall responsibility of the demonstration? What type of weapons and other instruments were at the disposal of the police? Did they use *agents provocateurs*?
- e) What tactics were used by Police? Were peaceful means used before resorting to force? Were demonstrators dispersed? How? Did the police pursue fleeing individuals? For how long? Were the Police seeking to arrest individuals?
- f) How many Victims were there? What was the nature of their injuries or cause of death?
- g) Were members of the police force injured or killed? How many? What was the nature of the injuries? Where did they occur? (*For example, nearer to where the alleged killing of demonstrators occurred*)
- h) Were there any witnesses to the use of force? Were a large number of individual arrested following the incident? Were there cases of alleged ill treatment? Were any charges brought? Did the police harass witnesses to the killings or relatives of the victims? Did the police charge the witnesses?

16.0 PROTECTING WITNESSES AND INTERVIEWEES

When conducting interviews with victims or witnesses, it is important to consider their need for protection. While there can be no complete assurance that the interviewee will not face retaliation or reprisals after the interview, several measures may be taken to protect the person. Such measures include:

- a) interviewing a significant number of people to avoid focusing attention on the one person
- b) conducting the interview in a safe place where surveillance is minimal
- c) asking for what security precautions the person believes should be taken at the start and the end of the interview
- d) inviting the person to keep in contact with the Investigator after the interview
- e) conducting a follow-up visit shortly after the interview and meeting with the same detainees
- f) concealing the identity of the Interviewee

It is a duty of the State to protect the alleged victims, witnesses and their families from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigations. As such, the Investigator should recommend that those implicated in human rights abuses should be removed from any possible control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations.

To ensure the safety of Interviewees; the Investigator should in addition to the above, write down and keep safe identities of people visited so that he or she can follow up on the safety of those individuals at a future return visit.

The Investigator should document the threats, reprisals and attempts of such on the Witness or Victim.

The Investigator should contact and engage higher authorities within the investigating Agency for assistance on ensuring the safety of a witness.

If the danger to the safety of the victim or witness is eminent, the investigator should seek other forms of evidence.



17.0 SAFETY OF THE INVESTIGATOR

Attacks, threats, intimidations, hazards and safety issues related to investigating alleged violations of human rights are a reality. In many cases, perpetrators of human rights violations are people in authority who may use all means to avoid investigative scrutiny and legal accountability. Often times, assailants seek to provoke fear in any person pursuing a claim, so as to avoid public exposure and criticisms. To this end, the vulnerability-exacerbating effects of such intimidation



extends to society as a whole and re-victimizes victims and those in search for the truth and justice, and reparation is impeded.

Threatening behaviours may include statements or acts of intention or expressions of excessive emotion. They can be indirect or direct, verbal or nonverbal. Verbal threats may be indirect expressions of frustration or anger directed toward a person or office, or they may be direct statements of the intention to harm. Any threatening behaviour should be considered potentially serious and reported. When threatened, some investigators halt or change their work habits, while others feel the urge to abandon their work or places of residence. In other cases, investigators have fled the country for fear of being hurt.

Even though an investigator should have the moral courage to assess and respond to such threats, he or she should know that personal wellbeing and occupational safety are always a priority. Investigator should be pragmatic, rational, realistic and practical about the situation and should always first ensure his or her own safety. Below are tips on what the investigator should do when threatened.

17.1 If the threat is immediate

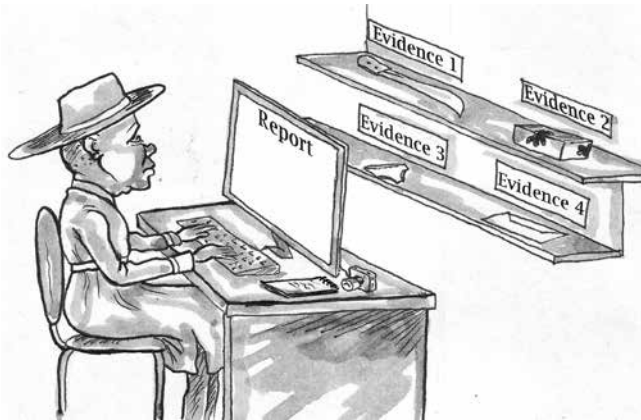
- a) **Run:-** leave the situation immediately or run for your life, then call security if possible;
- b) **Hide:-** Hide in an area out of the violent person's view; block entry to your hiding place and lock the doors; Turn off your cell phone's ringer and vibration settings.
- c) **Remain calm:** Do not panic and remain calm until help arrives or the threat diminishes.

17.2 If threat is anticipated

- a) Where the threat is from angry or hostile complainants or witnesses, stay calm and listen attentively. Maintain eye contact, while being courteous, patient, and respectful.
- b) If shouting, swearing, or threatening continues, signal a co-worker, or supervisor, that you need help (*have a prearranged code word or alarm system*). Do not make any calls yourself. Have someone call the Police.
- c) Inform the immediate supervisor where you feel threatened;
- d) Report the details of the incident to police;
- e) Document the incident. Describe the details, sequence and context of events. Have threats been made in the past? Is the person known to have a weapon? Is there a history of animosity? This information is important in evaluating the level of risk. Cite consultations, plan for action, and action taken.
- f) For matters or situations that cannot be handled at the regional level, the Regional Human Rights Officer should urgently inform the Directorate of Complaints, Investigations and Legal Services who will determine appropriate intervention, and choose appropriate safety measures.
- g) For major incidents, the Chairperson or Member of the Commission should involve the relevant authorities about the matter or incident.

18.0 REPORT WRITING AND DOCUMENTATION

At the conclusion of the investigation, it is a requirement to draft an investigation report. The report is a summary of the investigation, the evidence gathered and investigator's conclusion. In writing an investigations report, the investigator should think strategically and should write in a way that appeals to the intended audience. Investigators should clearly conceptualize and understand



what they are to write about before starting to write. If the Investigator has done a thorough job of gathering evidence, the report will be far easier to write.

18.1 Essential elements of a report

A report is written for two primary reasons; to educate and inform as well as persuade the audience. Generally, a good report should cover all the essential elements of the investigation and should show the steps taken by the Investigator to reach the conclusion. Such elements include;

- a) Details of an investigator and assistants if any. It reflects the unbiased composition of the team, their competence, experience and expertise regarding the subject matter of the investigation and hence builds confidence in the intended audience;
- b) Background to the investigations;
- c) The nature of allegation;
- d) Manner of receipt of complaint;
- e) Date and time of lodging a complaint; date of commencement and conclusion of the investigations. This provides perspective of the facts contained in the report;
- f) The purpose of the investigation;
- g) The allegation being investigated: alleged facts, elements and legislation;
- h) The gathering of physical evidence: medical reports, chain of custody etc;
- i) The reporting of interviews;
- j) Challenges in the investigation, such as cooperation, hostility and fear;
- k) Assessment of evidence and witness statement: consistency, plausibility and reliability;

- l) Conclusion and recommendations;
- m) Attachments;

18.2 Structure of a report

- a) **Introduction:** This section lets the reader know what the report is about. It explains what is being investigated and why.
- b) **How the evidence was gathered or methodology:** While brevity is normally a good thing when writing a report, this section is the exception to that rule. Include as much detail as possible. This demonstrates to the reader that the investigation was thorough, professional and fact-based; whether the conclusions in the report were made in a transparent manner.
- c) **Background:** Give some brief overall context for the investigation and include any relevant background information. Explain why the Investigating Agency say UHRC launched the investigation.
- d) **What happened before the incident?** Give a brief account of any relevant events leading up to the incident.
- e) **What happened during the incident?** This section is the most detailed. As far as possible, provide a chronological account of what happened during the incident. One option is to structure this section using each source of evidence; for example, including a summary or excerpts of what each witness said, followed by what any physical, digital or other source of evidence showed.
- f) **What happened after the incident?** Describe what happened to all parties immediately after the incident. Who spoke to whom? What utterances did anyone make? Who wrote what and when? This section should also include the details and results of any forensic processes and results, including the post-mortem if any.
- g) **Findings and recommendations:** This is where the Investigator analyses the evidence, perhaps using the criteria set out in the previous chapter on assessing evidence. The analysis includes:
 - **Issue:** What is the issue that is the subject of the report?
 - **Rules:** What rules and laws apply to the issue? The Investigator should set out any Human Rights laws and Standards that are relevant to what is being investigated. Rules do not just include Laws, Policies, Protocols and Standards, though those are extraordinarily important. They also include common sense, but only where it is reasonably obvious to or indisputable by anyone.
 - **Analysis:** The Investigator sets out the relevant facts and then applies the rule(s) to them. As this is done, the Investigator will be able to develop an answer to the issue, based on the rule. As the analysis is developed, the reader should be persuaded to agree with the ultimate conclusion. The Investigator should avoid using an accusatory tone as it could be interpreted to reflect a predetermined conclusion of the situation under investigation and hence compromise impartiality.

- **Conclusion:** What is the conclusion that deals with the issue?
It is important to note that different people can reasonably conclude different things, based on the same set of facts. The report should clearly explain why the conclusion was reached, based on the evidence and the rule(s).

18.3 General Tips for Good Writing

Good writing is all about communicating clearly with your audience. Below are some general tips for writing an accurate and effective report.

- a) Use short words.
- b) Use short sentences.
- c) Use short paragraphs.
- d) Use “active” language where possible; for example, “The Investigator writes the report” is better than “The report is written by the Investigator”.
- e) Use headings, subheadings and text boxes to break up the text.
- f) Have someone else read the draft report, especially someone unfamiliar with the investigation, to ensure that the information is clear and the analysis and recommendations make sense.
- g) Edit ruthlessly to ensure accuracy and clarity.

19.0 PREPARING AND GIVING EVIDENCE BEFORE COURT OR THE TRIBUNAL

An Investigator may be called upon before the Tribunal or Court to give evidence on his or her findings. This section therefore is intended to guide the Investigator on how to prepare before giving evidence before Court or the Tribunal.



As an Investigator, one might be called upon to give evidence in a court of law or any judicial tribunal as a witness, as well as to assist the victim and witnesses prepare for the hearing. This therefore calls for preparation, since non-preparedness could potentially damage the case and affect its credibility.

As a Witness, the Investigator's role is to honestly and truthfully tell the Court what he or she knows about the matter, without any embellishment, exaggeration or assumption. To adequately prepare as a witness, the Investigator should take the following suggested steps:-

- a) Read his or her statement before going to Court to ensure familiarity with the issues raised in the evidence;
- b) Read through and familiarize him or herself with any supporting documents that are referred to in the witness statement, although these documents will be available at court for ease of reference;
- c) If requested, read through the documents that set out each party's case and the statements of other witnesses.
- d) Raise any queries or concerns with a lawyer for possible answers or response;
- e) Practice answering questions and do a mock cross examination.
- f) Dress appropriately for Court and be appropriately groomed. This leaves a positive impression on the Commissioner or Judicial Officer;
- g) Use your own words and phrases while answering questions; it shows you cannot be influenced
- h) Listen carefully before answering any question. If one does not understand the question, say so for the examiner to rephrase it.
 - i) Tell the court straight away if he or she needs to see a relevant document to ensure that the answer to a particular question is fully accurate and truthful;
- j) Resist any temptation to 'fence' or argue with the lawyers – their job is to ask questions on behalf of their clients;
- k) Keep answers short. If a detail is needed, more questions will be asked.

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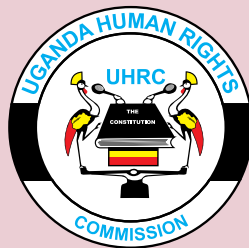
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