

# Fact-Finding by Human Rights Non-Governmental Organizations: Challenges, Strategies, and the Shaping of Archival Evidence

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**RÉSUMÉ** Les droits de la personne sont devenus un facteur prépondérant dans les activités mondiales durant les vingt ou vingt-cinq dernières années. Ce développement découle surtout du travail d'organisations non-gouvernementales (ONG) qui, depuis la Seconde Guerre mondiale, ont été au premier plan dans l'avancement et la défense de nouvelles normes de conduite internationales en terme de droits de la personne. Les ONG ont construit leur prestige et leur influence sur leur habileté à enquêter, documenter et publiciser les violations des droits de la personne et du droit humanitaire. À cause de la portée des enquêtes sur les droits de la personne dans les affaires internationales, la façon dont les ONG produisent et mettent en forme des preuves documentaires crédibles, ainsi que les contraintes et défis auxquels elles font face en le faisant sont des sujets importants à traiter. Les ONG peuvent faire face à plusieurs obstacles nécessitant la formulation de stratégies spécifiques de recherche, qui affectent directement le type de preuves ou de documents qui seront produits pour prouver les violations aux droits humains. La façon dont les organisations documentent, corroborent et rapportent les faits à la communauté internationale en dit beaucoup sur la raison qui fait que les ONG spécialisées en droits de la personne font partie des plus importants chroniqueurs de notre temps; il est aussi impératif de conserver leurs documents d'archives.

**ABSTRACT** Over the past twenty to twenty-five years international human rights has become a major force in world affairs. This development has stemmed primarily from the work of international human rights non-governmental organizations (NGOs), which since the Second World War have acted as the primary agents for advancing and defending new international norms of conduct. NGOs have built their prestige and influence on their ability to investigate, document, and publicize violations of human rights and humanitarian law. Given the significance of human rights fact-finding in international affairs, the manner in which NGOs credibly produce and shape documentary evidence and the constraints and challenges they face in doing so are important issues. NGOs may confront many obstacles that necessitate the formulation of specific fact-finding strategies, which directly affect what types of credible evidence or records are produced to substantiate alleged rights abuses. How these organizations document, corroborate, and report the facts to the international community says much about why human rights NGOs are one of the most important chroniclers of our times and why the imperative exists to preserve their records.

Within the last twenty to twenty-five years international human rights have become a major force in world affairs. During this period, scarcely a day has gone by without the news media reporting on one or more major stories about human rights: the war and its aftermath in Kosovo; the persecution of Tibetan monks; the extradition case of the former Chilean dictator Augusto Pinochet; the capture and arrest of former Khmer Rouge leaders; the international trial of Slobodon Milosovich; the capture of Saddam Hussein and the uncovering of mass graves in Iraq; and many other events that signify some of the most dramatic political events in recent history. In regions in Europe, the former Soviet Union, Asia, Africa, and the Americas, human rights have become a permanent fixture in international relations.

Many of these developments stem from the work of international human rights non-governmental organizations (NGOs), which since the Second World War have acted both as the primary agents for advancing new international norms of conduct and as one of the most important chroniclers of our times. NGOs like Amnesty International (AI), Human Rights Watch, and many others, have built their prestige and influence on their ability to investigate, document, and publicize violations of human rights and humanitarian law.<sup>1</sup> Given the significance of human rights fact-finding in international affairs, how NGOs credibly produce and shape documentary evidence and the constraints and challenges they face in doing so are important issues. In pursuing human rights investigations, NGOs confront many obstacles that necessitate the formulation of specific fact-finding strategies. These strategies directly affect what types of credible evidence or records are produced to substantiate alleged rights abuses. Government secrecy poses the most difficult challenge for human rights investigators, especially when governments engage in political murder, disappearances or torture, or otherwise conspire to break their own laws or subvert their own constitutions to continue repressive policies and cloak their crimes behind facades of legitimacy. Against this backdrop, human rights NGOs often face enormous challenges in documenting rights abuses. How do these organizations, then, discern the facts, on

<sup>1</sup> The principle behind these actions is one of practical consideration – that the most effective way to curb abuses is to expose them to public scrutiny and international criticism. While some governments may choose to ignore international condemnation, the record is clear that the strategy of promoting change through the documentation and reporting of facts has been highly effective. Governments now take NGO investigations and reporting of human rights abuses seriously, knowing that such publicity can have serious consequences for commercial and diplomatic relations or foreign aid to their countries. Because being labeled a pariah nation may carry with it serious international repercussions, the NGO fact-finding and reporting process carries with it significant weight. Without scrupulous attention to research methodology, human rights NGOs would not enjoy the political influence that they do today. The gathering and dissemination of this evidence therefore involves a high stakes game of international credibility that involves a constant challenge to governments who seek to cloak their abuses behind facades of respectability.

whom do they rely, and what methodologies do they employ to credibly document, corroborate, and report the facts to the international community? An analysis of how these fact-finding methodologies operate and how they shape the human rights archival record will illustrate why these records are important as a chronicle of our times and why the imperative exists for the preservation of these materials.

The records of human rights investigations are significant for several reasons. First, the human rights archival record is important for historical accountability. Because of the past inability or unwillingness to bring perpetrators to justice, the historical verdict has often served as the only tribunal for human rights perpetrators. Even with the recent institution of the new International Criminal Court, the historical verdict will continue to play a pivotal role in preserving a record that has amply demonstrated the international community's past reluctance in bringing many of this century's most notorious dictators to justice. Already, with the exponential growth of scholarly research into human rights affairs, this evidence is becoming an international public record of sorts that is increasingly being used by researchers, prosecutors, and victims alike with the aim of analyzing and making known the dimensions of particular human rights violations, the complicity of governments and individuals in these crimes, and the passivity, selectivity, and self-interest of others in the international community. As a result, this evidence imposes a lasting accountability or judgment concerning the actions of governments and individuals who have committed wide-ranging human rights violations. Their crimes are now a matter of historical record and, unless destroyed, will always remain so. Second, as a corollary to the historical verdict, this archival evidence is important for the memory of the thousands of victims and survivors of human rights abuses, their relatives, and others who must individually confront the truth of what transpired. Retaining the memory of victims and survivors is also important to preserve at least some semblance of identity for those who suffered extreme depredations at the hands of the state. Third, worldwide acceptance of the International Criminal Court and the move to end impunity means that fact-finding archival records of human rights abuses will likely assume new and critical importance as this evidence becomes pivotal in the adjudication of cases. Post-authoritarian governments can only be helped if they confront the crimes of the past and end impunity with the aim of building new democratic societies based on the rule of law. Fourth, this documentation may be seen as embodying the extremes of repression and the lengths to which power is sometimes exercised by the state against the individual. Finally, human rights archives chronicle how individuals have formed a mass international movement that has effectively challenged state-sponsored violence, eroded state sovereignty, elevated the individual as a matter of international concern, and advanced an idea that has become one of the most influential concepts of the twentieth and twenty-first centuries.

The interconnecting themes of contemporary world politics, archives, power, and accountability is an emerging field of study in archival literature. In 2002, *Archival Science* published two thematic issues comprising essays on the theme of archives, power, accountability, and memory.<sup>2</sup> In their introductory essay Joan M. Schwartz and Terry Cook wrote that archives have been established “by the powerful to protect or enhance their positions in society”; through “archives, the past is controlled,” certain “stories are privileged and others marginalized.”<sup>3</sup> What is missing from this argument is one of the ironies of modern history in which the copious secret archives amassed by autocratic and totalitarian officials as instruments of repression have often turned state’s evidence against those very same authorities after they have been cast from power. As a result, archives meant to serve the powerful may serve to indict them for their crimes, no matter how much they may attempt to practice national amnesia through the destruction of evidence.<sup>4</sup> From the defeat of Nazi Germany, to the 1989 revolutions in Eastern Europe, to the 1991 collapse of the former Soviet Union, the archives of the secret police often have been transformed from instruments of repression into instruments of indictment of former totalitarian and authoritarian officials. Under these circumstances, the powerful have fallen from grace, sometimes indicted, imprisoned, or executed, but perhaps more often freed from prosecution and accountability in the name of national reconciliation. At the very least, these records and archives that once served the authorities in anti-democratic regimes have become the tool of new masters as different elites – sometimes former prisoners of conscience – have assumed power in post-authoritarian governments.

2 See *Archival Science* 2, nos. 1–2 and nos. 3–4 (2000). These two issues contain a series of articles on various aspects of archives, accountability, and power.

3 Joan M. Schwartz and Terry Cook, “Archives, Records, and Power: The Making of Modern Memory,” *Archival Science* 2, nos. 1–2 (2000), pp. 1–19.

4 This point also has been amply demonstrated in Western democracies. In the United States alone, the records generated by presidential administrations and corporate executives have often been used against them in numerous investigations and criminal proceedings. Indeed, the United States Congress passed the *Independent Counsel Statute* in 1978 precisely to investigate the wrong-doing of powerful officials in the executive branch. From Presidents Richard M. Nixon through William J. Clinton, Congress has repeatedly investigated and subpoenaed the records of the White House, sometimes indicting powerful executive branch officials for civil and criminal wrong-doing. In addition, the numerous scandals and investigations involving WorldCom, Enron, and other major corporations have shown that records and archives know no loyalty and do not always benefit the powerful and privileged in society. Indeed, corporate lawyers understand that records may be dangerous to retain, often advising corporate leaders on the necessity of document destruction as a means of protection. Their modus operandi is to leave no self-incriminating trail. There is a wide range of archival literature on these other forms of accountability. A good starting point is Richard J. Cox and David A. Wallace, eds., *Archives and the Public Good: Accountability and Records in Modern Society* (Westport, CT, 2002). Also see Bruce P. Montgomery’s forthcoming book, *History Denied: White House Materials and Executive Branch Politics* (Lanham, MD).

Verne Harris, director of the South African History Archive, has written on some of these themes, seeing archives as both an expression and instrument of the prevailing relations of power within the context of South Africa's transition from apartheid to democracy.<sup>5</sup> Other articles anchored in contemporary world history have appeared in *Archivaria* on the Cambodian genocide and the Iraqi Secret Police files, demonstrating how the archives of genocidal perpetrators have been marshaled against them in the international arena.<sup>6</sup> Complementing these studies is T.A. Adami's essay on the management of criminal justice records of the Rwanda War Crimes Tribunal, which appeared in 2003 in the *African Journal of Library, Archives, and Information Science*.<sup>7</sup> In 2002, Richard J. Cox and David A. Wallace co-edited *Archives and the Public Good: Accountability and Records in Modern Society*, a series of case studies on records and accountability.<sup>8</sup> Of these, essays by Verne Harris and Greg Bradsher focus on politics, accountability, memory, and international justice.<sup>9</sup> Few articles, however, have appeared on the archives of international human rights NGOs, which were created not to serve the interests of powerful authorities who control the modern mechanisms of the state, but instead to call them to international account. As a result, they reflect an oppositional force to the repressive actions of governments and their efforts to manage the past, or to revise or eradicate memory. Such archives have been created and shaped specifically in response to fact-finding strategies and investigations that seek to indict authoritarian regimes and others in the court of world opinion. A salient value of these archives is that they were created on behalf of the persecuted or the "marginalized"; they constitute an antithetical narrative to the secrecy, half-truths, and lies of government authorities.

5 Verne Harris, "The Archival Silver: Power, Memory, and Archives in South Africa," *Archival Science* 2, nos. 1–2 (2002), pp. 63–86.

6 See Dawne Adams, "The Tuol Sleng Archives and the Cambodian Genocide," *Archivaria* 45 (Spring 1998), pp. 5–26. Also see the following by Bruce P. Montgomery: "The Iraqi Secret Police Files: A Documentary Record of the Anfal Genocide," *Archivaria* 23 (Fall 2001), pp. 69–99; "Archiving Human Rights: The Records of Amnesty International USA," *Archivaria* 39 (Spring 1995), pp. 108–31; "Human Rights: A Survey of Archival Sources in the United States and Canada," *Human Rights Quarterly* 23, no. 2 (May 2001), pp. 431–63; and "The Human Rights Watch Archives," *Peace Review* 14, no. 4 (December 2002), pp. 455–64.

7 T.A. Adami, "Management of International Criminal Justice Records: The Case of the Rwanda Tribunal," *African Journal of Library, Archives, and Information Science* 13, no. 1 (April 2003), pp. 1–10.

8 Cox and Wallace, *Archives and the Public Good*.

9 See Verne Harris, "'They Should Have Destroyed More': The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990–1994," in Cox and Wallace, *Archives and the Public Good*, pp. 205–28. Also see in this same book, Greg Bradsher, "Turning History into Justice: The National Archives and Records Administration and Holocaust-Era Assets," pp. 177–204.

### **The Fact-Finding Process: What Is It?**

Any effort to explore how human rights fact-finding shapes the archival record may be frustrated by the complexity of the human rights field and the diversity among domestic and international NGOs. The human rights field is commonly seen as homogenous, and human rights groups are assumed to share the same goals. NGOs active in human rights, however, represent not one, but a constellation of causes, purposes, ideologies, and constituencies with sometimes contradictory functions and goals. For purposes of classification, human rights NGOs may be roughly divided into “exclusive” and “non-exclusive” organizations. In the vanguard are groups that exclusively promote and defend international human rights, including such NGOs as Amnesty International, Human Rights Watch, or the International Commission of Jurists. Although these international organizations insist on their autonomy from governmental influence, their activities are inherently political. They routinely investigate and monitor government behaviour and seek to deter rights violations. At the same time, the legitimacy and credibility of these groups rests largely in their political non-partisanship, in the objectivity of their fact-finding, and in the integrity with which they apply international human rights standards. While these elite groups comprise only a minority of human rights organizations, they also constitute its core and frequently set the agenda for the movement’s overall direction.<sup>10</sup> Since the early 1980s, they have standardized their fact-finding strategies in response to government attacks on their credibility.

Beyond these elite NGOs exist many more numerous, diverse, and “non-exclusive” organizations that also devote resources to the human rights cause, for example, churches and religious entities, professional associations, women’s organizations, civil rights groups, political organizations, refugee groups, single issue and policy groups, ethnically-based and ideological entities, solidarity groups, organizations concerned with children, the handicapped, the elderly, and the poor. These groups typically have made human rights a significant, but not exclusive part of their concerns. In addition, in many cases the focus of these groups is to promote civil liberties in their own countries. In other cases, they may have an international focus, but possess conflicting ideologies and goals as, for example, groups that promote Jewish causes, including Israel, in contrast with those that advance the Palestinian cause.<sup>11</sup>

For purposes of this analysis, however, the focus is on international human rights NGOs, whose primary activities involve monitoring and investigating government conduct and advancing international norms of behaviour. Their

10 See Laurie S. Wiseberg, “Human Rights Nongovernmental Organizations,” in Richard Pierre Claude and Burns H. Weston, eds., *Human Rights in the World Community* (Philadelphia, 1992), pp. 372–73.

11 *Ibid.*, p. 373.

focus is principally international in scope. In carrying out their research activities, international NGOs continue to produce a trail of investigative records that reflect many of the seminal conflicts of past and current times. The nature of these archives, moreover, is circumscribed by the specific research methodologies employed by NGOs.

Human rights NGOs act to collect and analyze data about violations of human rights throughout the world. Investigators may attempt, for example, to evaluate information about arrests, trials, and detention in light of political and legal developments in a given country and to provide comprehensive details about the general political context and individual prisoners or victims involved. As reflected in human rights NGO archives, researchers may gather evidence from many sources, such as newspapers and periodicals in a variety of languages; consultations with experts in particular fields; and interviews with exiles, émigrés, refugees, expatriates, missionaries, journalists, lawyers, incidental travelers, victims and survivors and their relatives, informants, church officials, trade union officials, and members of professional organizations and other NGOs. In addition, NGOs may conduct investigative or fact-finding missions to particular countries to observe human rights situations first hand. From these many disparate sources, human rights researchers attempt to analyze and corroborate facts generally pertaining to such situations as political imprisonment, torture, prison conditions, disappearances, labour practices, extra-judicial executions, capital punishment, national and international legislation regarding human rights, and other matters of concern. Forensic analysis or other medical procedures may be employed to examine genetic material to determine the cause and manner of death, identify victims, and in some cases reunify families with children who have been abducted during civil conflict.<sup>12</sup> Researchers examine this evidence to reach conclusions concerning factual human rights patterns. In this respect, human rights fact gathering rarely, if ever, attempts to discern the underlying or theoretical causes for the actions of human rights perpetrators. This fact stems primarily from practical considerations. Human rights NGOs are not in the business of constructing theoretical analyses of motives behind government human rights abuses; rather their goal is to establish the facts, resolve cases, change government conduct, and institutionalize human rights norms in the world community. Human rights fact-finding is thus utilitarian in nature.<sup>13</sup> Through fact-finding, NGOs seek to identify and stigmatize those responsible for rights abuses and to compel change toward greater respect for human rights. In addition to securing the physical integrity of the individual, the goal of fact-find-

<sup>12</sup> *Amnesty International USA Handbook* (1991), pp. 57–60.

<sup>13</sup> Diane F. Orentlicher, "Bearing Witness: The Art and Science of Human Rights Fact Finding," *Harvard Human Rights Journal* 3 (Spring 1990), p. 95.

ing strategies is to promote the integration of human rights with political systems to advance pluralistic and democratic societies. The records produced by these research and fact-finding methods therefore embody the most sensitive data found in human rights NGO archives, including the names of victims and survivors, perpetrators, informants, and other sources of information.

### **Fact-Finding Constraints and Challenges to NGO Credibility**

Much of the fact-finding archival record derives from the difficulties faced by NGOs in documenting rights violations. These problems determine specific fact-finding strategies, including the types of credible evidence that is collected for analysis. The greatest difficulty faced by human rights researchers is government secrecy, intimidation, and disinformation. The facts surrounding these investigations are frequently a matter of dispute and denial largely because those responsible for committing violations do so in a shroud of secrecy. Security forces, for example, may “disappear” political opponents in the dead of night, dispose of their bodies in secret grave sites, destroy records or evidence, imprison or torture individuals in secret detention camps, or deflect blame onto others. Other obstacles may exist, including government control of the media; repression and persecution of political opponents, intellectuals, domestic human rights monitors, and others. Governments may also prohibit the entry of international human rights investigators or members of the foreign press into their countries. Witnesses and victims may refuse to testify or otherwise provide information out of fear of retaliation by government security forces or armed groups. These factors are prevalent in countries with the worst human rights records. NGO researchers must therefore find ways to circumvent these limitations to document the facts. As might be expected, the strategies to overcome government obfuscation profoundly circumscribe the nature of materials, records, or information collected to substantiate alleged rights violations. NGOs typically document the limitations in their investigative or mission field notes, and as a matter of course, also note them in their published reports. For example, in a report on human rights in Czechoslovakia published in 1989 by the U.S. Helsinki Watch Committee, the Committee noted the limitations of its investigation due to police violence, surveillance, and intimidation, prejudicial courts, and restrictions on freedom of movement. The Helsinki Committee noted that the investigation relied primarily on what information citizens themselves were willing to give at great risk of retaliation by the authorities.<sup>14</sup> As in other former Soviet satellite nations, pervasive secrecy and paranoia surrounding government activities made access to official sources of information virtually impossible. In the face of these authori-

14 See *Human Rights in Czechoslovakia* (U.S. Helsinki Watch Committee/Human Rights Watch, 1989), p. 1.



tarian social and political controls the Helsinki Committee had little choice but to rely almost solely on interviews and testimony collected from underground dissident groups such as Charter 77 and other independent sources in order to discern the basic nature of social and political repression. These authoritarian constraints therefore greatly constricted the fact-finding mission and produced an archival trail of documentation consisting of a very narrow range of source material that was developed through a network of underground contacts.

The role of interpreting evidence also has shaped the human rights archival record in important ways. Nevertheless, human rights analysis has often eschewed airtight conclusions, sometimes leaving NGOs open to criticism from governments and other critics. As a result of these interpretive differences, in the 1980s NGOs initiated sweeping changes in their documentation and reporting strategies.<sup>15</sup> These changes, more than any other factor, significantly redefined the archival fact-finding record along more factual and comprehensive lines. Up to this point, in the 1960s and 1970s, NGO efforts to promote human rights worldwide relied mainly on exhortations to governments. During the 1980s, however, repeated confrontations with the Reagan Administration over human rights abuses in El Salvador, Guatemala, Turkey, and the Philippines – governments supported by the United States – contributed greatly to the shift that made promoting human rights turn on debates over facts. At this point, the collection of documentation became more imperative than ever as a means of proving or disproving alleged rights violations. The gathering of records and other data not only took the form of more extensive written and oral testimony and interviews with victims and survivors, but also the collection and analysis of scientific and medical evidence, which served to strengthen public debates with governments, heighten public interest, and bolster the credibility of the human rights movement worldwide. As a result of the political confrontation with the Reagan administration, the archival trail of these fact-finding cases became considerably enriched, far more complete, factual, and powerful as a lasting historical indictment against those who engaged in wrongful imprisonment, torture, disappearances, extra-legal executions, or other egregious rights abuses.

Nowhere is this fact more evident in the archives of human rights NGOs

15 Most of the political attacks on NGO credibility derive from governments under scrutiny. These sometimes pose significant challenges to the integrity of the human rights fact-finding and documentation process. The aim of these attacks, of course, is to discredit human rights NGO documentation and reporting in order to deflect international pressure and to maintain government domestic and international legitimacy. The common assumption is that countries with the worst human rights records are the ones most likely to challenge NGO investigations. Direct assaults from outlaw or pariah nation states are less likely to be taken seriously by the international community than challenges from the United States or other developed countries that have firmly rooted democratic traditions.

than the dispute over alleged massive rights abuses in El Salvador between the international human rights community and the Reagan and Bush Administrations of the 1980s. El Salvador became the most compelling issue that ushered in this new age of fact-finding. The public dispute erupted over the Administrations' enormous provision of military aid to an increasing unstable Salvadoran government fighting a communist insurgency backed by Nicaragua. The reporting of wide-scale atrocities of the Salvadoran security forces not only eroded public support for U.S. involvement in Central America, but also sparked growing congressional opposition to continued massive military aid to the Salvadoran government. Reagan Administration officials questioned and attacked the credibility with which NGOs reported the human rights situation. Both sides traded harsh criticisms of each other's analysis and interpretation of factual conditions, accusing one another of politically motivated distortions. Despite mounting political pressure, Congress was unwilling to sever military aid completely and instead passed legislation linking U.S. aid to requirements mandating the President to provide biannual certifications that improvements in human rights conditions had been made in the previous six months.

This turn of events made the bi-annual congressional certification hearings the main battleground between the Reagan Administration and the human rights community. The dispute and the attacks on NGO credibility attracted broad media attention, which posed a serious challenge to the integrity with which such organizations as Americas Watch, the Lawyers Committee for Human Rights, and others conducted their investigations. This dispute alone added colour and drama to the archival record. The controversy was extensively covered by the international press, and NGOs responded to the attacks on their credibility by dramatically expanding their investigations and by producing an enormous output of factual reports aimed at both defending their credibility and curbing the continuing widespread violence. In recounting this controversy, Aryeh Neier, former executive director of Human Rights Watch, remarked in 1981 that it was the Reagan Administration's outspoken repudiation of human rights as an important factor in U.S. foreign policy and specifically regarding El Salvador that caused the human rights movement to bolster its activities toward far more meticulous and extensive documentation and analysis. This new approach, which sought to document the discrepancies between pretense and actual human rights practice, brought significant pressure to bear on curbing Salvadoran rights violations. The change toward more meticulous documentation can be seen in the archives of human rights NGOs, much like a major geological appearance in the earth's substrata. An enormous proliferation of material evidence suddenly appears in these archives in the early 1980s in the form of extensive witness testimony; interviews with victims and survivors, government and military officials; the use of statistical databases aimed at tracking specific incidences of abuse and identifying rights

abusers; documents from Salvadoran human rights organizations; political action documents; speeches before Congress; press releases; numerous published reports directly challenging Reagan Administration claims of an improving human rights situation in El Salvador; and other data.<sup>16</sup> In short, human rights organizations rapidly expanded and improved their professional operations, especially concerning the extent to which they began documenting rights violations. The result has been an obviously richer archival trail of evidence concerning many of the seminal human rights events of the later twentieth century.

The human rights archival record, moreover, has been influenced by the absence of uniform human rights standards by which to measure or evaluate violations. On the whole, NGOs attempt to document and assess state practices against internationally recognized human rights norms, or against a country's own laws and constitution.<sup>17</sup> NGOs have avoided applying uniform methodological standards to specific human rights situations for two reasons. First, as the records of NGOs indicate, human rights situations vary enormously from one country to the next. The vast cultural, social, and political differences among countries and the enormous variation in human rights situations have required NGOs to be flexible concerning their fact-finding and documentation strategies.<sup>18</sup> This fact has had an obvious bearing on the nature of archival records that pertain to human rights situations in countries with differing political and social contexts. For example, while NGOs focussed on documenting the absence of fundamental freedoms in the former Soviet Union during the Cold War years, they concentrated on disappearances and extrajudicial executions in such countries as Guatemala, Chile, or Iraq. The case files on each of these countries in the archives of Human Rights Watch and Amnesty International are therefore substantially different depending on the specific circumstances of the human rights situation, the degree of government co-operation, access to official and unofficial sources of information, and available witnesses or survivors of rights violations. At the same time, the case files indicate a fundamental difference in focus. The records on the

16 See Human Rights Watch (HRW) Archives, Americas Watch records, unprocessed, Human Rights Archives at the University of Colorado at Boulder. The HRW archives contain substantial raw interview and investigative data pertaining to the conflicts in Central America. Also see "El Salvador Work Shaped the Human Rights Movement," *Human Rights Watch Quarterly Newsletter* (Winter 1992), pp. 1–3.

17 See Orentlicher, "Bearing Witness," p. 98; *Human Rights Watch Quarterly Newsletter* (Winter 1992), pp. 1–3; and Rita McWilliams, "Who Watched Americas Watch," *The National Interest* (Spring 1990), pp. 45–58. See also Americas Watch, *Human Rights in Nicaragua: Reagan, Rhetoric and Reality* (1985); Morton Kondracke, "Broken Watch: Human Rights and Politics," *The New Republic* (22 August 1988); and Fred Barnes, "The Sandinista Lobby: Human Rights Groups with a Double Standard," *The New Republic* (20 January 1986).

18 Orentlicher, "Bearing Witness," pp. 105–6.

former Soviet Union essentially reflect concern on the level of fundamental human freedoms – the right to emigrate, freedom of association and speech, and so forth – while case files dealing with such countries as Sierra Leone or Guatemala reflect concerns for the security of the individual.

The absence of uniform standards also has influenced the archival record by necessitating that NGOs find alternative ways to gather information on governments that cloak their crimes in secrecy, destroy evidence, intimidate or murder political opponents, and disseminate disinformation regarding their activities. These severe obstacles determine the type of information that NGOs may be able to gather to substantiate alleged rights abuses. Because government authorities may refuse to volunteer information or provide other government data, NGOs may be compelled to rely more on witness testimony and interviews with other independent observers or underground sources. In cases in which governments prohibit entry into their countries, NGO field researchers may surreptitiously cross borders to gather not only witness testimony but also conduct forensic investigations of single or mass graves, as in the case of Iraq, for example, where Human Rights Watch and the Physicians for Human Rights secretly entered the country in 1989 to investigate accounts of mass atrocities carried out by the security forces of Saddam Hussein against the Kurdish minority population. In many cases, the adoption of narrow and uniform methodological standards would severely impede the ability of NGOs to tailor their fact-finding and documentation strategies to circumvent these obstacles. NGOs must be able to exercise all reasonable flexibility to uncover and record evidence that may not always be conclusive but nevertheless may be strongly indicative of rights violations. These less than conclusive findings may be enough for an NGO to sound a warning of an impending human rights crisis. NGOs could not reach conclusions about allegations of rights abuses if the factual data did not meet the desired exactitude of procedural rules or a judicial standard of proof. The archival records of fact-finding cases therefore often vary from including conclusive scientific and medical data and corroborating testimony and other information to far less persuasive interview accounts and circumstantial evidence that may indicate, but not substantiate, impending or actual human rights problems.

### **Fact-Finding Methods: Establishing Credible Evidence**

To overcome fact-finding difficulties, human rights NGOs employ specific methodologies to establish credible evidence of human rights violations. This data is derived through a variety of fact-finding techniques and relies on a wide range of oral and written sources. More than any other factor, these strategies have shaped the specific contours of fact-finding records found in human rights NGO archives, including types of data, informational sources, and credibility of evidence.

***On-Site Observation***

Many of the most significant fact-finding records in the archives of human rights NGOs relate to investigative missions that aim to observe and document human rights situations first hand. On-site visits not only provide important data but also give credibility to the conclusions of fact-finding investigations. The types of missions undertaken by NGOs may include trial observations, diplomatic contacts, and fact-finding, or a combination of these various efforts, for either past or ongoing rights abuses. The archives of the most elite international human rights NGOs, which have the resources to organize these investigative missions, contain a variety of materials on these missions, such as testimony, written evidence, photographs, audio and videotapes, and a broad array of other material evidence. An example of such a fact-finding mission may be found both in the Amnesty International USA archives and in the 1982 AI report on the Philippines. In 1981, AI launched a fact-finding mission to the Philippines to investigate reports of illegal detention, torture, extralegal killings, and disappearances by government security forces. AI's mission delegates sought meetings with government officials acquainted with the measures taken by the Philippines both internationally and domestically for the protection of human rights, including officials of the Ministries of Foreign Affairs, National Defense and Justice, and the Solicitor General's Office. They also sought the opinions of officials and members of religious institutions and the legal profession who could shed light on the human rights situation after the lifting of martial law. Finally, the AI delegates arranged extensive interviews throughout the country with victims, relatives, and friends of victims and others with first hand experience of human rights violations perpetrated by government agents. When its fact-finding delegates found government officials unwilling to cooperate, AI followed up with written communications to the government requesting specific information concerning alleged abuses. Interviews with individuals outside the government, analysis of the laws of the country, and other evidence gathered during the mission, however, led AI to conclude that the security forces of the Philippines had systematically engaged in practices that violated fundamental human rights, including the right to life, the right to security of the person, and the right against arbitrary arrest and detention. The documentation of these rights violations resulted in AI making a series of recommendations that the Philippine government institute immediate and full inquiries into each substantiated case of human rights abuse.<sup>19</sup> In AI's case, the investigation's records were archived at the International Secretariat in London where they can be accessed

19 Amnesty International, *Report of an Amnesty International Mission to The Republic of the Philippines, 11–28 November 1981* (1982), pp. 9–13. Also see Amnesty International Archives, case files, Archives of University of Colorado at Boulder.

by AI researchers. Copies of the records as well as field reports may also be found in the AI archives of the U.S. section.<sup>20</sup>

Such fact-finding archives also have been profoundly shaped by distinct problems of inquiry that require NGOs to formulate unique documentation strategies and procedures. Because governments or insurgent groups often prove obdurate or uncooperative, human rights NGOs may conduct fact-finding without on-site visits. Those under scrutiny may well construe requests for on-site visits as a form of indictment or direct interference into their internal affairs and therefore refuse permission for fact-finding missions in their countries. In these cases, NGOs seek first-hand evidence or documentation outside the countries under investigation, including testimony from refugees and other independent observers; legal documents; complaints and other information smuggled out of the country; government responses to accusations in writing or through diplomats; and information received via e-mail and fax detailing specific situations. Although NGOs prefer investigating human rights situations or patterns through on-site fact-finding missions, analysis of these other sources tend to be highly effective in yielding accurate and reliable results. In some cases, however, fact-finding missions may prove less reliable than other sources, especially when governments shift prisoners, intimidate potential witnesses into silence, prevent access to prisons, and otherwise preclude access to domestic organizations and relevant information during the short duration of the visit. This conduct may itself serve as evidence of government culpability in perpetrating rights abuses against political opponents or selected population segments. Nevertheless, governments have little ability to control how documentation is obtained outside their own countries and over extended periods of time.<sup>21</sup>

### *Testimony*

One of the most compelling sources of evidence in NGO archives includes direct testimony from witnesses, victims and survivors, refugees, émigrés, exiles, and others. International human rights groups consider first-hand accounts to be highly important in substantiating factual human rights conditions or patterns in a particular country. As in any criminal proceeding, oral testimony is considered the “backbone of inquiry and adjudication.” Its reliability rests in the ability of the investigator to “listen to and immediately question a witness, observe his/her demeanor, and judge his/her credibility.”<sup>22</sup>

20 Amnesty International USA Archives, case files, Archives, University of Colorado at Boulder.

21 See David Weissbrodt and James McCarthy, “Fact-Finding by Nongovernmental Organizations,” in B.G. Ramcharan, ed., *International Law and Fact-Finding in the Field of Human Rights* (Boston and London, 1982), pp. 199–200.

22 *Ibid.*, pp. 200–201.

Nevertheless, testimony may be fraught with either subtle or overt bias that may skew the results of the investigation. The value of taking testimony therefore lies primarily in how NGOs conduct interviews, the process employed to select and interview witnesses, and how statements or facts are corroborated. As always, these interviews frequently occur under dramatically changing circumstances, extreme duress, and other conditions of instability. These conditions substantially shape the nature of testimonial data found in human rights archives.

Other considerations also define the nature and credibility of the testimony found in NGO human rights archives. For example, NGOs are acutely aware of the need to limit political bias in witness testimony to avoid the possibility of constructing a skewed profile of the overall pattern of human rights abuses. To minimize this possibility NGOs may obtain testimony from a broad representative sampling of witnesses. This fact is amply demonstrated throughout numerous case files in the archives of Amnesty International and Human Rights Watch. Nevertheless, at times circumstances may preclude or limit access to witnesses in particular areas with frequent rights violations. In these situations, field investigators will carefully assess these limitations and analyze how they affect the investigation's overall conclusions. In cases in which investigators are prohibited from entering a country, field investigators may obtain first-hand accounts about the internal human rights situation from refugees in neighbouring countries, émigrés, exiles, and others. As already noted, Middle East Watch (MEW) employed this strategy in 1989 in investigating human rights in Syria, a government well known for its pervasive secrecy and powerful security apparatus. Although after analyzing many sources MEW was unable to determine exactly how many political prisoners were being held in Syria, how many had been tortured to death, and how many had been "disappeared," the human rights group nevertheless could make conservative estimates. Facts of this kind can often be difficult to determine in even open societies, but in this case, the reliance on testimony of émigrés and other independent observers was critical. The pattern of Syrian rights violations proved to be staggering, including massacres of innocent civilians, the practice of "collective punishment in which citizens in entire neighborhoods, towns, and even cities were massacred for the acts of a few dissidents, death by torture by security forces, appalling prison conditions, denial of habeas corpus, strict controls over freedom of expression and association, and denial of other fundamental human freedoms."<sup>23</sup>

What is clear from even a cursory examination of such testimony in NGO archives is the use of highly detailed questions to elicit useful information,

23 Middle East Watch, *Syria Unmasked: The Suppression of Human Rights by the Assad Regime* (New Haven and London, 1991), xvii–xviii. Also see Middle East Watch archives, research files, Archives, University of Colorado at Boulder.

including queries concerning specific dates, the names of perpetrators and those of other eyewitnesses and victims, the place of particular incidences, the nature of events or conditions under which they transpired, and other data that will enable investigators to verify or corroborate individual testimonies. In cases of war or civil conflict, investigators may ask questions of individuals concerning their place of birth, the last town in which they lived, their pattern of movement or dislocation during the period in question, and the reasons for each move. These questions tend to elicit telling responses concerning war-related events such as bombing and shelling, insurgent activity, massacres, abuses by government forces, deprivation of food and shelter, and other rights abuses that may help investigators assess the conditions of war and attacks on the civilian population. Questions about local social and political circumstances, living conditions, and other factors may also be asked to discern aspects of significance in the witness' testimony.<sup>24</sup>

Victim testimony found in NGO archives also reveal the importance which human rights investigators attach to corroborating testimony from other witnesses in order to verify actual events and establish highly credible evidence. For example, in 1987 when Amnesty International undertook a sweeping investigation of the human rights record in Guatemala, field researchers relied on testimony as the primary means in recording the widespread use of torture of political detainees and dissidents. AI received detailed testimony from victims and took corroborating testimony from other witnesses who had witnessed their torture. When victims turned out to have been murdered or disappeared, witness testimony obviously became the primary means of determining the cause and manner of death. This circumstance is illustrated by the case of Hector Morales, who was executed under decree 46-82 shortly after his relatives visited him in prison. The Rios Montt administration issued decree 46-82 in 1980 to erect a legal façade for its efforts to liquidate all political opposition.<sup>25</sup> The Guatemalan Human Rights Commission denounced the decree as a "legal monstrosity" for its basic denial of *habeas corpus* and its vicious intent to crush all opposition, real or imagined. Morales was arrested by security forces at the bank where he worked, charged, and indicted with two other men for allegedly demanding a ransom from the parents of a woman they were charged with kidnapping and raping. Neither Morales nor the other defendants were legally represented at the proceedings that found them guilty and condemned to death. Even the alleged victim's family filed a formal protest against the unjust nature

24 Orentlicher, "Bearing Witness," p. 99.

25 According to Amnesty International, Decree 46-82 "was issued on 1 July 1982, the day on which General Rios Montt declared a "state of siege" in Guatemala." It established special military tribunals "with the power to impose the death penalty for an extended range of political and politically related offenses after summary proceedings which severely restricted legal safeguards of defendants." See Amnesty International USA Archives, case files, Archives, University of Colorado at Boulder.



of the proceedings and that they had never seen any of the case documentation or other evidence on which the conviction was based. Morales “confessed” under torture and he was later executed. Relatives who had visited Morales in prison before his execution testified to AI that he appeared “Pale and thin,” that he had told them he had been beaten, and that there were red marks and bruises on his chest and stripes on his neck. AI also took testimony from a friend who had seen Morales before his death and who had said that Morales’s hands were black and blue from electric shocks. An evangelic pastor arrested under decree 46–82 and held in the same barracks with Hector Morales testified he was also beaten unconscious. After his release he reported the types of torture he witnessed Morales and others suffering:

They hit some of them with a kind of long hosepipe. Others had a hood put over their heads. The hoods consist of part of the inner tube of a tire sewn at one end. They put this over their heads. Then handcuffed they are thrown on the floor. As they can’t breath they suffocate. If they are willing to talk they have to nod their heads ... One day our captors came to the door and told us we were to leave early the next morning. We were very surprised to find ourselves taken [out] of the main prison where they hold those who are to appear before the special courts. There we realized that our situation had changed. On arrival they kept us apart for 13 or 16 days. We were taken to the torture sessions but they didn’t hit us. With the rest it was very different. Some even lost their arms, or their feet, or were blinded through being hooded for so long. The hoods had been filled with gamesan ... a chemical which disfigures the face and damages the eyes. Altogether we were about 250 prisoners.<sup>26</sup>

Here, as in other testimony in the archives of Amnesty International USA, AI was able to substantiate and corroborate both the specific types of torture suffered by Morales and the general pattern and methods of abuse routinely inflicted on other prisoners. Aside from the political dimensions of cases of this sort concerning AI’s attempts to curb torture and other widespread violations, such testimony is the only means by which individuals like Morales may be remembered. Without such testimony, he would have remained one of the thousands of silent victims murdered or tortured to death at the hands of the state.

The question of corroborating testimony, however, is a matter of establishing credible evidence. At times, forensic analysis or autopsy reports may be used to verify eyewitness testimony concerning the cause and manner of death. In the wake of the mass killings in East Timor, human rights investigators interviewed witnesses and survivors of the violence that engulfed the small Indonesian territory after the pro-independence referendum on 30 August 1999. They also

<sup>26</sup> Amnesty International, *Guatemala: The Human Rights Record* (London, 1987), p. 105.

visited sites of mass killings and places of detention where torture, extra-legal executions, and sexual crimes took place. Technical support and forensic expertise were provided to gather physical evidence before it degraded or disappeared. All of this evidence was gathered, corroborated, and produced for the United Nations Commission of Inquiry in the event that a UN War Crimes Tribunal could be established to bring those responsible to justice. In most cases, however, forensic evidence is unavailable and thus other means of corroboration are required for verification. These techniques might include analysis of whether the testimony comports with generally known human rights patterns in the country under scrutiny, whether it conforms with other individual testimonies on key details, or whether witnesses are able to provide consistent and clarifying information on certain matters that appear confusing. As reflected in some witness testimonies, the interviewer may repeatedly query the individual on the same subject by using different questions if part of the testimony appears doubtful. In these situations the interviewer looks for consistency in responses to discern the credibility of the witness.<sup>27</sup>

Another critical component for NGOs in producing credible testimony entails careful assessment of the witness's personal or political motives. Is the witness, for example, a member of the opposition political party or a member of the armed insurgency? As one may anticipate, field investigators consider testimony most credible when witnesses have no such political or personal motives or have no interest in the allegations. In situations of great instability and rights abuses, however, finding such witnesses may be virtually impossible. Field investigators therefore do not, and cannot, automatically discount the statements of allegedly partisan or biased sources. Certainly, in one sense testimony provided by victims and survivors may be considered biased by virtue of their suffering at the hands of the state or armed opposition. At the same time, human rights organizations would omit much vitally important data if victim and survivor testimony were dismissed. To minimize biased testimony from skewing fact-finding results, therefore, NGOs place emphasis on interviewing a broad base of witnesses and independent observers. The broad repetitive nature of allegations of the same incident from many different witnesses serves to counter denials of responsibility and credibly establish factual conditions under which rights abuses have transpired. In light of such evidence, government denials of responsibility or silence concerning rights abuses may be interpreted as further corroborating evidence. Governments may remain silent either because they are guilty or they do not want to give any credibility to the allegations and to the accusing NGO by "repeating the accusations in the pro-

27 "Human Rights News: An Independent Forum for News Related to Human Rights," (20 October 1999, available from <human-rights-news@oil.ca>, accessed 29 October 1999).

cess of denying them.”<sup>28</sup> In the face of overwhelming documentation of rights abuses, a government should be expected to respond or should anticipate that its silence may be interpreted as evidence of culpability.

NGOs are also acutely aware that testimony must be corroborated as much as possible by independent accounts, observations, and by other means that may sufficiently counter presumptions of bias. Field investigators, for example, may attempt to verify such testimony or portions of testimony from a variety of other sources, including inspection of sites where particular incidences occurred, or through examination of medical records, forensic evidence, police reports and logs, court records, and, importantly, through other independent witnesses. These other sources may often provide a fundamental basis for establishing a general pattern of credibility concerning testimony that otherwise might be considered highly suspect, or weak concerning critical details.<sup>29</sup>

For example, the archives of the Physicians for Human Rights (PHR) contain records of the group’s investigation into alleged Iraqi poison gas attacks against the Kurdish minority population. The records reflect how the various considerations concerning the credibility of testimony may be taken into account. In 1988, shortly after Iraqi armed forces began a major military offensive against the Kurds in northern Iraq, PHR began an investigation of alleged Iraqi wide-scale use of poison gas. PHR videotaped interviews with survivors of the attacks who had fled to Turkey and requested them to complete detailed questionnaires under PHR supervision for additional data. Questionnaires were used both to bolster and corroborate the credibility of the interview data. As PHR noted in its report, “without a questionnaire, testimony can be misleading and it may be impossible to assess its consistency, thereby calling into question the credibility of witnesses.”<sup>30</sup> Taken either separately or as a whole the record of videotape interviews and questionnaire responses gave a consistent picture of alleged Iraqi use of chemical attacks. The descriptions of the symptoms described by refugees and other witnesses comported with exposure to lethal poison gas. To corroborate this testimony further, PHR gathered evidence from a variety of other sources, including a journalist who made a clandestine trip inside Iraq and obtained soil samples and exploded bomb fragments from the regions allegedly attacked. An inde-

28 See Weissbrodt and McCarthy, “Fact-Finding by Nongovernmental Organizations,” p. 208; and Amnesty International, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan* (1979), pp. 14–15.

29 See Middle East Watch and Physicians for Human Rights, *Unquiet Graves: The Search for the Disappeared in Iraqi Kurdistan* (February 1992); Middle East Watch, *Bureaucracy of Repression: The Iraqi Government in Its Own Words* (February 1994); and Middle East Watch, *Syria Unmasked*.

30 Physicians for Human Rights, *Winds of Death: Iraq’s Use of Poison Gas* (1989), p. 10.

pendent laboratory analysis of these samples found strong indications of mustard gas. A separate Amnesty International team related multiple eyewitness reports of chemical weapons use; a British television group videotaped numerous eyewitness accounts of chemical attacks during another clandestine trip inside Iraq, constituting a separate interview sample from the PHR interviews; and four members of Parliament from southeastern Turkey who visited Kurdish refugee camps also reported to PHR that they saw many refugees with large amber-colored blisters who said they had been attacked with poison gas. PHR gathered further eyewitness reports from a group of journalists who had been invited to tour northern Iraq and who described seeing Iraqi troops wearing chemical defense masks and special clothing, raising the question of why Iraqi troop commanders would require their troops to wear such equipment without cause. The consistency of response and the details and circumstances related from these various eyewitness accounts supported by corroborating scientific and medical analysis strongly, if not definitively, confirmed large-scale use of poison gas against the Kurdish minority population by Iraqi forces.<sup>31</sup>

As the foregoing case indicates, NGOs often must rely on refugee testimony when especially repressive governments have barred entry into their countries.<sup>32</sup> In other such critical cases as Cambodia, Rwanda, or Burundi, the appearance of large numbers of refugees and their testimony of wide-ranging human rights abuses have served as indicators of the onslaught of enormous humanitarian catastrophes. NGOs realize that refugees may provide highly important testimony of recent violations, despite having been displaced to neighbouring countries. In many cases, refugees have been the victims of human rights abuses or have witnessed abuses against others. In countries where entry of human rights investigators or monitors has proved impossible, the ability to corroborate refugee testimony is sometimes difficult as it precludes cross-checking in areas where alleged events have occurred. As the case concerning Iraqi use of poison gas illustrates, human rights investigators attempt to verify statements by comparing and assessing as many refugee accounts as possible to establish the specific circumstances under which rights abuses have occurred and those responsible for perpetrating the violations.

The records of investigators also sometimes show a reliance on interviews with exiles in cases in which governments have barred fact-finding missions from their countries. These contacts may pose problems of bias, but nevertheless have sometimes proved credible when measured against other testimony, documentary sources, and other information. As already noted, field investigators may not immediately discount statements from partisan or seemingly

31 *Ibid.*, pp. 1–11. Materials pertaining to the Iraqi situation may also be found in the archives of the Physicians for Human Rights, Archives, University of Colorado at Boulder.

32 Orentlicher, "Bearing Witness," p. 121.

biased sources. Exiles generally keep in close contact with relatives, dissidents, and others and are thus often knowledgeable of current events and human rights patterns inside their countries of origin. In some cases the borders of repressive countries may have been porous enough to allow exiles and others to make cross-border visits. Before the 1991 Gulf War, this situation was generally the case in Iraqi Kurdistan, controlled largely by the Kurdish minority population, and to a lesser extent along the border between India and Tibet, which exists under harsh Chinese rule. In the case of Tibet, the Chinese government continues to shield human rights conditions from public scrutiny. Concerned individuals and organizations, the international media, and others have been effectively prohibited from independent observation of conditions in Tibet. In the late 1980s, Asia Watch made repeated requests to send an official mission to Tibet, but was turned down by the Chinese authorities. Nevertheless, Asia Watch gathered and analyzed alternative data, much of it derived from exiles, that resulted in the construction of a “uniformly grim” picture of severe political repression. In its report to the international community, Asia Watch was careful to note the shortcomings in its fact-finding and the possibility of biased reports from the Tibetan exile communities. The organization observed that it prefers first-hand accounts or observations of particular situations. In this specific case, however, printed sources and reports from exiles proved to be accurate and were further substantiated in later reports from other NGOs and independent sources.<sup>33</sup>

In other cases in which the authorities refuse to allow international human rights organizations to conduct investigations in the country, NGOs may seek other means of documentation. The Middle East Watch (MEW) archives, for example show that in 1989 the group launched a major investigation into the human rights practices of Syria, one of the most repressive and secretive regimes in the Middle East. Because the Syrian authorities had arrested and imprisoned all local rights monitors in the country, the documentation of Syria’s human rights practices posed extreme difficulties, and in some instances, considerable danger to those who agreed to be interviewed. The regime of President Hafez Asad was hostile to inquiries into Syrian human rights practices and steadfastly refused to acknowledge communications from international human rights NGOs, the Arab Organization for Human Rights, and various United Nations human rights committees.

Nevertheless, through a variety of means MEW conducted extensive research on Syria’s human rights situation and made an unauthorized visit to the country to observe and record the situation first hand. The investigation spanned the countries of Egypt, Switzerland, France, the Netherlands, Great

33 Asia Watch, *Evading Scrutiny: Violations of Human Rights After the Closing of Tibet* (July 1988), pp. 1–5.

Britain, and the United States. MEW solicited the cooperation of émigrés, sometimes at considerable risk to themselves and their relatives as Syrian security forces had been known to harass and assassinate opponents of the regime living abroad. The MEW archives and published reports show that the investigation also drew upon information and assistance from many non-Syrian sources, including scholars, journalists, human rights experts, doctors, students, government officials, and other knowledgeable contacts. Against the Asad regime's effort to prevent negative information from getting out of the country and tight control over the media, MEW managed both to gather and cross-check observations from foreign travelers, scholars, and officials who had been able to visit the country and travel around with little restriction. Syrian émigrés also proved useful since some of them made regular return trips to the country for family visits and thus could provide current information about the political and human rights situation. Other sources of information included relevant literature on Syria and Syrian rights in French, German, Arabic, and English and the documentary records compiled by such organizations as the United Nations Commission on Human Rights, the Committee for the Defense of Freedoms and Political Prisoners in Syria, and Amnesty International. From these disparate sources of information, a detailed profile of Syrian rights abuses could be constructed, including arbitrary arrest and imprisonment, torture, disappearances, massacres of villagers, support of international terrorist organizations, international operations of Syrian security forces, and other broad human rights patterns.<sup>34</sup>

### *Official Statements and Documents*

Other information that may substantially shape the nature of documentation or evidence found in NGO archives includes official policy statements by either the government or its armed adversaries. Such official pronouncements as presidential decrees, administrative regulations, new laws, public statements, and other articulations of policy often provide key details about the human rights situation in a given country. A government may officially acknowledge the existence of abuses that violate international human rights law in order to begin a process of reform. Other government or guerilla representatives, however, may openly admit to occasional violations but deny that these abuses reflect official policy. Official decrees pertaining to states of emergencies and marshal law, or official statements announcing government crackdowns on opposition groups, protests, or other forms of dissent have obvious significance in reflecting the human rights situation in a particular country. In these situations, such statements signify an open policy of repression against funda-

<sup>34</sup> Middle East Watch, *Syria Unmasked*, xiii–xx.

mental liberties, or perhaps even signal support for continuing violence or repression against political opponents. These statements often signal the beginning of a repressive campaign against selected segments of society. Other forms of government evidence may be seen in official denials of responsibility for specific violations. When measured against pervasive evidence of human rights abuses, official denials may indicate further evidence of serious government complicity and wholesale efforts to conceal government involvement. In the face of overwhelming evidence of human rights violations, government silence may indicate tolerance, if not outright encouragement of human rights abuses. These responses and conduct by a government are typically noted in detail in human rights records and published reports.<sup>35</sup>

In evaluating human rights situations, NGOs also consider a country's specific laws and constitution, regulations, judicial or criminal justice procedures, and other documents to be important as evidence of official government policy.<sup>36</sup> Governments may secretly violate their own laws and constitutions to repress dissent or eliminate adversaries or members of the political opposition. Or, governments may pass legislation that violate international human rights standards to which the state is a signatory. In these cases, laws may be passed to legitimate the exercise of arbitrary government power and be enforced by a complicit judiciary. Human rights specialists often analyze these situations and their consequences in undermining the rule of law.

In other cases, governments may enact judicial and constitutional reforms, but still continue restrictive practices. For example, Asia Watch reported in 1988 on judicial procedural abuses of the Republic of Korea, including the arbitrary arrest, detention, and torture of political demonstrators. Asia Watch noted that the South Korean government had undertaken significant reforms to improve the prospects for respect for internationally recognized human rights. These included new procedures for judicial review of the constitutionality of laws, increased powers of judges to review the legality of detentions, and requirements that the arresting authorities inform detainees of their right to counsel. Examination of the new constitution also found a strengthened foundation for judicial independence in providing greater oversight of judicial appointments by the National Assembly. Measured against these political reforms, however, Asia Watch documented a continuing pattern of abuse by the criminal justice system, including the arbitrary arrest and detention of persons involved in peaceful dissent and the mistreatment and torture of detainees. Analysis of these reforms therefore allowed Asia Watch to assess and document the discrepancies between South Korea's judicial reforms and the actual continuing practices of the authorities. Based on this evidence, certain

35 Orentlicher, "Bearing Witness," pp. 122–24.

36 *Ibid.*, pp. 125–26.

recommendations could be made to both the international community and South Korea to strengthen the government's commitment to human rights.<sup>37</sup>

### *Forensic Evidence*

Along with witness testimony, the documentation of human rights violations through forensic analysis often provides the most compelling evidence found in human rights NGO archives. This information is important both for establishing the cause of death and the responsibility of those involved. Most medico-legal investigations involve teams of specialists, including forensic anthropologists, pathologists, odontologists, archeologists, and human rights investigators. These specialists are skilled in the scientific disinterment and analysis of skeletal remains and are able to apply this knowledge to civil and criminal investigations. Human rights investigators are on site to assist in locating hidden gravesites and to conduct interviews with possible witnesses that may further corroborate the findings of the medical or forensic scientists.

These investigations begin with attempting to determine the time, cause, and manner of death. An exhumation team will carefully excavate a burial site, when located, first by digging a test probe at the foot of the grave to determine the depth of the burial. When the skeleton is carefully uncovered, it is photographed and then removed for laboratory analysis. Forensic specialists employ a highly methodical approach when uncovering burial sites in order to recover as many small fragments and fragile objects as possible, including teeth, bullets, and personal effects that may be critical to the identification of the victim. These items may also enable investigators to determine the cause and manner of death. Photographing the evidence, including the location of particular bullet fragments in relation to bone fragments, often may be critical in assessing the cause of death. An analysis of the remains of plants and insects discovered in the grave may provide an indication of the time of death. The most immediate means of identifying skeletal remains consists of pre-mortem dental or medical X-rays. When unavailable, forensic anthropologists will undertake an anthropological analysis of the skeleton to determine its age at death, sex, race, and stature. Forensic anthropologists also seek to distinguish among various types of trauma to bones, which sometimes are subtle.

<sup>37</sup> See Asia Watch, *Assessing Reform in South Korea: A Supplement to the Asia Watch Report on Legal Process and Human Rights* (October 1988), pp. 1–6. Asia Watch's recommendations encouraged the South Korean government to: 1) implement policies that would ensure the immediate and unconditional release of all persons imprisoned for the peaceful expression of their beliefs; 2) order independent reviews of all convictions in which credible reports existed concerning serious procedural abuses, including the use of torture to obtain confessions; 3) release without condition fifty individuals who were being held in preventive custody in Chongju Protective Custody Prison; and 4) announce an end to preventive detentions and repeal preventive detention laws.



Evidence of violent death may vary from the obvious, including bullet holes in the skull, to less noticeable minor cuts or nicks caused by a fatal stab wound. Strangulation can also leave tell-tale signs on the bone.

These procedures to identify and determine the cause and manner of death are considered highly important even if they pertain to only a small segment of the disappeared. This evidence may provide the international community with the scientific evidence critical to the identification and conviction of those responsible for genocide or crimes against humanity. Forensic evidence, for example, has proved highly valuable in establishing the cause and manner of death, and the identity of victims in the medico-legal investigations of human remains of the disappeared in Argentina, Brazil, and, most recently, in Iraq. Again, the Iraqi case represents a unique situation concerning the variety and preponderance of evidence indicting the regime of Saddam Hussein in perpetrating a genocidal campaign against the Kurdish minority in northern Iraq. In the wake of Desert Storm in 1991, Kurdish resistance fighters rose in rebellion against the Iraqi regime. After taking control of Iraqi military bases and government buildings, the Kurds seized tons of Iraqi documents detailing the abuses carried out by military intelligence units and the secret police over more than two decades. The secret police files contained tape recordings, photographs, and videotapes of torture. Other documents detail forced population expulsions or the forced relocation of thousands of villagers, and handwritten lists of political prisoners who were executed by firing squads or who were tortured to death. To gain further evidence of what precisely transpired in Iraqi Kurdistan during what was termed as the Anfal campaign, Middle East Watch and the Physicians for Human Rights sent a mission to northern Iraq to determine the probable cause and manner of death of individuals buried in mass and single unmarked graves. The investigators also interviewed relatives of the disappeared and former political prisoners, and took testimony from gravediggers who earlier had been ordered by Iraqi officers to bury secretly the bodies of executed political prisoners. Throughout the late 1980s the Kurds had made allegations that tens of thousands of people had been disappeared; in short, that a genocidal campaign had been carried out by Iraqi military and secret police units.<sup>38</sup>

Thus, to determine the accuracy of these claims, Human Rights Watch and the Physicians for Human Rights amassed an extraordinary array of medico-legal evidence, which not only included extensive forensic data, but also witness testimony and secret police files of the Iraqi regime – records that directly indicted the Iraqi regime in its own words. Although Saddam Hussein claimed that the secret police files were the result of a massive forgery, the forensic and scientific evidence together with numerous and varied witness testimony irrefutably testified to the atrocities carried out by the Iraqi regime.

38 See Middle East Watch and the Physicians for Human Rights, *Unquiet Graves*.

Through careful checking and cross-checking of testimony against the other evidence concerning a broad array of factual details, human rights investigators compiled what can be considered a definitive, or near definitive case of crimes against humanity and genocide. As a result of this investigation, throughout much of the 1990s Human Rights Watch attempted to find sponsoring governments to bring a formal case of genocide against Iraq in the World Court at the Hague.<sup>39</sup>

### *Secondary Sources*

Numerous secondary sources also may be found in the archives of human rights NGOs. Typically, NGOs consult and gather data from a broad variety of secondary sources in the assessment of human rights situations. International human rights NGOs, for example, frequently consult domestic human rights organizations that monitor conditions in the country under scrutiny or provide legal and medical assistance to human rights victims. Other sources of information that may be consulted include labour unions; religious institutions; domestic human rights lawyers; universities; journalists; press accounts in various languages; foreign diplomats; local government or business leaders; voluntary or grass roots organizations; and other knowledgeable observers and relevant literature. These sources, both confidential and otherwise, tend to be fully reflected in human rights analysis and documentation pertaining to specific cases or broad human rights patterns concerning particular countries. These sources provide human rights specialists both rich contextual information concerning particular developments and possible important leads to eye-witnesses and victims. In addition, this information is often vital to the overall evidence that NGOs include in their documentation or reporting.<sup>40</sup>

Domestic human rights NGOs that monitor developments in their own countries have proved critical in providing crucial and reliable data pertaining to statistical and geographical patterns, nature of violations, involvement of persons responsible for abuses, probable complicity of government or guerilla representatives, and other information. This information may at times be difficult for international NGOs to gather from afar. In the research or investigative records of NGOs, therefore, documentation is often found that reflects the close interplay between international and domestic NGOs concerning particular developments or events. International NGOs, however, are careful to verify data from these sources whose credibility may also be subject to attack.

Given the growing worldwide interaction between international and domestic NGOs in the documentation of human rights violations, the establishment of domestic NGO credibility has assumed considerable importance. In verifying

39 Middle East Watch, *Bureaucracy of Repression*.

40 See *USA Amnesty International Handbook*.

the credibility of domestic NGOs, international human rights organizations carefully assess their fact-finding methodologies, method of corroborating evidence, the objectivity of their documentation and reporting, and other data. For example, is the domestic NGO affiliated with or is it openly or secretly sympathetic to the rebel insurgency? An institutional affiliation with an illegal insurgency or opposition party would, of course, serve as discrediting evidence against the domestic human rights NGO. How close does the group's methodology comport with the international NGO's? Do they seek out eyewitnesses and, if so, what kind of witnesses and under what conditions are they interviewed? Does the domestic NGO consult a broad base of sources that in turn produces a representative picture of the human rights situation or does it rely on only a few sources or merely on press accounts or denunciations by victims or their relatives? How does the organization compile its statistical data pertaining to specific human rights patterns? These and many other issues may be considered in attempting to establish the reliability of information provided by domestic NGOs to the international human rights community. When satisfied as to the reliability of the organization, international NGOs consider such data to be important supplemental evidence to their own investigations. The archives of elite NGOs are replete with documentation from domestic human rights organizations throughout the world.

### **Responsibility**

The most critical aspect of human rights fact-finding and reporting is the establishment of responsibility for rights abuses. The determination of responsibility entails two primary issues: the identification and stigmatization of those responsible for the perpetration of human rights abuses; and the extent of human rights violations that have been committed. Through establishing fundamental facts surrounding human rights abuses, NGOs and others not only seek the conviction or punishment of those responsible, but also the establishment of government accountability for their actions in the hope that such practices may be deterred in the future. The identification of human rights perpetrators often is difficult since governments typically do everything possible to conceal their actions. As already discussed, human rights investigators seek to circumvent such obfuscation through a variety of means, including the gathering of witness testimony, assessments of official statements or decrees, examination of forensic and scientific evidence, secondary sources, and other methods. Often witnesses can be found who can identify those responsible for abducting, "disappearing," or committing other atrocities against individuals or whole population groups. The identity of individuals responsible may be high-ranking government officials, members of the military or police security force, members of the guerilla insurgency, or individual agents of the state. The issue concerning the extent of human rights

abuses carries particular importance in factually establishing the actual measure of violations committed, the broad pattern of violations in any particular country, and the appropriate international response to the situation. In countries with poor human rights records, NGOs try to document and report the degree to which the perpetration of wide-ranging human rights abuses reflect official government policy, or if not official policy, than government sponsored clandestine operations of security forces or paramilitary squads. Governments may be strongly committed to human rights but suffer lapses by individual agents of the state. At the other extreme, governments may officially support and carry out atrocities against their adversaries or political opponents under the guise of legitimate military operations, as in the case of Iraq or Kosovo. Between these two extremes exist various levels of culpability.<sup>41</sup> Nevertheless, the extent of documented human rights abuses and the degree of government or insurgent culpability has a direct bearing on the appropriate response taken by the international community, including the convening of international war crimes tribunals as in the cases of Bosnia and Rwanda.

In accordance with international law, NGOs look first to the state to redress violations of human rights within its own borders. If the violation is an isolated incident, the country's own legal system may provide adequate legal redress. In those cases in which governments systematically perpetrate wide-ranging violations, NGOs seek to bring to bear direct international pressure through the publicity of documented evidence, lobbying of heads of states, media campaigns, and other means. Governments may attempt to put on the appearance of bringing perpetrators to justice through the judiciary, which in fact may be complicit with the authorities in tolerating violations of human rights. Thus, even without evidence of deliberate government policy or direct involvement at the highest levels, the scale or repetitive nature of human rights abuses may be enough to indicate official culpability. NGOs will include such factors as well as all other documented evidence in reaching conclusions concerning the extent of official involvement. At times, a government's human rights record may be decidedly mixed, including contradictory evidence. Here, NGOs seek to reach a balanced judgment based on such considerations as the integrity of the investigative process, the credibility of witnesses, knowledge of witnesses, importance of other sources, analytical methods used to reach conclusions or to establish responsibility, and other relevant criteria.

In short, in establishing responsibility NGO investigators seek to be as thorough and detailed as possible in the documentation of violations in order to assist governments to conduct investigations to resolve particular situations,

41 Orentlicher, "Bearing Witness," pp. 125–26.

to persuade governments or others to change their conduct if they have been found to be complicit or directly involved in the systematic perpetration of abuses, or to convince the international community to bring direct pressure on selected pariah nations to institute meaningful change.

### **Conclusion**

The influence of human rights fact-finding and documentation on international affairs lies directly in its credibility, which represents the human rights community's greatest asset. Without it, human rights NGOs would exercise little, if any, influence on world affairs. Human rights investigations have left in their wake an extraordinary trail of archival evidence concerning many of the seminal events of the later twentieth century. This documentation reflects the manner in which NGOs have become one of the most important chroniclers of our times. It preserves the memory of the perpetrators and their crimes for the sake of historical accountability. It may hold the only memory of individual victims and how and why they vanished. It assists post-authoritarian regimes, struggling to democratize, to confront the crimes of the past, institute the rule of law and persecute those responsible. The archives of NGOs are already playing a role in the process of human rights prosecution and in the reconciliation of societies.

The credibility of this evidence has been shaped by numerous considerations and factors. In consulting and gathering a broad range of investigative evidence, the most compelling documentation derives from witness testimony and forensic and scientific evidence. At the same time, NGOs take painstaking measures to corroborate evidence through consultation of other sources and are careful to assess the limitations of their fact-finding strategies and conclusions. Much of this documentation is considered sensitive, as it contains testimony from victims, survivors, and others who still live under authoritarian regimes, dictatorships, or countries that have established only superficial democracies and where the rule of law has not become firmly rooted. The chance for retribution is therefore substantial.

With increasing momentum towards international accountability and bringing those responsible for crimes against humanity, war crimes, and genocide to justice, the records and archives of human rights investigations are likely to become of greater critical importance. Already, the establishment of war crimes tribunals for Bosnia and Rwanda, the worldwide call to create another international tribunal to put former Khmer Rouge leaders on trial, the extradition case involving the former Chilean dictator Augusto Pinochet, and the ratification of the International Criminal Court indicate an international move to end an era of impunity for human rights atrocities. Governments are now responsible for how they treat their own citizens. As legislation is increasingly passed by individual countries – and changes are made within international

bodies – to allow for legal redress and accountability, the archives of human rights atrocities will play a growing and pivotal role in the adjudication of cases, in reconstituting the memory and identity of victims, and in serving as an enduring record for the reconstruction of historical events.