

# FACT-FINDING & HUMAN RIGHTS MONITORING

DIRECTOR/INSTRUCTOR MATERIALS



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# COURSE AT A GLANCE

## SESSION 1- INTRODUCTION

### EXERCISE 1: TWO TRUTHS AND A LIE

Teaching Component: Contact Building

How to Build and Retain Contacts [Institutional and within vulnerable]

In this section, of the course, the foundation of relationships will be explored.

## SESSION 2 WHAT ARE HUMAN RIGHTS? VOCABULARIES AND TOOLS FOR STRUGGLES

In this session, participants will be guided in understanding the nature of human rights. Participants will be engaged with regards to:

- the nature of human rights
- the sources of human rights
- the value of human rights

Activity: Human Rights Squares

LECTURE: STATE OBLIGATIONS AND HUMAN RIGHTS VIOLATIONS

## SESSION 3: FACT-FINDING/INVESTIGATION? IN SEARCH OF...

In this session participants will be guided to achieve the following objectives:

- 1) develop an understanding of the monitoring process
- 2) develop an understanding of the investigating process as a subset of monitoring including the development of a Monitoring Protocol
- 3) develop an understanding of the ethical principles involved in investigation of human rights including how to address conflicting principles

LECTURE: ETHICAL PRINCIPLES [30 MINS], INTERVIEWING BASIC [20 MINUTES]  
WHAT DO YOU DO? INTERACTIVE EXERCISE

Ethical framework for the course. Ethical Framework for MRD. Confidentiality, Informed Consent

Required Readings: Torture Manual pp 54-64 , <https://www.essex.ac.uk/hrc/documents/practice/torture-reporting-handbook-second-edition.pdf>

## SESSION 4- IN SEARCH OF... THE INTERVIEW!

LECTURE: RIGHTS WHEN DEALING WITH THE POLICE [20 MINUTES]

In this session, participants will be guided in the basic tenets of good interviewing skills. The process of the interview from contextual background research, the identification of witnesses, dealing with witnesses with trauma inter alia will be addressed. Participants will utilize this skills with respect to addressing violations by agents of the State such as police. Participants will be guided with respect to the constitutional rights of citizens when engaging with the police and applicable steps for redress. How do we bring a Constitutional action against the police for example?

## ANALYSIS EXERCISE: JEREMY [50 MINUTES]

## SESSION 5 - SITUATION MONITORING

In this session, participants will be guided in understanding the law in relation to employment including appropriate remedies based on the common law and the Employment Rights. Participants will be engaged with regards to:

- the legal obligations of the employer
- Wrongful and unfair dismissal
- Harassment in the Workplace
- Remedies
- The limits of case monitoring: Situation Monitoring/Compiling Reports

LECTURE 30 minutes: Employment Rights in Barbados

Activity Small Group Exercise: Mock Interview to gather data for a Situation Analysis of Employment and Vulnerable Groups in Barbados. Progressive Realization and the case of Disabilities in Barbados. What are the international obligations? What are the Applicable Standards? Where are they located? Has the state been progressively realizing the right?

## SESSION 6- FURTHER MONITORING AND FOLLOW-UP

- In this session participants will be guided in the law in relation to private individuals and access to housing. The laws regarding landlord and tenant will be the basis of this presentation.
- In this session participants will be guided in additional tools which can be used to monitor both private and public bodies including the media.

ADDITIONAL MONITORING TOOLS: RECOMMENDED READING: [http://www.theadvocatesforhumanrights.org/uploads/ch\\_4\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/ch_4_2.pdf)

## SESSION 7 - MAKING SENSE OF IT ALL

In this session, participants will be guided in the process surrounding data analysis and given a brief introduction to the process of Report writing. How do we make data make sense? How do we present data?

In this session participants will be guided in the Process for Analysis of Data.

Exercise: Participants will be given Raw Data to Analyze regarding the Provision of Medical and other Essential Services and guided through the process of analyzing the legal obligations and matching the data against these standards with a view to detecting patterns and trends , addressing conflicting findings and Drawing Conclusions.

Required Reading Chapter 5 of the Advocates Human Rights Manual Documentation: Writing the Report [ page 65-82]

## SESSION 8-DOCUMENTING AND INTERNATIONAL REMEDIES

In this session, participants will examine the international forums which can be utilized in advocacy and for redress to address violations of human rights as applicable to Barbados . Participants will be guided in an examination of the procedures of Reporting Bodies such as United Nations Human Rights Committee and the Inter-American Commission.

Required Reading: Page 24 - 36 Human Rights Monitoring - a Field Mission Manual by Faye Jacobson

Participants will examine the Jamaica Shadow Report [2016] to consolidate the approaches to monitoring and fact-finding and the requirements of report writing. Participants through this exercise will develop and strengthen their competences in report-writing. This session will be in the format of a 30 minute interactive presentation followed by the group exercise examining the Report.

### A. GROUPS OF 5:

#### B. ASSESS THE CIVIL SOCIETY REPORT TO THE HUMAN RIGHTS COMMITTEE.

- WHAT WERE THE DOCUMENTS STRENGTHS?
- IDENTIFY THE TYPES OF EVIDENCE UTILIZED.
- WHICH TYPES OF VIOLATIONS DID THE SHADOW REPORT IDENTIFY?
- WHAT WERE SOME OF THE BEST PRACTICES NOTED?

## SESSION 9 -

In this session, participants will think about future action. What do you do with the information you have collected, monitored and analyzed. Participants will be guided with regards to use of the data collected for advocacy. Participants will be guided in the process of defining their advocacy goals and an advocacy strategy using data collected. The Types of Advocacy which are best suited for the various forms of data collected and presented will be the focus of this final session.

# COURSE ETHOS

## PARTICIPATORY

The Course will be heavily participatory and rely on various methodologies to encourage engagement and retention of skills. The course will engage in a combination of short presentations by the Course Director including multimedia, set-readings for participants, interactive discussions, assignments and practical exercises to build the competencies of participants.

# SESSION 1: COURSE OVERVIEW

## INTRODUCTION. CLARIFY THE PURPOSE OF THE COURSE. WHAT IS THE GOAL FOR THE COURSE?

- Lay out the objectives of the course [5-10 minutes]

Overarching Principles and Agreement:

**Respect.** Though this term is used widely, “respect” means different things to different people. Facilitators should ask their team what respect means to them. “I” Statements. It is critical to draw a line between individual experience and communal experience to prevent alienating someone whose experience may be different. When a member of the community speaks of personal experience or feelings, it is of utmost importance that he/she uses the “I” statement. Facilitators should encourage the participant to take responsibility for his/her own experience rather than projecting it onto fellow participants.

**One voice, all ears. When one person speaks, everyone else listens.**

**Confidentiality.** Each participant within the community needs to feel that he/she can trust that what is shared with peers will not be shared outside of the group. Though participants are encouraged to discuss what they have learned and share reflections on conversations, it is important to keep names and individual experiences private.

- Introduction of participants. [Two Truths and a Lie] [15 minutes]
  - Materials Needed: None
  - Group Size: Ideal for 10-15. Divide if larger group.
  - Instructions: Tell the group that each person will introduce him- or herself by stating two truths about their life and one lie. The rest of the participants will guess which statement is the lie.
    - The purpose of this exercise is two-fold. 1) To begin the formation of a cohesive group receptive to learning and 2) Relevant to the substance of the course as fact-finders being aware of the importance of ascertaining truth vs fiction.
    - Debrief- The importance of building levels of trust, the importance of fact-finding including the potential risk to participants dangers of a lie in Human Rights Advocacy.
- Substantive Teaching: Contact-Building [10 minutes]
  - How to Build and Retain Contacts.
- What are the expectations from the course? [10 minutes]
  - Participant to act as a Rapporteur for this section. - Importance of Active Listening
  - Review of Responses
- Privilege Walk [ 30 minutes ]
  - Purpose: To discuss the complicated intersections of privileges and marginalization in a less confrontational and more reflective way.
  - Materials Needed: Descriptions of fictional persons to be distributed to each participant. The descriptions will include reference to features such as sex, sexuality, gender, disability, age, wealth, socio-economic class, race, literacy status inter alia.

DIRECTIONS FOR THE ACTIVITY:

- 1) Have participants form a straight line across the room about an arm's length apart, leaving space in front and behind.
  - 2) State: Listen to the following statements, and follow the instructions given. Each step should be an average length step. No one is going to check up on you, so if you feel you qualify to take a step then do so, if not then you may stay where you are. You are the judge of what you should do.
  - 3) Read the statements one at a time allowing time for participants to take a step.
  - 4) When all the statements have been read process the activity using the following questions:
    - What is your "gut reaction" to where you find yourself at the end of this list of privileges?
    - Are you surprised at where you are? How does it feel to be in front? In the middle? In back? Did you come to any new realizations? If so, which one had the most impact? What question made you think most? If you could add a question, what would it be?
- Debrief.

# SESSION 2: WHAT ARE HUMAN RIGHTS? [105 MINUTES]

Objective: Develop an appreciation in participants in the nature of human rights, the sources of human rights [international and local] and the value of human rights as a precursor to why it is important to systematically monitor and evaluate them.

Lecture Notes [ 30 minutes]

Evolution of Human Rights

UDHR

Constitution

International Law Development

Looking back: Our relationship with law and justice in the Caribbean [Interactive]

Sources of Human Rights

**United Nations:** Convention on the Rights of Children, Convention to End All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities

## Regional Systems

- Human Rights Squares - Activity { 20 minutes} <sup>1</sup>

Procedure

- 1. Give everyone a copy of Handout 1, Human Rights Squares. Everyone tries to get an answer and a signature from a different person for each square. Stop after five minutes.
- 2. Debrief the game: Which were the easiest squares to find answers for? The most difficult? Why?
- Which squares had global answers? Barbadian answers? Local or community answers?
- 3. Discuss:
  - Can you match any of these squares to articles of the UDHR? Which of the squares are related to civil and political rights? To social, economic, and cultural rights? What additional squares might you create for this game?

Small break [5 minutes] <https://www.youtube.com/watch?v=pRGhrYmUjU4> - British Video Explaining Human Rights in 2 minutes

State Obligations and Human Rights [ 50 minutes]

Public Bodies

Who is a public body?

Judicial Review

Grounds of judicial review

Constitutional Remedies

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<sup>1</sup> Source: <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Default.htm>

## Obligations of the State: Positive Duties on the State: A Case Study on Domestic Violence

In the St. Lucian case *Francois v the Attorney General*, the Court addressed the extent to which States have an obligation through ratified treaties to positively protect rights as opposed to merely refrain from violating them.

Positive duty on state to protect citizens from domestic violence More remarkable than Barrow J's clear description of the harms of domestic violence to victims and Caribbean societies, was his insistence that the enactment of domestic violence legislation was the fulfilment of the state's constitutional duty to protect its citizens from violence. He pronounced obiter that the state had a constitutional duty to protect everyone from violence, and this included domestic violence. He said that it was constitutionally imperative for the state to address domestic violence and that this arose from the constitutional right of everyone to 'life, liberty, security of the person, equality before the law and the protection of the law.'<sup>35</sup> iii. The state must do everything it can to ensure that non-state actors do not violate the human rights of citizens Barrow J's decision reflects a seminal development in Caribbean constitutional law, one that has been well recognised in the Inter American human right system. It is the principle that the state has a positive duty to take reasonable steps to prevent private actors from violating the human rights of its citizens. It is not enough that state actors do not violate these rights. The state must do everything it can to ensure that private citizens do not violate the rights of others. In the *Velasquez Rodriguez Case*<sup>36</sup> the Inter American Court of Human Rights stated that the state must carry out a serious investigation of violations committed by others, identify those responsible, impose the appropriate punishment and compensate victims adequately.<sup>37</sup> Barrow J's statements do not form part of the ratio of the case, but it is expected that other Caribbean courts will follow his lead. Even though Caribbean constitutions mostly bind state actors, *Francois* demonstrates the nature of the state obligation to ensure respect for human rights at the level of citizen vis-a-vis citizen. His judgment also clarifies that Caribbean bills of rights are not simply concerned with negative duties or non-interference, but that they impose positive duties on the state to act to protect human rights..

Discussion Questions: Which type of monitoring is best suited to addressing this emerging reality? How would you document failure of this kind in the Caribbean? What areas of law II

# SESSION 3: IN SEARCH OF...

Objective: Develop an appreciation in participants in the nature of human rights, the sources of human rights [international and local] and the value of human rights as a precursor to why it is important to systematically monitor and evaluate them.

Why Monitor: Monitoring Human Rights Violations by the Asia Pacific Forum[15 minutes]

<https://www.youtube.com/watch?v=6en5l-BSfGo> - Video 8 mins 25s. Discussion 7 to 10 minutes

What were the elements of the course you saw reflected ?

What did you think about using monitoring to address individuals in conflict with the law re underlying causes?

What is the relationship between socio-economic and civil and political liberty violations?

What redress?

Ethical Principles Page 15-17 of Practitioners Guide

Activity: Provide Students with Fact Patterns based on the following Ethical Issues. Discuss. [20 mins]

MONITORING

Situation	Non-ethical response	Better ethical response
Interviewer is concerned about the psychological state of the interviewee after an interview	Interviewer calls a psychosocial counselor without obtaining the client's permission and asks the counselor to follow up with the client.	Interviewer provides closure and allows enough time for the interviewee to compose himself/herself and transition back to the present. Interviewer acknowledges that it may be difficult to discuss past abuse and return to reality and checks whether interviewee has somewhere to go or someone to be with that evening. Interviewer validates and normalizes the manner in which the survivor conducted himself/herself during the interview. <sup>143</sup> Interviewer provides an approved referral to the interviewee. Interviewer debriefs with the team leader and discusses possible follow-up with interviewee.
Interviewer is experiencing vicarious traumatization and having difficulty managing his or her own stress.	Interviewer talks with partner or spouse about the stories as a way to manage stress.	Interviewer debriefs with team members after each interview. Interviewer remembers the larger mission of the project. Interviewer addresses his or her own emotional and mental health needs and nurtures sources of hope and inspiration. Interviewer contacts the organization team member with concerns and questions. <sup>144</sup>
Interviewee asks interviewer for legal or medical advice in the course of the fact-finding.	Interviewer gives legal or medical advice to the interviewee outside the scope of the project mandate.	Interviewer remembers his or her role as a fact-finder and maintains boundaries. Interviewer provides appropriate referrals to interviewee.
Interviewee does not understand the question posed.	Interviewer mentions another interviewee's response (with or without the name) as a way to explain the question.	Interviewer reframes the question a different way; if interviewee still does not understand the question, interviewer moves on.

Trainings should also address ethical considerations that may arise after the project is finished. For example, a team member may want to write a blog entry or an academic piece about the project or about his or her experience. When the team has communicated to respondents the purpose of the interview and assured them of

## SESSION 4: INTRODUCTION TO INTERVIEWING - CASE MONITORING

Activity - Jeremy [60 minutes]

Two different accounts of the same events will be presented here. Read carefully the statement made by Jeremy, the alleged victim of human rights violations, and see the analysis and suggestions on what Maria, the interviewer, should do to get all information that is missing but is vital for the reporting on torture and other ill-treatment. Students will be provided with the short extract alone.

Jeremy Lowe, aged, 17, reported that he was arrested on 25th March, 2017 and taken to Central Police Station and was released with out charge on the 27th of January. He claimed that while in custody he was repeatedly hit, a plastic bag with a pesticide was placed around his head and he was called slurs while being interrogated by various officers.

What is missing? What information would you want to know after reading that report? What are you able to do with that report in its current format?

Guide: Provide one student with the Full Brief. Students will over the course of the exercise develop critical thinking skills in relation to complete interviewing and documentation. Examples of Questions are provided below.

### Questions of the Interviewer

Jeremy: I was arrested on 25th March, 2017.

- Where did the arrest take place?
- At what time did the arrest take place? Were you sleeping, coming from work etc. when the arrest took place?
- Did anyone see you being arrested?
- Who arrested you? How many persons? How were you taken to the police station? What happened during arrest and transport?

Jeremy: I was taken to Central Police Station.

- When did you arrive at the police station?
- Where were you taken when you arrived there?
- Were your details entered into a logbook/computer/database?
- Was there anyone else in the room where you were held or the cell with you?
- Were there any windows in the cell?
- Were there any toilet facilities in the cell?
- What was the hygiene of the cell like?
- How long were you there? If you don't know, you can give an approximation?
- Where did you sleep?

Jeremy: While I was in Custody, I was repeatedly hit on the head. A plastic bag filled with spray was placed around my head.

- When did this happen?
- Where did this happen?
- How did you get there?
- Did you go up or down?
- Who brought you there?
- What did they look like?
- Did you notice anything unusual about them?
- What was the office like?
- Was it furnished?
- Did you notice anything special about it?
- What exactly happened once you got there?
- Were you free to move about?
- You say you were hit - who hit you?
- What did they hit you with? Where exactly did they hit you? Did they aim at any particular part of the head? How often did they hit you?
- Did you notice where they got it from?
- Did they say anything to you or ask you any questions?

- ❓ Can you remember what they asked you about?
- ❓ How long did this last?
- ❓ Where did they take you afterwards?

- ❓ What consequences did you suffer; did you faint, bleed etc.?  
What were the short-term and long-term consequences?

Elaborated - Students will be provided with this extract after completion of the previous exercise.

Jeremy Lowe, aged 17, reported that he was arrested in Library Street at 11: 30 p.m. on 25th March, 2017 and taken to Central Police Station where he arrived at 4 a.m. He was placed in a cell by himself in the basement, which had no windows, no toilet facilities and was infested with rats.

Approximately 4 hours later, Jeremy was taken from the cell by two officers dressed in civilian clothing, and taken in a lift to the 3rd floor to an office on the right hand side of a long corridor. The office was furnished with 3 grey plastic and metal chairs, a wooden desk and three grey metal filing cabinets. It had a short brown carpet and one small window with a closed blind on the wall opposite to the door. A calendar with pictures of cars was hanging on the wall to the left of the door. One officer was short with curly hair and a beard. The other wore glasses, had a small triangular scar above his right eyebrow, and smoked cigarettes. During the interrogation, the officer with the beard referred to the officer with the scar as 'Birdz' .

Jeremy was kept in the office for two hours. During this time, he was asked repeatedly by the officer with the scar why he was keeping company with a bunch of immoral people and loitering around town. When he said that, he was not with them, he was waiting on his friends, the officer with the beard handcuffed his hands behind his back and repeatedly hit him on the head with a yellow telephone directory, which he took out of the top drawer of a filing cabinet.

Jeremy was returned to the same cell as before. Eighteen hours later, he was collected again by two officers in civilian clothing. One was the officer with the scar from the previous day. The other was bald with a goatee and a very deep voice. They took him to the same office on the 3rd floor. This time the bald officer told him to remove his shirt and handcuffed him again while sitting on a chair. The same officer took a black plastic bag and placed it around Jeremy's head. He could not breathe. During the time he spent in the office, the officer with the scar asked him questions about his lifestyle and told him he was nasty. Jeremy was released without charge on 27th March. When interviewed at his home on 28 January by Maria, a representative of NGO "Do better", He complained of a continuous headache and a ringing sound in his ears. He seemed nervous as he described the events, had dark circles under his eyes, shifted position repeatedly, and appeared to be cold although the temperature was normal.

## Analysis

Account 2 is detailed and informative, and provides many opportunities for corroboration. In addition to presenting the basic elements for an allegation of ill-treatment, it gives precise information on:

- ❓ Perpetrators: Gives many details about the individual perpetrators, which should make identification possible.
- ❓ Location: Describes the location and lay-out of the office where the ill-treatment took place in such a way as to make it possible to find it if a visit to the police station were carried out.
- ❓ Instruments: The description makes it possible to find the instruments used in the ill-treatment if a visit to the police station can be carried out.
- ❓ Purposes: Makes the purpose of the arrest and interrogation clear
- ❓ Conditions: Gives some detail of the conditions in which the victim was detained.
- ❓ Ill-treatment: Describes the ill-treatment in a precise way such as to make it possible for a medical expert to express an opinion on its relationship with the victim's injuries.
- ❓ Injuries and consequences: Describes the victim's injuries, including a basic indication of his mental and emotional state.

Account 2 could be improved in certain ways, as some important issues were not covered:

- ❓ A more specific account of what happened during the arrest is missing. Maria could ask about how the arrest occurred, i.e. how many agents have there been, were they uniformed or in plain-clothes, did they use force, what did they say
- ❓ It does not identify possible witnesses
- ❓ The description of the conditions of detention is sketchy and could be elaborated upon
- ❓ It does not indicate if Jeremy was allowed to contact his lawyer or family, if he was given a medical examination at any stage during his period in custody, or if he made a formal complaint about the ill-treatment to anyone in authority.
- ❓ It gives no information about what might have taken place between José's second interrogation and his release.
- ❓ Maria failed to notice the time gap between Jose's arrest at 11:30 p.m. and the time he arrived at the police station at 4 a.m. Noticing the inconsistency in timing might have revealed a further incident of ill-treatment, which José may have forgotten to mention or thought insignificant compared to what happened to him at the police station. Maria may have been too specific in her questioning in the early stages of the interview, asking him what happened at the police station, rather than what happened to him after being taken from his home, or simply asking what happened next.

15 minutes - Know your Rights. Police Violations and Constitutional and other Rights