

# FACT-FINDING & HUMAN RIGHTS MONITORING

COURSE MATERIALS

# COURSE MATERIALS

What Are Human Rights?	3
Value Of Human Rights	4
Defining Key Terms	7
Why Engage In Monitoring?	8
Principles	9
Monitoring Types	10
Interviewing	15
Guidelines For Interviewing	17
Preparing The Case Report	18
Advocacy	20

# WHAT ARE HUMAN RIGHTS?

Human rights are universal legal guarantees protecting individuals and groups against actions by governments which interfere with fundamental freedoms and human dignity. Human rights law obliges governments to do some things, and prevents them from doing others. Some of the most frequently cited characteristics of human rights:

are as follow:

- v focus on dignity of the human being
- v legally protected
- v internationally guaranteed
- v protect the individual and groups
- v oblige States and State actors
- v cannot be waived/taken away
- v equal and interdependent
- v universal

Earlier in this century, the term "human rights" was defined as those rights guaranteed by the International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights with its Optional Protocols). Over the years, however, international and regional human rights instruments have made more explicit the rights set forth in the International Bill of Human Rights. "Human rights" are now defined with far more detail and specificity. International human rights law is, therefore, more protective of vulnerable individuals and groups, including children, indigenous groups, refugees and displaced persons and women. In addition, some human rights instruments have expanded the definition by elaborating new rights.

# VALUE OF HUMAN RIGHTS

“At their core, human rights principles can strengthen social justice work for many of the following reasons:

- Human rights are internationally determined and recognized standards against which government performance can be measured – regardless of national laws.
- Human rights monitoring encompasses and provides standards on social and economic rights, an area of protection that is often lacking in Barbadian law and practice.
- A human rights-based approach can help resolve conflict or differences between different stakeholders by offering a common ground for collaboration.
- Framing work in terms of human rights can expand organizational networks and bring new allies and support to the cause.
- Human rights standards are enforceable in a number of forums depending on the issue, including UN, regional, and local bodies, as well as local courts. Even when the human rights standards at issue are not specifically legally enforceable, courts often consider international human rights principles in their decision-making.
- Many communities wary of governmental power can still relate to global standards of equality and justice.
- Framing work in terms of human rights may open up new funding opportunities.
- Human rights standards and procedures can provide new opportunities for advocacy”<sup>1</sup>

How is human rights be useful for the work that you do or the causes you care about?

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<sup>1</sup> Source: p.2 *A Practitioner's Guide to Human Rights Monitoring, Documentation and Advocacy* (2011) The Advocates for Human Rights

## WHO IS RESPONSIBLE FOR HUMAN RIGHTS?

### WHAT ARE HUMAN RIGHTS VIOLATIONS

“Human rights violations” include governmental transgressions of the rights guaranteed by national, regional and international human rights law and acts and omissions directly attributable to the State involving the failure to implement legal obligations derived from human rights standards. Violations occur when a law, policy or practice deliberately contravenes or ignores obligations held by the State concerned or when the State fails to achieve a required standard of conduct or result. Additional violations occur when a State withdraws or removes existing human rights protections. All human rights – civil, cultural, economic, political and social – impose three distinct types of obligations on governments: obligations to respect, protect and fulfil. The failure of a government to perform any of these obligations constitutes a violation of human rights. Although the full realization of some aspects of certain rights might only be achievable in a progressive manner, this does not alter the nature of the legal obligations of States, nor does it mean that all rights possess some components which are always subject to immediate implementation.

With specific regard to economic, social and cultural rights, violations can also occur when a State fails to satisfy “minimum essential levels of the rights” found in the ICESCR, and thus a State in which “any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is, prima facie, violating the ICESCR”. Such minimum core obligations apply irrespective of the availability of resources in the country concerned or any other actors and difficulties. Any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of any human rights constitutes a violation of human rights.”

#### Government parties to a treaty must:

<b>RESPECT</b>	<b>PROTECT</b>	<b>FULLILL</b>
Governments must not curtail the scope of a right or interfere with people exercising their rights.	Governments must prevent private actors from violating the rights of others.	Governments must take positive action to facilitate the enjoyment of basic human rights.
<b>GOVERNMENTS CAN RESPECT HUMAN RIGHTS BY:</b>	<b>GOVERNMENTS CAN PROTECT HUMAN RIGHTS BY:</b>	<b>GOVERNMENTS CAN FULFILL HUMAN RIGHTS BY:</b>
<ul style="list-style-type: none"><li>• creating constitutional guarantees of human rights;</li><li>• refraining from limiting individual freedom unless absolutely necessary for the well-being of society;</li><li>• providing ways for people who have suffered human rights abuses by the government to seek legal remedies from domestic and international courts; and</li><li>• ratifying and implementing human rights treaties.</li></ul>	<ul style="list-style-type: none"><li>• passing laws that prohibit individuals from committing human rights violations;</li><li>• prosecuting or pursuing civil actions for crimes and other violations, such as domestic violence, hazardous work conditions, and discrimination;</li><li>• educating people about human rights and the importance of respecting the human rights of others; and</li><li>• cooperating with the international community in preventing and prosecuting crimes against humanity and other violations.</li></ul>	<ul style="list-style-type: none"><li>• providing free, high-quality public education;</li><li>• creating a public defender service to provide indigent people access to lawyers;</li><li>• supporting civil society organizations and public participation in order to encourage freedom of expression and association;</li><li>• assisting those people in need by through funding of social service programs; and</li><li>• funding public education campaigns on the right to vote.<sup>9</sup></li></ul>

Source: The Advocates for Human Rights: Human RightTools for a Changing World, page 8

## 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 protect citizens from domestic violence.

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..

Which type of monitoring is best suited to addressing this emerging reality?

Who is a Public Body?

In Public Law- the Courts have increasingly adopted a wider understanding of public bodies for breaches of rights whether substantive or procedural.. Wide definition of public authority In prohibiting discrimination, onstitutions prohibit primarily state action but it is increasingly clear that the prohibition against sex and other forms of discrimination can in certain circumstances bind private actors and quasi-public actors. This effectively expands the scope and reach of the antidiscrimination clause. Most constitutions prohibit discriminatory laws and discrimination by any person acting by virtue of a law or in the performance of any functions of any public office or public authority.<sup>8</sup> The Dominica's Constitution 1978 and the St. Lucia Constitution 1978 go further and cover discrimination 'by any person or authority.'<sup>9</sup> In any event, for the purposes of the anti-discrimination protection, 'public authority' is defined widely. A Belize school operated by the Catholic Public Schools and the Catholic Church was held to be a public authority. In *Wade v Roches*,<sup>10</sup> a sex discrimination case brought by unmarried pregnant teachers who were dismissed by the catholic school, Conteh CJ identified a 'publicly avowed and acknowledged partnership between the Government and the Church in the area of education' as being an 'enduring feature' of education in Belize.<sup>11</sup> In education, the church was carrying out functions of 'enormous public ramifications' and could be seen as the 'alter ego of the government'.<sup>12</sup> The Court of Appeal affirmed this aspect of the Chief Justice's Supreme Court decision<sup>2</sup>

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<sup>2</sup> See Tracy Robinson (2011 Gender Equality and Judging in the OECS and wider Commonwealth Caribbean at <https://www.eccourts.org/wp-content/uploads/2013/10/Gender-Equality-and-the-Judiciary-in-the-OECS-Background-Paper-by-Tracy-Robinson.pdf>

# DEFINING KEY TERMS

## MONITORING

"Monitoring" is a broad term describing the active collection, verification and immediate use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies and other immediate follow-up."

"Monitoring means the close observation of a situation or individual case carried out so as to determine what further action needs to be taken. The following elements constitute monitoring:

- a. It is carried out over an extended period of time.
- b. It involves collecting or receiving a large quantity of data.
- c. Close observation of the situation is done through constant or periodic examination or investigation and documentation of developments.
- d. Standards or norms are used as reference in objectively assessing the situation or case in question, especially in determining what is wrong with it.
- e. Tools or instruments are used in identifying how the situation compares with established standards or norms.
- f. The product of monitoring is usually a report about the situation.
- g. The report embodies an assessment of the situation which provides a basis for further action"<sup>3</sup>

## FACT FINDING

"Fact-finding" describes a process of drawing conclusions of fact from monitoring activities. Hence, "fact-finding" is necessarily a narrower term than "monitoring". Fact-finding entails a great deal of information gathering in order to establish and verify the facts surrounding an alleged human rights violation. Moreover, fact-finding means pursuing reliability through the use of generally accepted procedures and by establishing a reputation for fairness and impartiality."

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<sup>3</sup> <https://www.huridocs.org/wp-content/uploads/2010/08/whatismonitoring-eng.pdf>

# WHY ENGAGE IN MONITORING?

## Aims of Monitoring

The most common general purpose of monitoring is to be able to pinpoint what is wrong with a situation or a case and to indicate what steps can be taken to remedy it. Monitoring is also undertaken to see whether steps that have been taken to improve a situation are working. Most activities that are carried out in response can be therefore considered as reactive. However, monitoring is also undertaken to be able to provide early warning. Early warning refers to the presentation of an assessment of a certain situation citing the likelihood of the outbreak of conflict, especially violent conflict, well in advance so that mechanisms of intervention can be set up before the actual outbreak. Human rights monitoring has the following particular purposes, among others:

- a. to assist governments in applying international standards;
- b. to be able to pressure governments into adopting and implementing international standards;
- c. to be able to undertake domestic legal actions like taking cases to court;
- d. to be able to undertake other actions like denunciations and publicity campaigns, with the goal of bearing pressure on the government and/or to enhance public awareness
- e. to be able to help particular victims; and
- f. to be able to provide early warning in potential conflict areas.<sup>4</sup>

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# PRINCIPLES

## 4.2 Key Principles of MDR

**Do no harm:** While it is not within the purview or capacity of human rights monitors to ensure the safety of victims of human rights violation, it is crucial for human rights monitors to know that his/her duty is first to the victims and those sharing information on human rights violations. Informants stand a great risk in providing information, so the monitor must not endanger the lives of his/her contacts or victims of human rights violations.

**Understanding and respecting the mandate:** Everyone involved in human rights monitoring must be acquainted with the assignment before s/he can be actively involved in carrying out such a sensitive task. The mandate must be respected to prevent monitors from stepping out of bounds. It is most significant to understand as well as respect the mandate of human rights monitors.

**Widespread consultation:** A human rights monitor is not an island, so s/he should consult widely with supportive personalities or organizations who would add value to the work of human rights monitoring. There exist a good number of people understanding the dynamics prevalent in a community or their sphere of influence. Consulting with such individuals or organizations may enrich the outcome of the investigation.

**Respect for authorities:** Human rights monitors are not in competition with the authorities, nor should they maintain an antagonistic front with the authorities, especially since the action and inaction of the authorities has a huge influence on the achievement of their goals. Therefore, there should be respect for the authorities. Monitors should consider them as partners or potential partners who would complement these authorities' efforts towards achieving seeking justice for victims of human rights violation in their area of operation.

**Neutrality:** If the monitor is seen as being neutral, not showing favouritism or bias towards one side or another, it adds credibility to the outcome of any investigation. You must avoid prejudice in carrying out the task of collecting and analysing information about violations.

**Precision:** Human rights monitors must ensure and maintain a great degree of precision and accuracy of information reported. Inaccuracy could affect the perception of reliability of your work.

**Confidentiality:** It is important that informants understand and trust that the information that they provide is confidential. Without this confidence, they are unlikely to share information with you. It is also the monitor's responsibility to protect the confidentiality of their informants (See Box 9 for more information on confidentiality)

**Conspicuousness:** Your availability as a monitor at crucial times emboldens the contact and victims to feel secure that their course is being pursued vigorously. Ensure that the people you seek to facilitate the protection of their rights and the authorities know your work and mandate (See section 5.3 Contact Building)

**Sensitivity:** The monitor must be sensitive to the culture and environment of operation and to further exercise sensitivity to the plight of the victims or the culture where they are operating.

# MONITORING TYPES

SOURCE: WHAT IS MONITORING VOL 1. MANUEL GUZMAN, BERT VERSTAPPEN

## 6. HOW TO MONITOR A SITUATION

### 6.1 The “Violations” Approach to Monitoring

There are two general approaches used in monitoring human rights situations: the "violations" approach and the "progressive realisation" approach.

The “violations” approach has been used extensively in monitoring civil and political rights, but can also be used for monitoring other types of rights. Simply put, this approach seeks to identify the violations of recognised rights, rather than the steps taken by governments to comply with their obligations. Violations can be very visible acts like killings, arrests, torture and displacements, or less visible acts like the failure of a government to adopt a policy for combating homelessness. Violations can be

- a. acts of commission, by the state or by parties insufficiently regulated by the State
- b. acts of omission by the state

The violations on the part of the state can be seen in terms of its failure to comply with its three different types of obligations. These are:

- a) obligation to **respect**, which is to abstain from doing anything that violates the integrity of the individual or group or infringes on her/his/their freedom.

Examples of violations are such acts as:

- extra-judicial execution (in violation of the obligation to respect an individual’s right to life)
- arbitrary arrest (in violation of the obligation to respect an individual’s right to liberty)
- banning of a trade union (in violation of the obligation to respect a group’s freedom of association)

- b) obligation to **protect**, which is to take the measures necessary to prevent other individuals or groups from violating the rights of the individual or group, including the prevention or infringement of the enjoyment of her/his/their freedom.

Examples of violations are acts like:

- inaction when a certain group, such as an ethnic group, attacks another
- failure to compel companies to pay decent wages

- c) obligation to **fulfil**, which is to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs which cannot be secured by personal efforts.

Examples of violations are acts of omission like:

- failure to adopt a basic health care system
- failure to implement a free education system on the primary level

### 6.2 The “Progressive Realisation” Approach

An important piece of legislation concerns the national budget. Budget analysis can be done to see whether the government has adopted policies and is serious in implementing these.

Annual reports of government organs from the national to the local levels can be studied to see if laws, policies, programs and plans are implemented as intended. The various benchmarks set as targets by governments, usually contained in multi-annual development plans, can be used as standards.

## **6.6 Monitoring the Establishment and Progress of Human Rights Institutions and Other Government Bodies Dealing with Human Rights**

The *Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights*, often referred to as the Paris Principles, were adopted in 1991 in Paris at an international workshop convened by the U.N. Centre for Human Rights, and subsequently endorsed by the Commission on Human Rights in 1992. The Paris Principles provide a set of international standards that can be used in monitoring the establishment and performance of such agencies as national human rights commissions, ombudsmen and specialised commissions.

The judiciary can also be regarded as a human rights institution in a way, as it is often the recourse of citizens in seeking remedies for human rights violations. Hence, some organisations, including international NGOs, monitor the independence of the judiciary. There is also a designated UN Special Rapporteur on the Independence of Judges and Lawyers.

Institutions that deal with education and training may also be studied. For instance, it would be valuable to determine whether basic human rights values are integrated in school curricula. Professional training of government officials can also be looked into, especially in the case of law enforcement authorities and the armed forces.

RETRACET SOURCED FROM: WHAT IS MONITORING VOLUME 1 MANUEL GUZMAN, BERT VERSTAPPEN

Another monitoring approach, one used in monitoring economic, social and cultural rights, is the “progressive realisation” approach. It stems from Article 2 of the International Covenant on Economic, Social and Cultural Rights which provides that “*each State Party to the Covenant undertakes to take steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant.*” This approach thus focuses on periodic evaluations of government efforts towards the realisation of economic, social and cultural rights, and comparing the progress made during each period. As such, it requires the collection of a large amount of data over a long period of time, such as through a national census. Thus, this approach is best taken by governments and by IGO bodies which monitor treaties, with the former actually doing the data-gathering and afterwards reporting to the latter.

### 6.3 The “Events” Monitoring Methodology

Two dominant methodologies in monitoring human rights situations are the “*events*” (or *acts-based*) methodology and the *indicators-based methodology*.

The “events methodology” for monitoring involves identifying the various acts of commission and omission that constitute or lead to human rights violations. In other words, it is a concrete form by which the “violations” approach takes shape.

This methodology involves investigating and documenting an event that is suspected of or confirmed to be consisting of one or more acts considered as violations. For instance, the dispersal of a protest rally is an event which could contain several acts of violations like beatings of rally participants, arrest of rally leaders, etc. Aside from the event and its component acts, information about the persons involved, including the victims and perpetrators, are also recorded. HURIDOCS has developed a set of standard formats for recording the various pieces of events and related information. For a more detailed discussion of the “events” methodology, refer to the book *HURIDOCS Events Standard Formats: A Tool for Documenting Violations*.<sup>3</sup>

The “events” methodology has been effective in monitoring very visible acts as killings, arrests, torture and the like. Inquiries into less visible acts, especially acts of omission such as instances of inaction by authorities, are now gradually being integrated into this methodology.

A limitation of the “events” methodology is that it usually does not aim, or often fails, to arrive at a complete picture by giving the total number of violations, much less the proportion of actual victims to the whole population. There are two problem areas identified in this regard;

The monitoring body does not hear of all events involving the violations covered by its mandate. Among the reasons for this are the lack of local contacts who could inform on ongoing events, and misconception by the local population in the sense that some acts are not seen as violations. Even if the monitoring body learns of events that are likely to contain violations, it is unable to investigate and document these for reasons such as ongoing military actions, hesitation of witnesses to come forward, and lack of resources.

In a way, the use of the “events” methodology, including the use of the HURIDOCS Events Standard Formats, can be considered as the conduct of a survey involving a haphazard sample. It

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<sup>3</sup> Dueck, Judith, Manuel Guzman and Bert Verstappen. *HURIDOCS Standard Formats : A Tool for Documenting Human Rights Violations*. Versoix: HURIDOCS, 2001.

must be stressed though that “haphazard” here simply refers to the fact that the respondents are limited only to those that can be reached. There is nothing haphazard at all with the deliberate efforts taken by NGOs in tracking, investigating, documenting and following up cases within their reach.

What is important is to qualify the reports that one issues after using this methodology. Such qualifications can indicate the possibility that there are more violations that had occurred but were not investigated and documented. The report can include a description of the factors that hampered investigation of certain events.

## 6.4 The Indicators-Based Monitoring Methodology

An indicator is a tool that shows where something is, what direction it is leading to, and how far it is from that objective. It serves as a sign or symptom that tells what is wrong in a situation and helps in pointing out what needs to be done to fix the problem. Examples of indicators are:

- in the area of education: adult literacy rate
- in the area of health: infant mortality rate
- in the area of political participation: proportion of seats in Parliament held by women
- in the area of access to information: ratio of telephone lines to population

There are two kinds of indicators: result indicators and process indicators. A **result indicator** measures the outcome of efforts, or the lack of them, by the state to meet a particular obligation. It is therefore an indication of the current status of the enjoyment of a certain right. A **process indicator** on the other hand measures the degree to which the state is complying with its obligations.

For example, a state has the obligation to increase literacy among its citizens. A result indicator would be the literacy rate, while a process indicator would be the number of schools in the country. Another example concerns the obligation to reduce deaths among newly-borns. A result indicator would be the infant mortality rate, while a process indicator would be the proportion of children immunised against childhood diseases.

A **benchmark** is the level that is aimed to be met when using a certain indicator. An example of a benchmark, when using adult literacy rate as an indicator, is 75% literacy among adults nationwide.

There are many indicators already used by various IGOs such as the World Health Organisation and the United Nations Development Programme to measure the status of economic and social conditions within countries. These indicators can be used as they are or may need to be adapted for local use, at the same time that NGOs can develop their own indicators.

While indicators have been employed mainly in the field of economic, social and cultural rights, especially by development organisations, they are equally applicable in the area of civil and political rights. An example has been given above (proportion of seats in Parliament held by women). Another example would be the percentage of persons tortured among all those arrested.

Also, indicators can be used in both the “violations” and “progressive realisation” approaches. If a State Party failed to meet the minimum obligations to fulfil a certain right, it can right away be considered a violation. Also, if a benchmark is not met, or if a government does not set any target to be met to begin with, this can also be construed immediately as a violation on the part of the

government. As for the “progressive realisation” approach, the findings over a period of time using both process and result indicators could show whether a state is meeting its various obligations.

Overall, indicators are very valuable in expressing the magnitude of the problems in a certain situation. However, their use cannot replace the “events” methodology, especially in addressing grave violations like killings, evictions and disappearances. Also, a main weakness of the indicators-based methodology lies in the fact that the focus is removed from the individual. In human rights work, it is often necessary to know the details concerning victims, especially if direct assistance is to be given.

On the other hand, it must be recognised that with sufficient data gathering, and with the aid of tools and techniques for data analysis, the results of monitoring events can be transformed into indicators. For instance, if there are sufficient and well-chosen samples that show the proportion of tortured persons among all those arrested in local areas, a national projection can be made to give one indication of the state of police conduct in handling arrested persons.

In short, the combination of the “events” methodology and the indicators-based methodology should result in a comprehensive and detailed picture of a situation. This is especially needed in the field of early warning, where information on the magnitude and nature of violations as well as on economic and political realities is crucial to determine whether a situation is on the verge of plunging to conflict.

## **6.5 Monitoring Laws and Policies and their Implementation**

A substantial part of monitoring a country situation is studying the laws of the country and finding out if there is progress in keeping with international standards.

First, it is necessary to find out what instruments have been signed, ratified or acceded to by a government. Afterwards, a good place to start the study of national legislation is with the country’s national Constitution, if there is one. A Constitution normally contains a Bill of Rights, and it would be easy to determine how the provisions compare with universal standards. Afterwards, specific laws that have been passed by the country’s legislature can be studied. Many of the laws relevant to human rights can be found in national penal codes, for instance.

Laws pertain not only to those passed by the legislature. For instance, decisions by judicial bodies, especially by the Supreme Court or the highest court in a country, become part of a law, and are normally referred to as case law.

It must be borne in mind that laws have different levels of effectivity. Some laws are self-enacting, while others need enabling laws for them to take effect. For instance, the Constitution may contain a provision stating in general that torture is prohibited. This general statement, to be effective, would require an enabling law to be passed by the legislature which should include, among others, the definition of torture as a crime with corresponding penalties when committed.

The next step after studying existing laws is to monitor bills that are being proposed, drafted, debated or passed in legislative bodies. The substance of each bill can be reviewed to see whether its provisions warrant support or opposition. Moreover, NGOs can monitor how individual legislators vote in relation to human rights issues, to form a concrete basis for lobbying plans.

# INTERVIEWING

## ACTIVITY

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?

<b>INTERVIEW DETAILS</b>	Name of Interviewer(s)
	Location of Interview
	Date and Time of Interview
<b>PERSONAL DETAILS</b>	Full Names
	Age/Date of Birth
	Sex
	Address, Telephone Number
	Occupation/Employment/Name of Employer
	Family Status
	Nationality
	Religion
	Ethnic Group
<b>DATE AND TIME OF THE VIOLATION</b>	<input type="checkbox"/> Day, Month, Year, Hour?
<b>LOCATION OF VIOLATION</b>	<input type="checkbox"/> Where exactly did the violation take place?
<b>WHAT VIOLATIONS OCCURED</b>	<input type="checkbox"/> What did you witness? (It is important to separate what the individual actually saw or experienced versus what they may have heard from other people? Describe the incident (or incidents) in detail? <input type="checkbox"/> What happened leading up to the violations? (This could even mean asking questions about the history of the area or the community)
<b>PERSONS INVOLVED IN THE VIOLATION</b>	<input type="checkbox"/> Do you know the violators? Did you see them, would you recognize them if you saw them again? <input type="checkbox"/> If they are security actors, which forces did they belong to? How do you know? <input type="checkbox"/> What type of vehicle (brand, colour, number plate) were they using?
<b>WITNESSES</b>	<input type="checkbox"/> Did other members of the community or outsiders see the violation(s)? Who were they? (Collect full details, names and addresses if possible)
<b>INJURIES AND DAMAGE</b>	<input type="checkbox"/> Any physical injury? If yes what part of the body. Any property damage? (Take pictures if possible). <input type="checkbox"/> Did the victim(s) go to a doctor, medical clinic or hospital? Request for the medical report if available? If not available ask why?
<b>RESPONSE BY AUTHORITIES</b>	<input type="checkbox"/> Was anyone arrested or detained? Did they give a reason for the arrest? Did they show any warrant? <input type="checkbox"/> Was the victim taken away? How? Can you identify the type and number of vehicle? How many people were involved in the operation? <input type="checkbox"/> Are you aware of any investigation by the authorities? If yes, who have they interviewed? Has any action been taken?
<b>ADDITIONAL QUESTIONS</b>	<input type="checkbox"/> Is there anything that I may have left out but you want to share with me? Additional questions that may be necessary



# GUIDELINES FOR INTERVIEWING

EXTRACT SOURCED FROM CPT DOCUMENTING HUMAN RIGHTS ABUSES PP 2-3

## BEHAVIOR IN THE FIELD

**Respect the Culture:** Even small mistakes on your part can create problems. Learn the basic cultural sensitivities of the people you visit. If you truly respect the people you interview, and don't make them feel that you are looking down on them, they will notice your efforts and cooperate more fully with you.

**Commitment and Cooperation:** The stronger your commitment to justice and human rights, the better your interview skills will be. You will automatically ask questions that let people know that you understand their suffering, and, in turn, people will cooperate with your efforts. Part of this commitment is to recognize that victims of human rights violations themselves can bring an end to oppression. A good reporter respects this ability in the people and treats them not only as victims, but as equals who are also struggling for justice. After you have written up your interview, you should find some way to share it back with the interviewees so they can see how their information is useful to the struggle.

**Reliable Information:** Reporters must collect the most detailed and reliable information possible because any information that appears exaggerated will discredit the report and the people who are suffering. Always double-check information, especially if an answer is unclear. Always be sensitive to whether or not people feel free to express their true feelings. Minorities and oppressed people often give answers that they think the interviewer wants to hear, in order to avoid problems. This is part of the culture of oppression under which they live. It is important to ask questions in a way that builds their confidence to speak freely.

It is also important to understand that asking many questions may lead to raising suspicion on the part of the interviewees. Thus, establishing trust is of the utmost importance when seeking to gather correct and reliable information.

## PREPARING FOR THE INTERVIEW

**Background Information:** Before you interview, you should know the background of the situation you are entering, including, for example, the history of human rights abuse in a village or the general nature of a person's complaint.

**Preparing Questions:** Write down some general questions that will get the interview started and moving in the direction you want it to go. Preparing questions beforehand is important because sometimes interview time is limited, or the people will need help focusing on relevant information. Three useful categories of questions are:

1. **Background Questions:** these are questions about the general situation to ask at the beginning of the interview so that you can gain as much useful background information as possible. These will also give the interview subject the chance to relax and get comfortable with the interview process. Examples: when did the soldiers first start coming to this village? How is the relationship between this village and the rebels? Did you have a good harvest last year?
2. **Specific Questions:** these questions cover more detail about what was learned from the general questions. Examples: how did the army tell the village that it had to move? Did the commanding officer send a letter or talk directly to the headman? How many soldiers did you see take your husband away?
3. **Questions About Opinions and Feelings:** these questions are to be asked at the end of the interview. They can be broad and general, asking people how they feel about the present situation or what they think might happen in the future. Examples: what impact does this execution have on your family? What does the village think will happen if it has to move another time? How do the women here feel about their children's future? What do the children want to do when they grow up?

**Selecting People to Interview:** Sometimes, when there are many people who can be interviewed for a single subject (for example, the burning of a village), you should carefully select your informants in order to save time. Selection should depend on who the most articulate and knowledgeable eyewitnesses are. People who are not eyewitnesses do not make good primary informants, but can be useful in double-checking information. Try to interview just one person at a time; too many people produce confusing statements with many interruptions and contradictions (see "privacy" below).

**Interview Materials:** Pens (always more than one!) And notebooks are the basic required equipment for good interviews. When available, tape recorders and cameras can also be very useful, because they supplement the information in your notes. Never rely only on a tape recording of an interview, however, because if the tape gets lost or damaged, you will have no record. Always ask your subject's permission to record his or her voice or take a picture.

**Interview Site:** An interview site should be chosen according to its privacy, security and comfort for the interview subject. In civil war zones, it is important that interviews be discreet, involving only a few people and conducted over a short period of time. Public interviews can draw the attention of spies and gossips who can cause problems for the interviewee.

Source: Human Rights Monitors Guidebook (2014) - Search for Common Ground, p 17

# PREPARING THE CASE REPORT

## **Building a Case/ Report:**

Gathering testimonies is only a first step. The most important contribution is for someone to put that mountain of interviews into a broader context. One person can be kicked in the face, and it can be argued that this is just a rogue soldier, but if a hundred interviewees describe being kicked in the face, we can talk about a consistent pattern of abuse.

In order to really have an impact, it is important to:

- A. accurately identify patterns of abuse of particular concern, and,
- B. gather sufficient evidence about those abuses to be able to present a powerful case.

Patterns of abuse may include: torture, beatings in detention, use of excessive force, rude treatment, existence of mass graves. Evidence will most likely consist of dozens of individual cases.

For example, a CPT report might say something like: “Many Iraqis detained by U.S. authorities experience inhumane treatment, physical abuse and beatings, rude curses, and other forms of abusive treatment while in detention. CPT team members have interviewed x number of former detainees and have found the following patterns of abuse...” This makes for a much more powerful case than individual testimonies, which can always be discounted as different from the norm or even lies. It is possible for one person to lie, but reports based on dozens of interviews describing similar abuses are much more difficult to discount.

One of the key strategies to pursue is to find as many witnesses as possible to the patterns of abuse you are trying to document – and this is another reason to try and keep interviews as private as possible. For example, Human Rights Watch was able to make a very powerful case in one report on Chechnya by describing the beating to death of a detainee by stressing that HRW had interviewed three different independent witnesses, all of whom described how they saw a Georgian with a head wound being beaten to death while walking through a cordon of Russian guards when they arrived at the prison. The fact that the dead man was identified as Georgian, and that all three witnesses described him being beaten to death in the cordon was crucial to making a strong case. It is important to ask the same detailed questions from all witnesses, as the devil is in the details.

It is important to exclude a lot of random information and focus on what shines through clearly. For example, individual facts like being fed a strange fruit juice would be excluded but consistent patterns would be highlighted (“Detainees consistently spoke about being kept handcuffed for days on end in the hot sun, being forced to squat, and being denied food. Jamal al-Jabar, a forty-two year old shopkeeper, was detained in June and spent x days in detention. When he was first detained, he was kept handcuffed for x days at the x base).

Before HRW goes public with information, they often have interviewed literally hundreds of witnesses. They interview doctors who have treated victims; human rights activists and preachers who have counseled them; the victims themselves; the families of those still detained; anybody at all who may have some relevant information about the abuses they want to highlight. A successful human rights report is based on many interviews, and putting together these different interviews in such a way as to make the case that a pattern of abuse exists.

**Privacy:** whenever possible, conduct interviews in as private a setting as possible. When you encounter multiple persons who may have information about the same incident (for example, two people who were detained together, or who went through the same detention center), **it is VERY important to separate the witnesses and to interview them separately.** If one of them is interviewed in the presence of the other, the second witness is likely to just repeat the same story, but if they are interviewed separately from each other and tell a similar story, the case will be much more powerful. Usually it is not a problem to ask one of the people to leave the room for a while if you explain the reason; in fact people tend to then attach greater importance to their "deposition" and gladly comply.

## **BEGINNING THE INTERVIEW**

Before an interview, develop a friendly relationship with the interviewee by asking personal questions and sharing information about your own life. Starting an interview quickly and formally can intimidate people. Share some food or a cup of tea, and let them realize that they don't need to be afraid of you. Clarify who you are, the purpose of your interview and what you hope to do with the information you seek. Encourage people to think about human rights information work and why you and others are involved in it.

## **ASKING QUESTIONS**

- You should not ask difficult questions at the beginning of an interview. Oppressed people may feel that they are being challenged or pushed.
- Try not to put your opinions in questions. This can be confusing, and people may start responding more to your opinion than to the question. EXAMPLE: "Those soldiers are really brutal when they come into the village. Were they brutal when they talked to the leader here?"
- Leading questions, which encourage the interview subject to give a specific answer, should always be avoided. EXAMPLE: "So, after you came outside you saw your husband being beaten and you felt afraid, right? So then you went and told your son, right?"
- If someone refuses to answer a question once, do not repeat it or try to find another way to ask the same question. Respect your subject's right to privacy.
- Be gentle. Don't interrogate people the way police do.
- Use simple and direct language. Don't use special English or other foreign language terms unless you already know that the person understands them.
- If the subject does not understand the intention of your question, and gives an answer that moves away from the question, don't interrupt them directly, but wait for them to pause and redirect their answer by saying something like, "I understand what you are saying, but what I meant to ask was..."
- If your subject's answer moves away from your original question, but uncovers other important or interesting information, follow that direction and resume your primary questions later.
- Details, details, details. It is important to ask who was present when they were abused, exactly what was said, where they were kept, exact time lines, if they recognized anyone else who was being abused etc. If anything major happened (for example, the death of a detainee), those details will be of crucial importance as they will allow you to check the reliability of one testimony against another. (See below, building a case).
- Always double-check numbers, names and dates. One way to do this is to take these facts near the beginning of the interview, double-check them again a while later, and then when finishing the interview ask one last time. Then, check with other people.
- An important aspect of human rights investigations is to seek out other witnesses. During interviews, ask the witness if he or she knows of any other persons who were present at the time of abuse or who may have had similar experiences.
- Try to write your notes openly so that the interviewee can see. Even if s/he can not read, writing openly is an act of trust that s/he will appreciate. Explain when you start that you want to take some notes to help you later, and that the interviewee can ask to have some things left in or out.
- Make sure you get good definitions for local terms that are unfamiliar to you or to your audience. When an interviewee says s/he was psychologically or physically abused, it is important to ask exactly what happened. Some cultures would describe a simple push as a beating; in Kosovo people would describe a single killing as a massacre.

## **CONCLUDING YOUR INTERVIEW**

- Check to see if your information is clear and complete. Do you need any more information? Are your notes clear to you?
- If you need more information, but cannot continue the interview, ask the interviewee if a future interview would be possible.

# ADVOCACY

Figure 5 Five Key Steps for Advocacy

