

Documentation projects: from proposals to reports

***Information is a cornerstone
in the struggle against discrimination***

Judith Dueck, HURIDOCS



Please review this booklet before the workshop begins.



Documentation and evidence based advocacy
ILGA Europe July 9 – 11, 2008

Day 1 Documentation projects: from Proposals to Reports – Judith Dueck

9:15 – 10:00	Introductions and expectations
10:00 – 11:15	Gathering the information: Fact Finding and Monitoring
	<i>Break</i>
11:30-13:00	Documentation: Organizing the elements of information
13:00 – 14:00	<i>Lunch</i>
14:00 – 15:30	Analyzing and presenting the data The ILGA proposal
	<i>Break</i>
15:45 – 18:00	Writing the Impact Report

Day 2: Evidence based advocacy

Day 3: Looking at reports and Proposals – Group work

Simultaneous individual meetings with the resource people to look at participant reports.

Closing and Wrap up

Please review this booklet prior to the workshop and complete page 5.

What are your expectations from this workshop?

Participant list

Participant	Email address	Country	Organisation	Project	Notes
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Zigmars Sebris	sebris@gmail.com	Latvia	Alliance of LGBT and their friends "Mozaika"	Publication of Homophobic Speech - Monitoring Results	
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What are human rights and human rights violations?

I. What are human rights?

Any group, in which human beings come together for any length of time, requires some mechanism to ensure its collective stability. Among other things, that mechanism must assure a predictable degree of conformity by the members of the group to some coherent rules of conduct determining things that the group can do and/or should refrain from doing, in given circumstances.¹ These sets of rules are what is often referred to as the law and are the basis of a country's legal system.

While national laws are normally passed by the legislature (parliament/congress), human rights law and standards are agreed internationally or regionally by governments. Human rights are those rights without which we cannot live as a human being in dignity. Human rights permit us to develop to our full potential and to satisfy our fundamental intellectual and physical needs.

One of the paramount achievements of the United Nations (UN) is the creation of a comprehensive body of human rights law, which, for the first time in history, provides us with a code of human rights, one to which all nations can subscribe and to which all people can aspire.

The foundations of international human rights law are the United Nations Charter and the Universal Declaration of Human Rights. But since then, the United Nations has gradually expanded human rights law to cover specific documents (instruments) for women, children, disabled persons, minorities, migrant workers and other vulnerable groups, who now have recognised rights that protect them from discriminatory practices that had long been common in many societies.

Characteristics of human rights

Human rights do not have to be given, bought, earned or inherited. They belong to people simply because they are human – human rights are 'inherent' to each individual. Human rights are inherent because we are born with them.

Human rights are the same for all human beings regardless of sex, religion, ethnicity, political, or other opinion, national or social origin. We are all born free and equal in dignity and rights - human rights are 'universal'. Human rights are universal because they apply to everyone in the world.

Human rights cannot be taken away - no one has the right to deprive another person of them for any reason. People still have human rights even when the laws of their countries do not recognise them, or when they violate them – for example, when slavery is practised, slaves still have rights even though these rights are being violated – human rights are 'inalienable'.

To live in dignity, all human beings are entitled to freedom, security and decent standards of living concurrently – human rights are 'indivisible'.

Human rights are proclaimed in international documents such as the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and regional documents like the African Charter on Human and Peoples' Rights.

After a government has agreed to be party to a Convention or Treaty² they undertake the commitment to incorporate it into their local legal code and to abide by it.

Certain rights may never be suspended or limited, even in emergency situations. These are the rights to life, to freedom from torture, to freedom from enslavement or servitude, to protection from imprisonment for debt, to freedom from retroactive penal laws, to recognition as a person before the law, and to freedom of thought, conscience and religion.

¹ Paul Sieghart, The international law of human rights, 1983, Oxford University Press, United Kingdom

² This process is called ratification

II. What are the differences between human rights violations and infractions of the law?

A human rights monitor should not deal with all cases of violence or crime but only with violations or abuses of human rights. So how do we establish what constitutes a human rights violation or abuse?

Three sub-questions have to be answered:

1. Was the act a breach of national **and/or** international human rights law?
2. Who was responsible?
3. What was the motivation?

1. Was the act a breach of national and/or international human rights law?

To answer this question it is important to realise that national law usually includes many provisions from international human rights law. States that have ratified an international human rights Convention have to adapt their constitution and national laws in accordance with the Convention. So, what we call a human rights violation is *always* a breach of international human rights law but *can* also be a breach of national law. However, an infraction of national law is usually not referred to as a human rights violation if it is not *also* a breach of international human rights law (see examples in Box).

2. Who was responsible?

(i) The State

Human rights violations are primarily committed by person(s) representing the State³ who violate national or international law relating to the protection of human rights. For example, to qualify as a violation of human rights the act has to be committed by a person(s) representing the State such as a police officer, or a civil servant.

The State should

- Respect – not breach, no interference with the enjoyment of a right
- Protect – stop, prevent violations
- Fulfill – adopt appropriate measures towards the full realization of rights; and the obligation to facilitate, provide and promote human rights.

(ii) Non-state actors

a. Armed opposition groups

Armed opposition groups have not, in a formal legal sense, committed themselves to obeying human rights law. But under International Humanitarian Law such groups are also obliged to respect human rights.

b. Multinational and international companies

In recent years, because of their power and wealth, there have been more voices arguing that international and multinational companies should also be made more accountable and responsible for respecting human rights. This debate, however, has not yet come to a conclusion and as such there is no clear system that holds these entities responsible for committing human rights violations.

c. Common criminals

Undoubtedly a situation where there is a lot of crime and violence prevents a community from enjoying their rights (i.e. freedom of movement, or the right to own property), but this does not mean that ordinary criminals or vandals are committing human rights violations. They are breaking the law and should be dealt with by law enforcement agencies according to the legal code of the country.

³A 'state' is a political entity possessing sovereignty: not being subject to any higher political authority

3. What is the motivation?

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.

III. How are human rights violations be committed?

A human rights violation is committed by an *act* (i.e. arbitrarily depriving someone of their freedom or torturing them) or by *omission* (i.e. not providing protection against systematic abuse committed by one group against another).

The primary responsibility to protect human rights rests with the government. It is its duty to ensure that the law protects everyone (does not discriminate) and that it is enforced. When some cultural practices justify actions contrary to human rights standards the authorities have to put into practice the law and find ways to transform such practices so that they no longer violate human rights.

Omission is negligence in performing the requirements of national or international law relating to the protection of human rights. These laws give governments duties to be performed as a means of protecting the human rights of the public, and it is an omission when the authorities neglect to perform them.

In the case of omission, the actual hurt can be committed by common citizens. In such cases you need to be able to show that the incidents of hurt are widespread, have a pattern, and infringe the integrity and dignity of the victims; therefore, the authorities have a responsibility to act to stop these incidents and provide protection to the victims. If the authorities don't do so, they are violating the rights of the victims by their omission. For example: a high incidence of abductions of children into forced labour in a certain region can be labelled a human rights violation; this is even the case if the abductions are not committed by government agents or armed opposition groups, or if the authorities are not taking the necessary steps to stop this situation so that the abductions persist.

Examples (Are all of these human rights violations?)

The type	Example	Example	Write an example
A human rights violation committed by an agent of the State	A police officer beats a person in their custody who is not offering any resistance or posing a threat	Arbitrarily without due process a Minister of Interior orders 50 refugees to be forcibly repatriated to their country of origin	
A human rights abuse committed by a non-state actor	Members of a known identifiable anti-gay gang beats up an LGBT person	A militia is killing fighters of another armed group who surrendered and put down their weapons	
An infraction of the law	Mr. Miko kills his neighbour during a fight	A police officer steals from the funds of the police station where he works	
Omission of government to stop abuses by citizens	A pattern of police not dealing with reported rape cases	Government not actively implementing a national law that prohibits forced marriages	

What is a human rights violation?

Excerpt from: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS PROFESSIONAL TRAINING SERIES No. 7. Training Manual on Human Rights Monitoring UNITED NATIONS. New York and Geneva, 2001. http://www.unhchr.ch/pdf/train7_a.pdf . Pages 7 and 32.

“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.

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.

The phrase *“human rights abuses”* is used in this Manual as a broader term than “violations”, and includes violative *conduct committed by non-State actors*.

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While most human rights are perceived as individual rights vis-à-vis the Government, human rights norms may also apply to non-State actors (such as armed opposition groups, corporations, international financial institutions and individuals who perpetrate domestic violence) who commit human rights abuses. The campaign to abolish slavery, one of the oldest efforts to protect human rights, was an attempt to prevent private actors from keeping or trading in slaves. More recently, international human rights norms have been addressing the responsibility of governments to restrain individuals from committing human rights abuses in the areas of domestic violence, female genital mutilation, etc. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (adopted 26 January 1997 by a group of 30 international legal experts) state:

... The obligation to protect requires states to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the rights to work or the right to just and favourable conditions of work ...

In sum, currently the term “human rights” should be viewed as incorporating both the rights traditionally defined by the International Bill of Human Rights, as well as the expansion of that definition to include rights guaranteed by international humanitarian law. Further, human rights norms are now perceived to be enforceable against some non-State actors.

