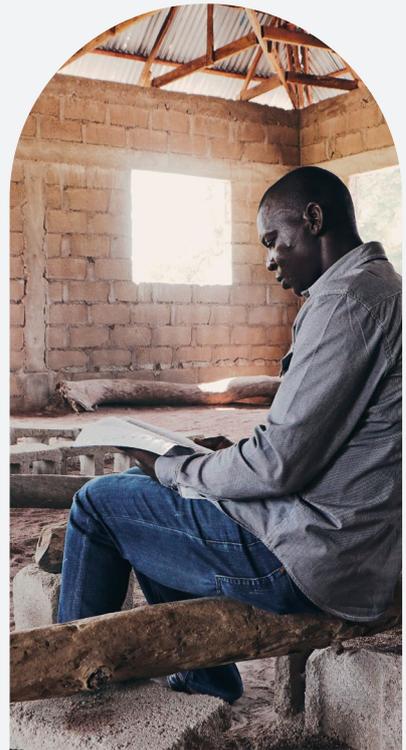


# International Protocol on Documenting Violations of Religious Freedom

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OPEN DOORS INTERNATIONAL  
RELIGIOUS FREEDOM INSTITUTE



# About

## Open Doors International

Open Doors International (ODI) is an international NGO that supports communities of Christians from all denominations in more than 60 countries where their fundamental rights are violated because of their faith.

## Religious Freedom Institute

A non-profit organization based in Washington, D.C., RFI is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. RFI seeks to advance religious freedom for everyone, everywhere.

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## Acknowledgments

This Protocol was prepared by the Middle East Divisions of Open Doors International and the Religious Freedom Institute, in response to requests from civil society partners for guidance on how to document serious violations of religious freedom in their local contexts, when no mandated authorities either exist, have the capacity, or are reliable to document occurrences.

This project was directed by Open Doors' Director of Middle East Advocacy Najib Bajali, and the Religious Freedom Institute's Director of the Middle East Action Team Jeremy Barker. The coordinator and lead author was Naomi Prodeau, independent consultant and international human rights lawyer.

Open Doors International and the Religious Freedom Institute are grateful to Amira Mikhail, director of the Eshhad Center for the Protection of Minorities, and Tiffany Barrans, international human rights lawyer, both contributing experts and co-authors of this Protocol.

We are also grateful to Stephanie Barbour from the Commission for International Justice and Accountability, and Reverend Andrew Bennett, from Cardus, for contributing their expertise to this project and their detailed review of the Protocol.

Due to security concerns, not all contributions and reviews can hereby be disclosed. We are particularly grateful to all of our local partners whose work with this Protocol continues to advance justice.

## Disclaimer

The purpose of this Protocol is to present important aspects of civil society documentation of violations of religious freedom and connected rights, and to provide guidance in order to raise the safety of these activities and the quality of their results.

It does not purport to be a comprehensive presentation of all potential issues, nor of the local and international legal frameworks governing such issues. It is not a substitute for investigative, legal, psychological, medical, forensic, or security training. Users of this Protocol are advised not to rely on the Protocol alone, and to seek technical advice and support before and throughout documentation.

The Religious Freedom Institute and Open Doors International disclaim all liability to any person or object with regard to any activity performed, or anything omitted or permitted in reliance on this Protocol in whole or part. This disclaimer extends to the consequences of any activity undertaken, omitted, or permitted in reliance on this Protocol in whole or part.

Editorial authority for the Protocol rests with Open Doors International and the Religious Freedom Institute. As such, being a contributing expert or reviewer does not necessarily indicate full endorsement of all aspects of this Protocol.

## A note on terminology

Throughout this protocol the terms religious freedom and freedom of religion or belief, or FoRB, are used interchangeably. In broader usage, the distinction between these terms is at times due to regional differences but can also include broader differences over matters of principle. The term religious freedom is typically used to indicate one's right to hold and live in accord with not undefined "beliefs" but one's religious beliefs, including the right to change one's religion or reject religious belief altogether. Absent a clear definition, such as is outlined in Part 1 of this protocol, the expansive nature of "or belief" can obscure or dilute the particular nature of the protection of religious freedom as protecting the right of all individuals to hold and manifest their religious beliefs.

# Contents

<b>Introduction</b>	<b>7</b>
<b>Part 1: Defining Religious Freedom</b>	<b>8</b>
<b>1. Understanding Religious Freedom Within the International Human Rights Framework</b>	<b>11</b>
<b>2. Protections and Interpretations of Religious Freedom in International Law</b>	<b>12</b>
2.1 International Human Rights Law: The law that applies at all times (IHRL)	13
2.2 International Humanitarian Law: In times of armed conflict (IHL)	14
2.3 International Criminal Law: In specific contexts (ICL)	14
2.4 Regional Human Rights Law: In specific locations	15
<b>3. Elements of Religious Freedom under International Human Rights Law</b>	<b>16</b>
3.1 The freedom to adopt, change, or renounce a religion or belief	16
3.2 Freedom from coercion that impairs the freedom to have or adopt a religion or belief of one's choice	17
3.3 Right to manifest one's religion or belief, alone or in community, in public or private	17
3.3.1 Freedom to worship	18
3.3.2 Places of worship	18
3.3.3 Religious symbols	19
3.3.4 Observance of holidays and days of rest	20
3.3.5 Appointing clergy	21
3.3.6 Teaching and disseminating materials	21
3.3.7 Right of parents and legal guardians to ensure the religious and moral education of their children	22
3.3.8 Registering Religious Institutions	23
3.3.9 Communicating on religious matters at the national and International level	24
3.3.10 Establishing and maintaining charitable and humanitarian institutions	24
3.3.11 Refusing to perform military service (conscientious objection)	24
3.4 The right not to be discriminated against on the basis of religion, and the prohibition of inter-religious discrimination	24
<b>4. Lawful Limitations on Religious Freedom</b>	<b>25</b>
4.1 Absolute components of Religious Freedom ( <i>cannot be limited</i> )	25
4.2 Qualified components of Religious Freedom ( <i>can be limited</i> )	25
<b>5. Protecting the Religious Freedom of Groups at Risk</b>	<b>25</b>
5.1 Women	26
5.1.1 Clothing	26
5.1.2 The right to be recognized by law	27
5.1.3 Women's right to the freedom to adopt, change, and manifest religion or belief	27
5.2 Refugees and Internally Displaced Persons	27
5.3 Children	28
5.4 Religious and Belief Minorities	28
5.5 Migrant Workers	29
5.6 Persons Deprived of Their Liberty	30
<b>6. The Intersection of Religious Freedom with Other Human Rights</b>	<b>30</b>
6.1 The Freedom of Expression and Freedom of Association	30
6.2 The Right to Life and Liberty	31
6.3 The Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment	32
<b>Part 2: Monitoring and Documenting Violations of Religious Freedom</b>	<b>34</b>
<b>1. Monitoring and Documentation</b>	<b>36</b>
1.1 Distinguishing Monitoring from Documentation	36
1.2 Purpose of Monitoring and Documentation	36

1.2.1 <i>Initial Considerations</i>	37
1.2.2 <i>Best Practices of Monitoring and Documentation</i>	37
1.3 <b>Specific Considerations for Religious Freedom</b>	40
1.3.1 <i>Two Dimensions of Religious Freedom: Internal and External</i>	41
1.3.2 <i>Two Principles of Religious Freedom: Non-Discrimination and Non-Coercion</i>	41
1.3.3 <i>Two Types of Violations: Specific Violations of Religious Freedom and Religious Freedom as a Component of a Violation</i>	43
1.3.4 <i>Two Actors: State and Non-State</i>	43
1.3.5 <i>Resources For Monitoring Religious Freedom</i>	44
<b>2. Documenting Violations of Religious Freedom — Key Principles of Documentation</b>	<b>45</b>
2.1 Harm Reduction	45
2.2 Informed Consent	46
2.3 Confidentiality	47
2.4 Managing Expectations: Fulfill Your Mandate	48
<b>3. Stages of Documentation</b>	<b>49</b>
3.1 Understanding Documentation Requirements	49
3.1.1 <i>Understanding the Legal Framework Applicable To a Situation</i>	50
3.1.2 <i>Understanding Requirements for Evidence and High-Quality Information</i>	54
3.2 Preparing Documentation	56
3.2.1 <i>Creating a Documentation Plan</i>	56
3.2.2 <i>Implementing a Recording System</i>	57
3.2.3 <i>Preparing Safety and Security</i>	61
3.2.4 <i>Preparing and Training Team Members</i>	78
3.2.5 <i>Working with Interpreters</i>	78
3.3 Collecting Data and Information	80
3.3.1 <i>Physical Information</i>	81
3.3.2 <i>Documentary Information</i>	85
3.3.3 <i>Testimonial Information: Interviewing Participants</i>	92
3.4 Verifying the Information Collected	103
3.4.1 <i>General Principles: Credibility, Reliability, and Coherence</i>	103
3.4.2 <i>Specific Verification For Information Types</i>	105
3.5 Analyzing the Information Collected	107
<b>Part 3: Using the Information Documented – Avenues for Advocacy</b>	<b>114</b>
<b>1. Advocacy</b>	<b>116</b>
1.1 Advocacy's Purpose	116
1.2 Methods of Advocacy	117
<b>2. Reporting (Drafting a Report)</b>	<b>118</b>
2.1 Purposes of Reporting	118
2.2 Different Types Of Human Rights Reports	119
2.3 General Principles Of Effective Reporting	119
<b>3. Advocacy Avenues</b>	<b>121</b>
3.1 International Avenues	121
3.1.1 <i>The United Nations Special Rapporteurs</i>	121
3.1.2 <i>United Nations Thematic Working Groups</i>	122
3.1.3 <i>The Human Rights Council Complaints Procedure</i>	123
3.1.4 <i>United Nations Treaty Bodies Complaint Procedures</i>	123
3.1.5 <i>The Universal Periodic Review</i>	124
3.2 Regional Avenues	125
3.2.1 <i>The Inter-American Commission on Human Rights</i>	125
3.2.2 <i>The African Commission</i>	126
3.2.3 <i>The European System</i>	127
3.2.4 <i>The Arab Human Rights Committee</i>	129
3.2.5 <i>The ASEAN Inter-Governmental Commission on Human Rights</i>	130
<b>4. Judicial Avenues</b>	<b>130</b>
4.1 Domestic Courts	130

4.2 The International Criminal Court	130
4.3 Regional Courts	132
4.3.1 <i>The Inter-American Court of Human Rights</i>	132
4.3.2 <i>The African Court of Human and Peoples' Rights</i>	132
4.3.3 <i>The European Court of Human Rights</i>	133
4.3.4 <i>The Arab Court of Human Rights</i>	133
<b>Part 4: References</b>	<b>134</b>
<b>Part 1: Defining Religious Freedom</b>	<b>135</b>
<b>Part 2: Monitoring and Documenting Violations of Religious Freedom</b>	<b>135</b>
<b>Part 3: Using the Information and Evidence Collected – Avenues for Advocacy</b>	<b>137</b>
Reporting	137
Advocacy	137
<i>United Nations Mechanisms</i>	137
<i>Inter-American Commission</i>	138
<i>African Commission</i>	138
<i>European System</i>	138
<i>Arab Human Rights Committee</i>	138
<i>ASEAN Inter-Governmental Commission on Human Rights</i>	138
Judicial Avenues	139
<b>Part 5: Appendices</b>	<b>140</b>
<b>1. Documentation plan – Elements to consider</b>	<b>143</b>
<b>2. Risk Assessment</b>	<b>145</b>
<b>3. Documentation folder templates/samples</b>	<b>152</b>
<b>4. Legal Analysis</b>	<b>159</b>
<i>Summary</i>	161

# Introduction

The right of religious freedom is a foundational human right grounded in the dignity of every person and a cornerstone of flourishing societies. Yet around the world, violations of this right and incidents of violent persecution against individuals and communities on account of their beliefs continue to increase, with devastating impact.

In this context, attempts at accountability face numerous obstacles. Oftentimes, mechanisms do not exist, or institutions are unable, or are unwilling to investigate, requiring individuals to themselves document violations of their religious freedom to prevent impunity.

At many levels however, accountability requires thorough documentation far beyond layperson expertise. Documentation - if any - of these incidents of persecution or rights violations therefore cease at early stages, without adequately providing the evidence base to allow for the pursuit of proper steps toward accountability and justice in alternative venues. The *International Protocol On Documenting Violations of Religious Freedom* seeks to bridge the gap between the documentation conducted and the requirements of various mechanisms for information submitted to them, to assist in overcoming the obstacles advocates face in obtaining accountability.

Particularly inspired by advocates from religious minorities of Iraq dedicated to documenting incidents of persecution and discrimination against their communities in particular, and religious minorities in general, this Protocol draws together expertise from a wide range of contributors including lawyers, human rights investigators, former diplomats, and religious freedom researchers to develop an internationally recognized Protocol as a comprehensive and accessible resource to facilitate the work of groups such as this.

It is designed as a tool for NGOs, lawyers, human rights activists as well as national and international institutions to provide an evidentiary standard and documentation of evidence that would be acceptable in most judicial or advocacy institutions, particularly at the international level.

The core of the Protocol provides a set of guidelines detailing the best practices on how to document violations of religious freedom as per international standards, combined with an articulation of the right and its protected dimensions under international law.

We trust that the Protocol becomes a tool in the hands of courageous advocates, lawyers, researchers, and others to document violations of religious freedom, and to promote genuine accountability to protect this freedom for everyone, everywhere.



PART 1

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# Defining Religious Freedom

# Contents

<b>1. Understanding Religious Freedom Within the International Human Rights Framework</b>	<b>11</b>
<b>2. Protections and Interpretations of Religious Freedom in International Law</b>	<b>12</b>
2.1 International Human Rights Law: The law that applies at all times (IHRL)	13
2.2 International Humanitarian Law: In times of armed conflict (IHL)	14
2.3 International Criminal Law: In specific contexts (ICL)	14
2.4 Regional Human Rights Law: In specific locations	15
<b>3. Elements of Religious Freedom under International Human Rights Law</b>	<b>16</b>
3.1 The freedom to adopt, change, or renounce a religion or belief	16
3.2 Freedom from coercion that impairs the freedom to have or adopt a religion or belief of one's choice	17
3.3 Right to manifest one's religion or belief, alone or in community, in public or private	17
3.3.1 Freedom to worship	18
3.3.2 Places of worship	18
3.3.3 Religious symbols	19
3.3.4 Observance of holidays and days of rest	20
3.3.5 Appointing clergy	21
3.3.6 Teaching and disseminating materials	21
3.3.7 Right of parents and legal guardians to ensure the religious and moral education of their children	22
3.3.8 Registering Religious Institutions	23
3.3.9 Communicating on religious matters at the national and International level	24
3.3.10 Establishing and maintaining charitable and humanitarian institutions	24
3.3.11 Refusing to perform military service (conscientious objection)	24
3.4 The right not to be discriminated against on the basis of religion, and the prohibition of inter-religious discrimination	24
<b>4. Lawful Limitations on Religious Freedom</b>	<b>25</b>
4.1 Absolute components of Religious Freedom ( <i>cannot be limited</i> )	25
4.2 Qualified components of Religious Freedom ( <i>can be limited</i> )	25
<b>5. Protecting the Religious Freedom of Groups at Risk</b>	<b>25</b>
5.1 Women	26
5.1.1 Clothing	26
5.1.2 The right to be recognized by law	27
5.1.3 Women's right to the freedom to adopt, change, and manifest religion or belief	27
5.2 Refugees and Internally Displaced Persons	27
5.3 Children	28
5.4 Religious and Belief Minorities	28
5.5 Migrant Workers	29
5.6 Persons Deprived of Their Liberty	30

<b>6. The Intersection of Religious Freedom with Other Human Rights</b>	<b>30</b>
<b>6.1 The Freedom of Expression and Freedom of Association</b>	<b>30</b>
<b>6.2 The Right to Life and Liberty</b>	<b>31</b>
<b>6.3 The Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment</b>	<b>32</b>

## 1. Understanding Religious Freedom Within the International Human Rights Framework

Religious freedom, freedom of religion or belief, or 'FoRB,' is one of the fundamental international human rights protections for which all persons and communities across continents, countries, and systems hold the right. It protects individuals and communities who have and who practice various forms of beliefs and religions, whether traditional or non-traditional, old or new, monotheistic or polytheistic. It also safeguards non-theistic or atheistic beliefs, pacifist beliefs, and persons with no interest in belief matters.<sup>1</sup>

This right was enshrined in the most fundamental human rights text, the Universal Declaration of Human Rights (UDHR) in Article 18.

### Universal Declaration of Human Rights: Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Today, the most widespread definition of this right is found in international human rights law, under Article 18 of the International Covenant on Civil and Political Rights (ICCPR). As articulated in Article 18, this is the right of every person to **have, to adopt, or change** a religion or belief of their choice; to **practice and manifest it** individually and collectively; **not to be discriminated** against or suffer coercion on the basis of religion or belief; and to provide for the **religious and moral education** of one's children.<sup>2</sup> It requires equal and effective protection of the law for *all* persons against discrimination on the basis of religion or belief.<sup>3</sup> It also fundamentally protects the right of religious minorities to practice their own religion in any State where they reside.<sup>4</sup> This Manual follows this definition of religious freedom, and its corresponding protections.

### International Covenant on Civil and Political Rights: Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

As a protection included in the Universal Declaration of Human Rights, religious freedom must be interpreted in the spirit of the overarching human rights principles of universality, non-discrimination, the indivisibility of human rights,

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<sup>1</sup> Freedom of Religion: European Human Rights Law and Practice, Paul M. Taylor, Cambridge University Press 2005.

<sup>2</sup> ICCPR, Art. 18; Berkley Center for Religion, Peace, and World Affairs—Georgetown University, *The International Promotion of Freedom of Religion or Belief, Sketching the Contours of a Common Framework*, p. 11.

<sup>3</sup> ICCPR, Art. 26.

<sup>4</sup> ICCPR, Art. 27.

## PART 1. Defining Religious Freedom

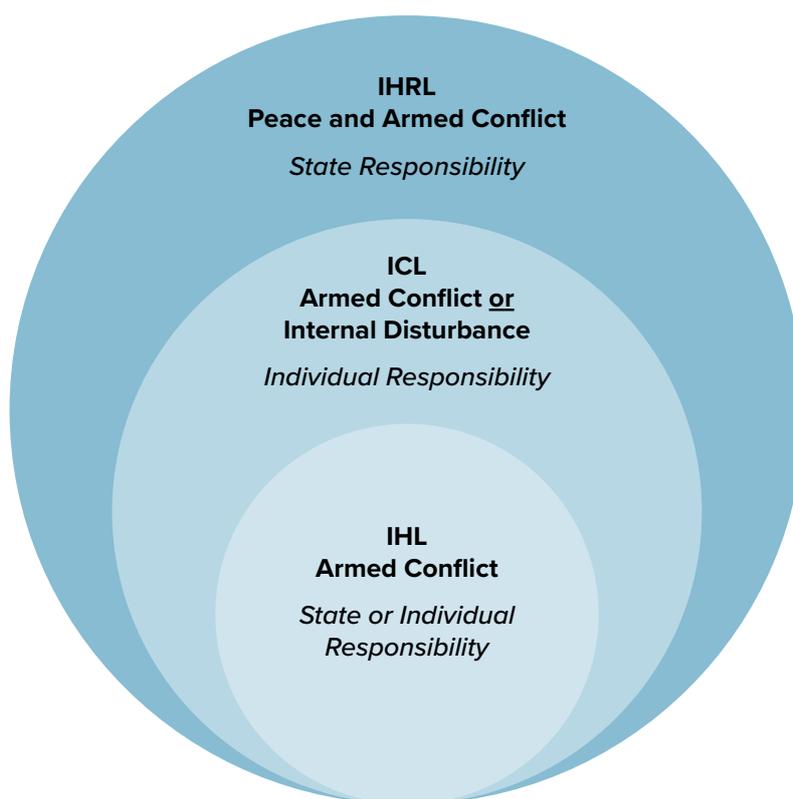
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and equal consideration of collective and individual rights.<sup>5</sup>

As a **universal** freedom, religious freedom equally protects and **prohibits discrimination** against all beliefs and religions, whether they represent the majority or minority in a particular context. It is both a collective freedom for religious and non-religious communities, and a freedom for individuals. Its different elements are protected at both levels. For example, the right to practice or not practice a belief or religion in the way one chooses is protected at the individual level when this differs from the collective practices and doctrines of the community.

More importantly, all human rights are **indivisible and equal**. Religious freedom must be interpreted in accordance with, and not in conflict with, other international human rights. Accordingly, it can never be used to justify discrimination, inequality, a violation of other groups' or individuals' religious freedom, or other human rights.<sup>6</sup> In practice, religious freedom intersects with many other human rights, including the freedom of expression, the freedom of association and assembly, the right to life and liberty, and prohibition of torture, among others.<sup>7</sup> Some of these rights must be protected for religious freedom to be enjoyed fully. Conversely, discrimination on the grounds of religion or belief often occurs through the violation of other rights. However, religious freedom remains protected in its own right, as well as materializing through others.

## 2. Protections and Interpretations of Religious Freedom in International Law



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<sup>5</sup> Berkley Center for Religion, Peace, and World Affairs—Georgetown University, *The International Promotion of Freedom of Religion or Belief, Sketching the Contours of a Common Framework*, p. 18.

<sup>6</sup> Berkley Center for Religion, Peace, and World Affairs—Georgetown University, *The International Promotion of Freedom of Religion or Belief, Sketching the Contours of a Common Framework*, p. 17.

<sup>7</sup> Office of the High Commissioner for Human Rights, *Digest on the Freedom of Religion or Belief*, available at: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx>.

## PART 1. Defining Religious Freedom

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In International law, there are three frameworks that include protections of the Freedom of Religion or Belief:

- International human rights law (IHRL), which applies at all times, in times of peace or armed conflict;
- International humanitarian law (IHL), which applies in times of armed conflict; and
- International criminal law (ICL), which applies if the crimes it prohibits are committed in specific contexts.

Under international law, armed conflict can be international or non-international. International armed conflict occurs when a State declares war against another State, and armed fighting ensues on two territories. Non-international armed conflict occurs on only one territory, between government armed forces and non-government armed groups, or between these groups only.

Any time outside of armed conflict is considered 'peace' time. This does not mean that times of 'peace' are free from disturbance, and do not involve violence. Contexts of civil unrest, including resistance and protests, violence by the State against its civilians, and violence between civilian groups can all occur in times that are **not** considered armed conflict.

### 2.1 International Human Rights Law: The law that applies at all times (IHRL)

International human rights law applies at all times, primarily in times of peace, but also in times of armed conflict. As mentioned above, the first protection for the Freedom of Religion or Belief is found in Article 18 of the *Universal Declaration of Human Rights (UDHR)* of 1948. The most detailed definition of the right is found in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) of 1966. The elements of Religious freedom protected under the Covenant are described in the Elements of the Freedom of Religion or Belief (see below).

Other international treaties or conventions that protect specific rights or groups have specifically incorporated Freedom of Religion or Belief, and include:

- The International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966), Article 13.
- The Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5.
- The Convention on the Elimination of Discrimination Against Women (CEDAW, 1979), Article 16.
- The Convention on the Rights of the Child (1989), Article 14.
- The Convention Relating to the Status of Refugees (1951), Article 4.
- The Convention Relating to the Status of Stateless Persons (1954), Articles 3 and 4
- The Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article 2.
- The Convention Against Discrimination in Education (1960), Articles 1, 2, and 5.
- The United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981).
- The Draft Declaration on the Rights of Indigenous Peoples (1994), Articles 12 and 13.

Certain international bodies interpret the above treaties and declarations. Some treaties have an international body of experts mandated to interpret the treaty. The Freedom of Religion or Belief protected by the ICCPR has been interpreted by the United Nations Human Rights (UNHR) Committee. The main reference for interpreting the right is the Human Rights Committee, General Comment Number 22 on Article 18 of the ICCPR (1993).<sup>8</sup>

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<sup>8</sup> Human Rights Committee, *General Comment Number 22 on Article 18 of the ICCPR—Freedom of Religion or Belief*, 1993, available in English, French, Spanish, Arabic, Russian, and Chinese at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en).

## PART 1. Defining Religious Freedom

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States who sign human rights treaties have three levels of obligations. They “assume obligations and duties under international law to respect, to protect and to fulfill human rights.”<sup>9</sup>

- The obligation to respect means that States must not interfere with or restrain the human rights of its citizens and others present in its territory.
- The obligation to protect means that States must protect their citizens against violations of their human rights.
- The obligation to fulfill means that States must actively ensure and provide an environment in which its citizens enjoy full access to their human rights.

### 2.2 International Humanitarian Law: In times of armed conflict (IHL)

International Humanitarian Law (IHL) applies in times of armed conflict. As described above, under international law, armed conflict can be international or non-international. International armed conflict occurs when a State declares war against another State, and armed fighting ensues on two territories. Non-international armed conflict occurs on only one territory, between government armed forces and non-government armed groups, or between these groups only.

Customary international humanitarian law applies to all States in times of armed conflict, whether or not they have signed the Geneva Conventions. Customary International Humanitarian Law (IHL) provides for the respect of convictions and religious practices. All States therefore have the obligation to respect the below rules:

- **Rule 104 Customary IHL** – Respect for Convictions and Religious Practices: The convictions and religious practices of civilians and persons *hors de combat* must be respected, in all types of armed conflict (international and non-international).
- **Rule 127 Customary IHL** – Respect for Convictions and Religious Practices of Persons Deprived of Their Liberty: The personal convictions and religious practices of persons deprived of their liberty must be respected, in all types of armed conflict (international and non-international).
- **Rule 27 Customary IHL** – Religious Personnel: Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.
- **Rule 38 Customary IHL** – Attacks against Cultural Property: Each Party to the conflict must respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education, or charitable purposes, and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperative required by military necessity.
- **Rule 39 Customary IHL** – Use of Cultural Property for Military Purposes: The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.

### 2.3 International Criminal Law: In specific contexts (ICL)

The primary source of codified international criminal law is the Rome Statute of the International Criminal Court (ICC, 2002), that establishes the Court. International criminal law prohibits three main crimes: the crime of genocide, crimes against humanity, and war crimes. For acts to be considered an international crime, they need to occur in the specific context that each crime requires. For example, war crimes can only occur in times of armed conflict. This is explained in more detail in [Section 2](#), “Understanding the Legal Frameworks.”

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<sup>9</sup> Office of the High Commissioner for Human Rights, *International Human Rights Law*, available at <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>.

## PART 1. Defining Religious Freedom

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**Under Article 6** of the Rome Statute, ‘Genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or **religious** group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group; and
- Forcibly transferring children of the group to another group.

**Under Article 7(1)(h) of the Rome Statute, ‘Crimes Against Humanity’** include “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, **religious**, gender, or other impermissible ground” when committed as part of a widespread or systematic attack against any civilian population, whether during conflict or peacetime, and could be carried out in connection with other acts including murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other sexual violence of comparable gravity; enforced disappearance; apartheid; or other similar inhumane acts that cause great suffering or serious injury to body, or mental or physical health.

**Under Article 8 (2)(b)(ix) of the Rome Statute, ‘war crimes’** means ... serious violations of the laws and customs applicable in armed conflict, such as: intentionally directing attacks against buildings dedicated to **religion**, education, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives.

There are many conditions to access the International Criminal Court (See [Part 3, Avenues to Advocacy](#)). However, understanding international crimes is important for advocacy.

Many States have incorporated the above international crimes in their domestic criminal law. Adapted definitions of these crimes can therefore be found in some domestic law, providing domestic access to accountability for international crimes.

### 2.4 Regional Human Rights Law: In specific locations

Regional systems also protect religious freedom. Regional protections often vary from international protections, depending on local distinctions and understanding of religion or belief, individuals, and groups. In cases where the international system is not accessible because the State is not party to a specific international treaty, the regional system may be available. Key regional instruments include:

**The American Convention on Human Rights (ACHR, 1969), Article 12** protects freedom of conscience and religion; the right to maintain or change religion or belief without restrictions; to profess or disseminate; to practice individually, collectively, in private and in public. Parents’ have the right to educate their children accordingly. This right is subject to necessary limitations prescribed by law to protect public safety, order, health, morals, or rights or freedoms of others.

**The African Charter on Human and Peoples’ Rights (ACHPR, 1981) (‘The Banjul Charter’), Article 8** protects freedom of conscience, profession, and practice of religion, without restriction except law and order.

**The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 9** protects freedom of thought, conscience, and religion; the freedom to change religion or belief; to practice alone or with others, in public or private; to manifest in worship, teaching, practice and observance. This right can be limited only by law, as necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## PART 1. Defining Religious Freedom

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**The Universal Islamic Declaration on Human Rights (1981), Article 12** protects the right to express thoughts and beliefs *within limits prescribed by law*. It prohibits disseminating falsehood, circulating reports that may outrage public decency, slander, innuendo, defamation. The pursuit and search of truth is a right and duty of all Muslims. It is a right and duty of all Muslims to protest and strive against oppression, even against the highest State authorities, within limits of the law. Free dissemination of information is protected, so long as it does not endanger security of the State and Society, and within limits of the law. Contempt, ridicule, and incitement or public hostility against the religious beliefs of others is prohibited. **Article 13** protects the freedom of conscience and worship.

**The Arab Charter on Human Rights (2000), Article 3** protects the right to enjoy all rights under the Charter without distinction on the grounds of religion. **Article 25** protects the right of minorities to profess and practice their own religion, as regulated by law. **Article 30** protects the right to freedom of thought, belief, and religion, subject only to limitations prescribed by law; the freedom to manifest or practice religion or beliefs, individually or in community. This right is subject to limitations prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights of others. Parents and guardians have the right to ensure the religious and moral education of their children.

## 3. Elements of Religious Freedom under International Human Rights Law

Under Article 18 of the ICCPR, the Freedom of Religion or Belief (FoRB) can be divided into different elements. The details of what these elements include is what is protected under International Human Rights Law, and to which individuals and groups are entitled.

### 3.1 The freedom to adopt, change, or renounce a religion or belief

All people have the right to adopt, change, or renounce a religion or belief.<sup>10</sup> This right is codified under three main sources of law including Article 18 of the UDHR, Article 18 (1) of the ICCPR, and Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.<sup>11</sup>

The rights to adopt, change, or renounce a religion or belief are broadly construed and are not limited to traditional religions. This includes any theistic religions, non-theistic, and atheistic religions or views, including newly established religions or beliefs, or those that represent religious minorities within the State.<sup>12</sup>

Both individuals and communities have this right, and it can be practiced in public or private.<sup>13</sup> Further, no one can be compelled to reveal her or his thoughts or their adherence to a specific religion or belief.<sup>14</sup> Even in States where there is a majority religion that is recognized under the local laws or constitution, members of a minority religion cannot be prevented from practicing their faith or beliefs individually or in a community.<sup>15</sup>

This aspect of Religious freedom is absolute and cannot be restricted by law or derogated from for any reason, including for public safety.<sup>16</sup> The only limitations that are permitted under international law will be discussed below.

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<sup>10</sup> ICCPR, Art. 18; *General Comment 22*; Declaration, Art. 1; UDHR, Art 18.

<sup>11</sup> ICCPR, Art. 18; *General Comment 22*; Declaration, Art. 1 UDHR, Art 18.

<sup>12</sup> *General Comment 22*, para. 2 & 5.

<sup>13</sup> ICCPR, Art. 18(1); *General Comment 22*, para. 3; Declaration, Art 1(1); UDHR, Art 18.

<sup>14</sup> *General Comment 22*, para. 1.

<sup>15</sup> ICCPR, Art. 18 & 27; *General Comment 22*, para. 9.

<sup>16</sup> ICCPR, Art. 4(2); *General Comment 22*, para. 1.

### **3.2 Freedom from coercion that impairs the freedom to have or adopt a religion or belief of one's choice**

Individuals and communities are protected from coercion that impair the absolute right to adopt, change, or renounce a religion or non-religious belief.<sup>17</sup> Coercion may include using threat of physical harm or penal sanctions forcing individuals to adhere, recant, or convert to certain beliefs or religious practices.<sup>18</sup> Any policy or practice with the same intention or which has the same effect are also prohibited, including restricting access to education, medical care, employment, public services and other political rights such as voting or running for office.<sup>19</sup>

This right may also not be restricted under any circumstances, including by law or public policy.<sup>20</sup>

#### **CASE EXAMPLE: LAO PEOPLE'S DEMOCRATIC REPUBLIC**

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In 2010, during a visit by the Special Rapporteur, several violations of the right to be free from coercion were found in the Lao People's Democratic Republic.<sup>21</sup> In some cases, Christians were asked to either renounce their faith, sign a letter saying that they would burn their Bibles, or to leave their village.<sup>22</sup> When they declined to sign the documents, they were arrested and detained by local authorities, and their children were harassed and prevented from accessing public schools.<sup>23</sup>



### **3.3 Right to manifest one's religion or belief, alone or in community, in public or private**

Everyone has the freedom to manifest their religion or belief, through worship, observance, practice, and teaching, in public or in private.<sup>24</sup> This element acknowledges the reality that manifesting one's religion or belief includes communal and public expressions, not merely individual and private expressions and recognizes that religious manifestation includes not only individual activities but institutional expressions as well.

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<sup>17</sup> CCPR, Art. 18(2); *General Comment 22*, para. 5; Declaration, Art. 1(2); UDHR, Art. 18.

<sup>18</sup> *General Comment 22*, para. 5.

<sup>19</sup> *General Comment 22*, para. 5; ICCPR, Art. 25.

<sup>20</sup> *General Comment 22*, para. 8.

<sup>21</sup> A/HRC/13/40/Add. 4, para. 40.

<sup>22</sup> A/HRC/13/40/Add. 4, para.40.

<sup>23</sup> A/HRC/13/40/Add. 4, para. 40.

<sup>24</sup> ICCPR, Art. 18(1), 18(2); Declaration, Art. 1(1), 1(3); UDHR, Art 18; *General Comment 22*, para. 4.

## PART 1. Defining Religious Freedom

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Religious institutions, of all type and size, are intrinsic in many ways to the manifestation of religion.<sup>25</sup> Institutional religious freedom can be understood to include three main dimensions: substantive or *self-definition*, vertical or *self-governance*, and horizontal or *self-directed action*. Included with the right of religious freedom is for a religious institution to define its identity and its core convictions (the self-definition or “substantive” dimension), govern itself by its core convictions (the self-governance or “vertical” dimension), and act and express itself based on its core convictions in society and public life to the extent and in the manner it wishes to do so (the self-directed action and expression or “horizontal” dimension). The horizontal dimension of institutional religious freedom is subject to two basic limits: it does not authorize violence, or the infringement of the fundamental rights of others (see [Section 4, Lawful Limitations on Religious Freedom](#)).<sup>26</sup> The manifestation of religion or belief in full encompasses a broad range of elements including those listed and explained below.<sup>27</sup>

### 3.3.1 FREEDOM TO WORSHIP

All people are guaranteed the right to worship and assemble to practice their faith or belief.<sup>28</sup> Certain acts are specifically protected, such as conducting or participating in ritual and ceremonial acts that give direct expression to belief.<sup>29</sup>

A person does not have to be officially registered or identified with a religion or belief to practice it. Registration cannot be compulsory; a person cannot be prevented from practicing a religion because they are not registered with it.<sup>30</sup>

Registering a religion or belief cannot be limited by a prior review of the content of that religion or belief, the structure of the religion, or the clergy. A group’s registration cannot depend on the authorization of another religious group.<sup>31</sup> States are required to review registration requirements to make sure they comply with an individual’s right to manifest her or his religion ([See Section 3.1](#)).<sup>32</sup>

### 3.3.2 PLACES OF WORSHIP

The freedom to manifest religion or belief also extends to the building and maintaining of places of worship.<sup>33</sup>

States should ensure that religious and belief-related places, sites, and shrines are fully respected and protected. When necessary, States should “take additional measures in cases where they are vulnerable to desecration or destruction.”<sup>34</sup>

In her 2004 report to the Commission on Human Rights, Special Rapporteur Asma Jahangir expressed concern with the number of communications received regarding attacks or restrictions on places of worship.<sup>35</sup> Even though many of the perpetrators of the attacks were non-State actors, the Special Rapporteur called for “increased attention” to the attacks and for the prosecution and trial of the perpetrators.<sup>36</sup>

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<sup>25</sup> See for example: Marshall, Katherine. 2013. *Global Institutions of Religion: Ancient Movers, Modern Shakers*. 1st ed. Routledge Global Institutions Series. New York: Routledge. <https://doi.org/10.4324/9780203581940>.

<sup>26</sup> Shah, Timothy Samuel. 2021. “Institutional Religious Freedom in Full: What the Liberty of Religious Organizations Really Is and Why It Is an ‘Essential Service’ to the Common Good.” *Religions* 12 (6): 414. <https://doi.org/10.3390/rel12060414>. See also: Jr, W. Cole Durham, Javier Martínez-Torrón, and Donlu D. Thayer. 2021. *Law, Religion, and Freedom: Conceptualizing a Common Right*. Taylor & Francis and Bauman, Chad, Thomas Berg, Robert Hefner, Farahnaz Ispahani, Byron Johnson, and Timur Kuran. 2021. “Institutional Religious Freedom and the Common Good: Significance, Challenges, and Policy Implications.” Working Group Report. Freedom of Religious Institutions in Society (FORIS) Project. Washington D.C: Religious Freedom Institute. <https://www.religiousfreedominstitute.org/publication/foris-working-group-report-institutional-religious-freedom-and-the-common-good-significance-challenges-and-policy-implications>.

<sup>27</sup> General Comment 22, para. 4.

<sup>28</sup> ICCPR 18(1), Declaration, Art. 1(f), Human Rights Resolution 2005, 4(d).

<sup>29</sup> General Comment 22, para. 4.

<sup>30</sup> E/CN.4/2005/61, para. 58.

<sup>31</sup> E/CN.4/2005/61, para. 58.

<sup>32</sup> E/CN.4/2006/5/Add. 1, para. 51; Resolution 2005/40, para. 4(c).

<sup>33</sup> General Comment 22, para. 4; Declaration, para. 6(a); HRC Resolution 6/37, para. 9(g).

<sup>34</sup> Resolution 6/37, para. 9(e).

<sup>35</sup> E/CN.4/2005/61, para. 48 & 49.

<sup>36</sup> E/CN.4/2005/61, para. 48 & 49.

### CASE EXAMPLES: ARGENTINA AND TURKEY

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In Argentina, some provincial authorities determined that land had to be returned to indigenous populations to provide them access to their sacred sites and graves because the land “constitutes the matrix for their beliefs and a support for the manifestation of those beliefs.”<sup>37</sup>

The Special Rapporteur recommended that Turkey should ensure the Christian, Greek Orthodox, and Armenian minorities, the freedom to establish and maintain places of worship and allow religious communities to establish facilities where new communities relocate to or take root in.<sup>38</sup>

Therefore, while in some cases a person’s right to their land may be a protected right, the ability to move and build new communities is also a protected right.



The protection for places of worship extend to establishments that are significant to a religion or belief, such as community centers, cemeteries, and monasteries.<sup>39</sup>

In India, the State was encouraged to ensure that places of worship remain “neutral ground” that are “sheltered from political currents and ideological and partisan controversy.”<sup>40</sup>

### 3.3.3 RELIGIOUS SYMBOLS

Religious freedom also includes the ability to make, acquire, and use necessary articles and materials that relate to rites or customs of a religion or belief.<sup>41</sup> This extends to wearing certain clothing or head coverings, adhering to dietary regulations, participating in rituals surrounding certain stages of life, and using a particular language.<sup>42</sup> This right is explained as both a positive (prohibiting an individual from identifying themselves through the display of a religious symbol) and a negative religious freedom (by requiring people to identify themselves through the display of a religious symbol).<sup>43</sup>

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<sup>37</sup> E/CN.4/2002/73/Add. 1, para. 112 & 113.

<sup>38</sup> A/55/280/Add. 1, para. 160 (country visit to Turkey).

<sup>39</sup> A/55/280/Add. 1, para. 160 (country visit to Turkey).

<sup>40</sup> E/CN.4/1997/91/Add. 1, para. 93 (country visit to India).

<sup>41</sup> Declaration, Art 6(c).

<sup>42</sup> General Comment 22, para I & 4.

<sup>43</sup> E/CN.4/2006/5, 36.

### CASE EXAMPLE: RELIGIOUS SYMBOLS RESTRICTIONS

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In 2008, around 25 countries were found to have certain regulations or prohibitions on wearing religious symbols.<sup>44</sup> These regulations or prohibitions have been implemented through different legal mechanisms, including “constitutional provisions, legislative acts at the national level, regulations and mandatory directives of regional or local authorities, rules in public or private organizations or institutions (for example, school rules) and court judgments.”<sup>45</sup> These rules have impacted people in both education institutions, places of employment, in public, as well as for the purpose of government or civil documents.<sup>46</sup>



Religious symbols involve a matter of debate in the international community due to the question of whether or not a State can lawfully limit the right.<sup>47</sup> Most international judicial or quasi-judicial bodies consider the display of religious symbols to be a *manifestation* of the freedom of religion or belief, which is subject to limitations. The Human Rights Committee also includes it as a form of manifestation of religion or belief.<sup>48</sup> However, other international human rights bodies have found that the display of religious symbols is in fact an element of *forum internum*, a personal right that cannot be limited and thus is fully protected by Article 18 of the ICCPR.

Ultimately, the burden is on the State to show that the restriction was responding to a pressing public or social need, that it was pursuing a legitimate aim under the law, and that it is proportionate in its aim.<sup>49</sup> Therefore, if a prohibition or law is passed that is based on speculation only, it is a violation of religious freedom.<sup>50</sup>

#### 3.3.4 OBSERVANCE OF HOLIDAYS AND DAYS OF REST

The ability to celebrate holidays and days of rest is also a protected right and is considered significant to enable the performance of ceremonies and religious or faith-based customs.<sup>51</sup> In some countries, those observing certain religious traditions, such as marriage and funeral ceremonies, faced obstacles or such ceremonies were banned outright.<sup>52</sup>

However, in other cases, States such as Pakistan and Australia were able to accommodate requests by religious minority communities to observe days of rest or holidays.<sup>53</sup>

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<sup>44</sup> E/CN.4/2006/5, 37.

<sup>45</sup> E/CN.4/2006/5, 37.

<sup>46</sup> E/CN.4/2006/5, 37.

<sup>47</sup> E/CN.4/2005/61, para. 65.

<sup>48</sup> General Comment 22, para. 4.

<sup>49</sup> E/CN.4/2006/5, 53.

<sup>50</sup> E/CN.4/2006/5, 53.

<sup>51</sup> Declaration art. 6(h), *General Comment 22*, para. 4.

<sup>52</sup> E/CN.4/1987/35, para. 57.

<sup>53</sup> E/CN.4/1996/95/Add. 1, para. 48 & 49 (country visit to Pakistan), E/CN.4/1998/6/Add. 1, para. 37 & 47 (country visit to Australia).

## PART 1. Defining Religious Freedom

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### 3.3.5 APPOINTING CLERGY

This right includes managing internal affairs including the freedom to choose religious leaders, to establish seminaries or religious schools and their necessary teachers, as well as to prepare and distribute religious texts or publications.<sup>54</sup>

### 3.3.6 TEACHING AND DISSEMINATING MATERIALS

Everyone is also guaranteed the right to teach and disseminate materials, including those related to missionary work.<sup>55</sup> Generally, this includes the right of “carrying out actions to persuade others to believe in a certain religion.”<sup>56</sup>

Constitutional provisions or other laws prohibiting proselytism is considered to be inconsistent with the Declaration.<sup>57</sup> For instance, in Greece, in addition to constitutional provisions that prohibited proselytism, two other acts found proselytism punishable.<sup>58</sup> The Special Rapporteur recommended that these laws be changed, and that at a minimum, proselytism should be defined in a way to allow individuals to practice their faith given that proselytism is inherent to their religion.<sup>59</sup>

#### CASE EXAMPLE: SOUTH KOREA

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After being arrested and tortured for distributing leaflets that criticized the South Korean military regime in the 1980s, Mr. Yong-Joo Kang was tried and convicted for violations of the National Security Law for joining an anti-state organization and espionage. Mr. Kang was put in solitary confinement, where he was held for 13 years, and enrolled in an “ideology conversion system” that was “designed to induce change to a prisoner’s political opinion by the provision of favorable benefits and treatment in prison.”<sup>60</sup>

The Human Rights Committee found that this system restricts freedom of expression and of manifestation of belief and is a violation of Article 18 of the ICCPR.<sup>61</sup>



This right is believed to be wide, although subject to narrow limitations under Article 18(3) of the ICCPR.<sup>62</sup> This right is also believed to be covered in Article 19 of the ICCPR, which covers the right to freedom of expression.<sup>63</sup>

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<sup>54</sup> General Comment 22, para. 4; Declaration, 6(g); A/55/280/Add.1, para. 160 (country visit to Turkey).

<sup>55</sup> ICCPR, Art 18(1); General Comment 22, para. 4; Declaration, 6(d), (e); Commission on Human Rights resolution 2005/40 (paragraph 4 (d)) and Human Rights Council resolution 6/37 (paragraph 9 (g)).

<sup>56</sup> A/60/399, para. 59.

<sup>57</sup> A/51/542/Add. 1, para. 134 (country visit to Greece).

<sup>58</sup> A/51/542/Add. 1, para. 134 (country visit to Greece); see Greece’s Constitution of 1975 with Amendments through 2008, Art. 13(2).

<sup>59</sup> A/51/542/Add. 1, para. 134 (country visit to Greece).

<sup>60</sup> *Yong-Joo Kang v. Republic of Korea*, CCPR/C/78/D/878/1999, UN Human Rights Committee (HRC), 16 July 2003, para. 3.2, available at: <https://www.refworld.org/cases,HRC,404887efa.html> [accessed 21 August 2019].

<sup>61</sup> *Yong-Joo Kang v. Republic of Korea*, CCPR/C/78/D/878/1999, UN Human Rights Committee (HRC), 16 July 2003, para. 7.2, available at: <https://www.refworld.org/cases,HRC,404887efa.html> [accessed 21 August 2019].

<sup>62</sup> A/60/399, para. 62.

<sup>63</sup> A/60/399, para. 61; See Manfred Nowak, UN Covenant on Civil and Political Right(CCPR) Commentary (2nd revised ed.), 2005, 450-452.

## PART 1. Defining Religious Freedom

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### 3.3.7 RIGHT OF PARENTS AND LEGAL GUARDIANS TO ENSURE THE RELIGIOUS AND MORAL EDUCATION OF THEIR CHILDREN

Under Article 18(4) of the ICCPR and Article 5 of the Declaration, as well as Article 14(2) of the Convention on the Rights of the Child, Article 13(3) of the ICESCR, and Article 12(4) of the Migrant Workers Convention, parents and legal guardians have the right to teach their children in conformity with their own convictions, both moral and religious.<sup>64</sup>

In addition to having the right to teach a child according to the parents or legal guardian's religion or belief, children must not be forced to receiving education on a religion or belief that goes against the wishes of the child's parents.<sup>65</sup> These rights also apply to children who are not under the care of parents or legal guardians, in so far as a parent or legal guardian's expressed wishes, ultimately taking into account the best interests of the child.<sup>66</sup>

Without a non-discriminatory option to opt-out, religious instructions in public education is inconsistent with Article 18(4) of the ICCPR.<sup>67</sup> As a result, States must provide neutral and objective religious instruction in public schools, recognizing that many parents or guardians may want their children to receive religious instruction in public schools, while also providing safeguards to opt-out for members of religious or belief minorities, including nonreligions and members of the majority religion.<sup>68</sup> The ability to opt-out should not be difficult to accomplish or be burdened by bureaucratic procedures or policies.<sup>69</sup>

#### CASE EXAMPLE: CANADA

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While recognizing that private schools do contribute to institutional diversity in a modern society, the Human Rights Committee found that Canada had violated Article 26 (to equal and effective protection against discrimination), and consequently of Articles 18 and 27, of the ICCPR for providing full and direct public funding for only Roman Catholic schools in Ontario.<sup>70</sup> The funding provision was enshrined in the Constitution in 1867 to ensure that Roman Catholic schools were not controlled by the Protestant majority. Ultimately, Roman Catholic schools were incorporated as a part of the public school system.<sup>71</sup>



This right cannot be derogated from for any reason, including for public safety as stated in Article 4(2) of the ICCPR.<sup>72</sup>

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<sup>64</sup> ICCPR, Art. 18(4); Declaration, Art. 5; *Convention on the Rights of the Child*, Art. 14:2; ICESCR, Art. 13(3); *Migrant Workers Convention*, Art. 12(4).

<sup>65</sup> Declaration, Art. 5(2).

<sup>66</sup> Declaration, Art 5(4).

<sup>67</sup> A/HRC/16/53, para. 51.

<sup>68</sup> A/HRC/16/53, para. 50; see Human Rights Committee, Communication No. 40/1978, *Hartikainen v. Finland*, Views adopted on 9 April 1981, para. 10.4, and *Leirvåg v. Norway*, para. 14.2.

<sup>69</sup> A/HRC/16/53, para. 50.

<sup>70</sup> Human Rights Committee, Communication No. 694/1996, *Waldman v. Canada*, Views adopted on 3 November 1999, para. 10.6 & 10.7.

<sup>71</sup> Human Rights Committee, Communication No. 694/1996, *Waldman v. Canada*, Views adopted on 3 November 1999, para. 10.3.

<sup>72</sup> ICCPR, Art. 4(2); A/HRC/16/53, para. 53.

## PART 1. Defining Religious Freedom

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### 3.3.8 REGISTERING RELIGIOUS INSTITUTIONS

States are asked to review registration practices to ensure the right to manifest religion or belief as well as the ability to establish and maintain religious, charitable or humanitarian institutions.<sup>73</sup> The Special Rapporteur highlighted four major points to take into consideration regarding registration:<sup>74</sup>

- Registration should not be compulsory, meaning that it should not be a precondition for practicing one's religion. It can only be required for the acquisition of a legal personality and related benefits;
- Registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed;
- Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.; and
- No religious group should be empowered to decide about the registration of another religious group.

In addition to these points, registration requirements that are vague or that grant “excessive governmental discretion” should not be allowed.<sup>75</sup>

#### CASE EXAMPLE: TURKMENISTAN<sup>76</sup>

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In Turkmenistan, religious minorities faced procedural and substantive obstructions including the Ministry of Justice requesting additional materials or suggesting amendments to the charter of the religious community. Although a decision should only take three months, according to Article 11 of the Religious Organizations Law, some applications remained pending for several years.

Jehovah's Witnesses, in particular, faced substantive restrictions based on how they share their views, their refusal to join the military, and their refusal to allow blood transfusions. The Special Rapporteur found their inability to register based on these reasons a particular concern revealing that the State was not remaining neutral but instead getting involved in substantive review of the application, which may lead to discriminatory or excessively intrusive practices towards a religious minority.



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<sup>73</sup> Commission on Human Rights Resolution 2005/40 (para. 4(c) & 4(e)); Human Rights Council Resolution 6/37 (para. 12(e) & 12(h)).

<sup>74</sup> E/CN.4/2005/61, para. 56 & 58; OSCE, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, (To assist the Organization for Security and Cooperation in Europe (OSCE) in review of legislation relating to religious freedom or belief, the Advisory Panel of Experts on Freedom of Religion or Belief (Panel) of the Office for Democratic Institutions and Human Rights (ODIHR) developed “Guidelines for Review of Legislation Pertaining to Religion or Belief.”).

<sup>75</sup> A/HRC/10/8/Add. 4, para. 22-32 (country visit to Turkmenistan).

<sup>76</sup> A/HRC/10/8/Add. 4, para. 27, 29 (country visit to Turkmenistan).

## PART 1. Defining Religious Freedom

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### 3.3.9 COMMUNICATING ON RELIGIOUS MATTERS AT THE NATIONAL AND INTERNATIONAL LEVEL

Religious freedom also protects the establishment and maintenance of contact with individuals and communities at a national and international level as it relates to religious matters.<sup>77</sup> In addition, states must not place restrictions on religious minorities when obtaining passports or visas.

### 3.3.10 ESTABLISHING AND MAINTAINING CHARITABLE AND HUMANITARIAN INSTITUTIONS

People have the right to establish and maintain appropriate charitable or humanitarian institutions.<sup>78</sup> This includes the freedom to solicit and receive voluntary financial or other contributions from individuals or institutions.<sup>79</sup>

This right may be limited, but only if the restriction is necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.<sup>80</sup>

### 3.3.11 REFUSING TO PERFORM MILITARY SERVICE (CONSCIENTIOUS OBJECTION)

The right to refuse to perform military service is derived from Article 18 of the ICCPR in so far as the “obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”<sup>81</sup> All States that require mandatory military service must also provide a mechanism for someone to apply as a *conscientious objector*.<sup>82</sup> A State may require another form of service in the place of military service, although it cannot be punitive.<sup>83</sup>

## 3.4 The right not to be discriminated against on the basis of religion, and the prohibition of inter-religious discrimination

All people are granted the right to be free from discrimination based on religion or belief and to be treated as equal before the law.<sup>84</sup> States are responsible to combat discrimination and intolerance, provide legal remedies to victims, and should seek to ensure that school and university curricula include instructions on international and domestic standards.<sup>85</sup> Teachers should also receive training specific to promoting tolerance.<sup>86</sup>

Importantly, in 2000, the Special Rapporteur identified a new offense under international law after a deep review of the international mechanisms: *aggravated discrimination*. This offense is committed when “the right to freedom of religion and the right to belong to an ethnic group or to a minority are infringed” either against a person or a group, or when religious discrimination is aggravated by racial discrimination.<sup>87</sup>

A State’s official religion is not inherently in opposition with freedom of religion or belief.<sup>88</sup> However, in cases when a religion is the recognized State religion, there should not be any impairments of the rights of those who do not follow

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<sup>77</sup> Declaration, Art. 6(i).

<sup>78</sup> Declaration, Art. 6(b); Commission on Human Rights resolution 2005/40 (para. 4 (e)) and Human Rights Council Resolution 6/37 (para. 12 (h)).

<sup>79</sup> Declaration, Art. 6(f).

<sup>80</sup> A/65/207, para. 36.

<sup>81</sup> *General Comment 22*, 11.

<sup>82</sup> Commission on Human Rights Resolution 1989/59; A/52/477, para 78.

<sup>83</sup> *General Comment 22*, 11; Commission on Human Rights Resolution 1998/77, para. 5.

<sup>84</sup> ICCPR, Art. 2(1), 5(1), 26 & 27; Declaration Art. 2(1), 3, 4(1)(2); ICERD, art 5; ICESCR, art 2(2); CRC, art 30; Commission on Human Rights Resolution 2005/40, para. 4(g), 7-10; *General Comment 22*, para. 2.

<sup>85</sup> E/CN.4/1987/35, para. 106.

<sup>86</sup> E/CN.4/1987/35, para. 106108.

<sup>87</sup> A/55/280, para. 111.

<sup>88</sup> E/CN.4/1996/95/Add. 1, para. 81 (country visit to Pakistan); E/CN.4/1996/95/Add.2, para. 88 (country visit to the Islamic Republic of Iran).

## PART 1. Defining Religious Freedom

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the official religion.<sup>89</sup> Ultimately, aggravated discrimination can be intensified or occur more frequently when a State does adopt an official religion since the respect of minority ethnic and religious rights “depends on the goodwill of the State, the personality of those in office at any given moment, and other unpredictable or subjective factors.”<sup>90</sup>

## 4. Lawful Limitations on Religious Freedom

### 4.1 Absolute components of Religious Freedom (*cannot be limited*)

Article 18 of the ICCPR does not permit any limitations on the freedom of thought, conscience, or the freedom to have or adopt a religion or belief.<sup>91</sup> This means that no one can be compelled to reveal their thoughts or what religion of belief they adhere to.<sup>92</sup> These freedoms are protected unconditionally and cannot be interfered with by the State. Individuals also have absolute right to the freedom from coercion. Although most of the rights to manifest one’s religion is not guaranteed as an absolute right, the right of parents and legal guardians to ensure the religious and moral education of their children is absolute.

### 4.2 Qualified components of Religious Freedom (*can be limited*)

Some limitations or restrictions of the manifestation of freedom of religion or belief are permissible under Article 18(3) of the Covenant, in exceptional circumstances, and only when “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>93</sup> However, any limitations imposed must be established by law and must not be applied in a manner that would impair the rights guaranteed in article 18 of the Covenant.<sup>94</sup> The limitations can only be applied for the purpose they were meant for, which in no case can be for discriminatory purposes or applied in a discriminatory manner.<sup>95</sup> They must also be directly related and proportionate to the need.<sup>96</sup>

Additionally, a State may not designate a manifestation of religion or belief as “propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>97</sup>

## 5. Protecting the Religious Freedom of Groups at Risk

The identities of individuals and communities are multiple, and often overlap based on ethnicity, sex, social status, and other characteristics. In some countries, contexts, and political climates, certain individuals are more exposed to violations of their freedom of religion or belief than others. This can often be the case for women, children, refugees and internally displaced persons, migrant workers, religious and belief minorities, and persons deprived of their liberty. Being generally vulnerable to human rights violations creates an additional risk to the full enjoyment of religious freedom.

Risks to religious freedom can have multiple sources. There can be risk between religious or belief communities as a

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<sup>89</sup> *General Comment 22*, para. 9 & 10.

<sup>90</sup> A/CONF.189/PC.1/7, para. 119.

<sup>91</sup> *General Comment 22*, para. 3.

<sup>92</sup> *General Comment 22*, para. 3.

<sup>93</sup> ICCPR, Art. 18(3). *General Comment 22*, para. 8.

<sup>94</sup> *General Comment 22*, para. 8.

<sup>95</sup> *General Comment 22*, para. 8.

<sup>96</sup> *General Comment 22*, para. 8.

<sup>97</sup> A/HRC/13/40/Add.4 (Lao People’s Democratic Republic), para. 29.

## PART 1. Defining Religious Freedom

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result of different beliefs. Risk also may exist between different sub-groups within the same community, as a result of a difference in interpretation, or a specific understanding of social and political roles and positions within the community.

Religious freedom should not be neglected for groups at risk or be interpreted in a way that contradicts their other rights or protections. International Human Rights Law has developed and enshrined specific protections for certain groups at risk.

### 5.1 Women

Women may be particularly vulnerable to religious freedom violations, as they experience discrimination or differential treatment on the basis of their gender. These violations tend to be less visible than those directed at men and are most often directed at women's 'purity' and 'honor.'<sup>98</sup> Under the ICCPR, no State, group, or person can act in a way that destroys or limits any of the rights and freedoms contained in the Covenant,<sup>99</sup> which includes the equal right of women and men to enjoy the rights protected in the Covenant.<sup>100</sup>

This right extends to women, both as members of a larger community and as individuals. In some contexts, women face risks to their freedom of religion or belief from within their own communities. As found by the UN Human Rights Council, situations of discrimination or violence in the name of religion, belief, or cultural and traditional practices come to affect many women and other vulnerable groups.<sup>101</sup>

Religious communities are afforded the right to practice and interpret their beliefs. As individuals, women hold the right to practice their religious beliefs free from coercion, or indeed change their religion or beliefs. Under the law, the protection of others' fundamental rights and freedoms is one of the few lawful limitations to the freedom to *manifest* one's religion or belief.<sup>102</sup> The practice of religion or belief therefore cannot be used to deny or limit women's individual rights.

States have the obligation to take measures to guarantee women's freedom of religion or belief.<sup>103</sup>

Some examples where women have faced unlawful limitations in their freedom of religion or belief include:

#### 5.1.1 CLOTHING

State laws or regulations on what women can or must wear in public can be incompatible with many other fundamental rights. The UN Human Rights Committee has set forth the rights that are impacted by clothing regulations.<sup>104</sup> Primarily, these laws may go against women's right to practice their religion, their right to self-expression, and their freedom of movement if they represent a different religion or religious interpretation, or a different belief.<sup>105</sup>

Furthermore, regulations imposing or prohibiting specific clothing can violate women's right to non-discrimination (Article 26, ICCPR); women's protection against corporal punishment if such punishment is used to enforce the law (Article 7, ICCPR); women's right against arbitrary arrest, if arrest is used to enforce the law (Article 9, ICCPR), women's freedom of movement if the regulation has the effect of constraining movement (Article 12, ICCPR), women's right to privacy without arbitrary or unlawful interference (Article 17, ICCPR).

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<sup>98</sup> Fisher, Helen and Elizabeth Miller, *Gender-specific religious persecution: Analysis and Implications*. World Watch Research, February 2019, p. 3.

<sup>99</sup> ICCPR, Art 5(1)

<sup>100</sup> ICCPR, Art. 3

<sup>101</sup> UN Human Rights Council, Resolution 6/37, para. 9.

<sup>102</sup> ICCPR, Art. 18(3)

<sup>103</sup> UN Human Rights Council, Resolution 6/37, para. 9.

<sup>104</sup> Human Rights Committee, General Comment 28, para 13.

<sup>105</sup> ICCPR, Art. 18 & 19.

## PART 1. Defining Religious Freedom

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### 5.1.2 THE RIGHT TO BE RECOGNIZED BY LAW

Women are full legal persons and have the right to be recognized by law equally to all others (*ICCPR, Article 16*). The UN Human Rights Committee has noted that, by virtue of their gender or their marital status, women's right to equal legal recognition is sometimes denied or diminished.<sup>106</sup> In practice, the Committee notes that this can take the form of a restriction on a woman's right to enter into a contract or ability to own property. More seriously, for a married woman whose husband is deceased, this may result in being compelled to go live with the husband's family, without the right or freedom to live otherwise.<sup>107</sup> When confronted with these realities, the Committee has set forth that States have the obligation to "provide information on laws or practices that prevent women from being treated or from functioning as full legal persons, and [to take] measures to eradicate laws or practices that allow such treatment."<sup>108</sup>

### 5.1.3 WOMEN'S RIGHT TO THE FREEDOM TO ADOPT, CHANGE, AND MANIFEST RELIGION OR BELIEF

The UN Human Rights Committee has highlighted the importance of ensuring women's freedom of religion or belief, specifically their freedom to adopt, to change, and to express religion or belief.<sup>109</sup> Under International Human Rights Law, freedom of religion or belief as protected by Article 18 of the ICCPR does not allow discrimination between women and men in realizing their right. The freedoms to adopt, change, or express a religion cannot be limited by restrictions other than those authorized in the ICCPR; they cannot be subject to the permission of third parties or to the interference of male relatives.<sup>110</sup>

## 5.2 Refugees and Internally Displaced Persons

The United Nations General Assembly has highlighted the concerns faced by refugees, asylum-seekers, and internally displaced persons to freely exercise their religious freedom.<sup>111</sup>

Under international human rights law, States where refugees seek safety are prohibited from expelling or returning them to a territory where their life or freedom would be threatened on account of their religion, or membership to a particular social group or political opinion.<sup>112</sup> This includes the risk of facing torture or cruel, inhuman, or degrading treatment upon being forcibly returned.<sup>113</sup> This prohibition is called the principle of 'non-refoulement'—or of non-expulsion. It is binding on all States, whether or not they are party to a specific treaty.<sup>114</sup>

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<sup>106</sup> Human Rights Committee *General Comment No. 28*, para. 19.

<sup>107</sup> Human Rights Committee *General Comment No. 28*, para. 19.

<sup>108</sup> Human Rights Committee *General Comment No. 28*, para. 19.

<sup>109</sup> Human Rights Committee *General Comment No. 28*, para. 21.

<sup>110</sup> Human Rights Committee *General Comment No. 28*, para. 21.

<sup>111</sup> UN General Assembly Resolution 65/211, *Elimination of all forms of intolerance and of discrimination based on religion or belief* (21 Dec. 2010), para. 8: "Recognizes with concern the situation of persons in vulnerable situations, including [...] refugees, asylum-seekers and internally displaced persons [...], as regards their ability to freely exercise their right to freedom of religion or belief" (available at: <https://undocs.org/en/A/RES/65/211>).

<sup>112</sup> Convention relating to the Status of Refugees, Art. 33; ICCPR, Art. 6 (Right to Life).

<sup>113</sup> Regarding the scope of the obligations under ICCPR, Art. 7, see Human Rights Committee in its *General Comment No. 20: Art. 7 (Prohibition of torture, or other cruel, inhuman, or degrading treatment or punishment)*, 10 March 1992, UN Doc. HRI/ GEN/1/Rev.7, para. 9: "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion, or *refoulement*."

<sup>114</sup> See notably, UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <https://www.refworld.org/docid/45f17a1a4.html>.

### CASE EXAMPLE: FRANCE

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In 2013, the European Court of Human Rights (ECHR) ruled in favor of a Coptic Christian seeking asylum in France on the basis of religious persecution. Because of his faith as a Christian, the applicant was verbally and physically attacked by his landlord in Egypt and received several death threats. The Egyptian authorities failed to act on his complaint, and instead he was sentenced to three years imprisonment on charges of illegal proselytizing. The Court acknowledged that the return of the applicant to Egypt would expose him to ill treatment.<sup>115</sup>



### 5.3 Children

The United Nations General Assembly has affirmed the responsibility of the international community to protect children from any form of discrimination on the grounds of religion or belief, and to bring children up with respect for the freedom of religion or belief of others.<sup>116</sup> In its Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Assembly emphasized that the practice of a specific religion or belief should not be harmful to the physical or mental health of a child, or to their full development.<sup>117</sup>

Many States are Party to the Convention on the Rights of the Child (CRC). Under this Convention, States have the obligation to respect children's rights to freedom of thought, conscience, and religion.<sup>118</sup> As part of this right, States must respect parents' right to provide direction to their child in her or his freedom of religion or belief, and respect parents' and children's cultural identity, language, and values.<sup>119</sup> Moreover, article 18(4) of the ICCPR affirms the liberty of parents and legal guardians to "ensure the religious and moral education of their children in conformity with their own convictions."<sup>120</sup>

### 5.4 Religious and Belief Minorities

Persons who belong to national or ethnic, religious, and linguistic minorities often face risks to their right to Religious freedom. Minorities can face various forms of discrimination, including with official registration procedures, when disseminating materials, or displaying symbols. Some may be the subject of intolerance, threats, or acts of violence perpetrated by State or non-State actors that are tolerated or encouraged by public authorities. Minority religious groups following a non-traditional or newer religion or belief may be the object of suspicion and suffer limitations to their freedoms.

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<sup>115</sup> <https://www.asylumlawdatabase.eu/sites/default/files/aidfiles/AFFAIRE%20M.E.%20c.%20FRANCE.pdf>.

<sup>116</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5.3: "The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men."

<sup>117</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5.5.

<sup>118</sup> Convention on the Rights of the Child (CRC), Art. 14.1.

<sup>119</sup> Convention on the Rights of the Child (CRC), Art. 14.2.

<sup>120</sup> <https://www.ohchr.org/en/special-procedures/sr-religion-or-belief/international-standards#23>

ICCPR Art. 18 (4): "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

## PART 1. Defining Religious Freedom

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The rights of minority religious groups are specifically protected by the International Covenant for Civil and Political Rights (ICCPR).<sup>121</sup> Under the ICCPR, persons who belong to religious or belief minorities enjoy all the protections of the freedom of religion or belief under Article 18 of the ICCPR. They have the right to profess and practice their own religion or belief, in private and in public, freely and without interference or any form of discrimination, as well as the right to participate effectively in cultural, religious, social, economic, and public life.

Further, the international community has recognized the rights of individuals and groups from minority communities. In its Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the UN General Assembly affirms the right of persons belonging to minorities (religious, ethnic, national, or linguistic) to “enjoy their own culture, profess and practice their religion, and use their own language, in private and in public, freely and without interference or any form of discrimination.”<sup>122</sup> When abuses against members of religious minorities are committed by State or non-State actors, States have the obligation to ensure the free exercise of freedom of religion or belief and provide a remedy for violations, including bringing perpetrators of discriminatory or violent acts to justice.

Beyond protection, States have responsibility to protect the existence and identity of minorities and encourage the promotion of that identity.<sup>123</sup> These protections are expressly stated for children belonging to minorities under the Convention on the Rights of the Child (CRC).<sup>124</sup>

### CASE EXAMPLE: CHINA

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In China, the Counter-Terrorism Law of 2016 violates the rights of religious minorities. The definitions of ‘terrorism’ in the law are overly broad and vague, enabling them to be used to criminalize peaceful civic and religious expression and activity with ‘terrorism.’ The provincial government enacted regulations with types of behavior considered extremist, including young and middle-aged men wearing beards and short trousers, and women wearing clothing or owning goods with a star and crescent. Following the introduction of the law, Uyghur and Turkic Muslims of China have been sent to internment facilities under a ‘de-extremism policy.’



## 5.5 Migrant Workers

Individuals who migrate to other countries to work may not be in a country of the same religion or belief, or the same majority interpretation of religion. Some necessities of religious practice (such as places of worship or reunion, clerics or leaders, and scripture) may be unavailable or inaccessible. At times, even within a religion or belief, discrimination can exist due to xenophobia or the social status imposed on foreign workers.

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<sup>121</sup> ICCPR, Art. 27.

<sup>122</sup> UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 47/135 (1992), Art. 11.

<sup>123</sup> General Assembly Declaration 47/135, Art. 1(f): “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”

<sup>124</sup> Convention on the Rights of the Child (CRC), Art. 30.

## PART 1. Defining Religious Freedom

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As for all other individuals, the right of migrant workers and their families to freedom of religion or belief is protected under the International Covenant on Civil and Political Rights. It is also specifically protected under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, for States who are party to this Convention.

### 5.6 Persons Deprived of Their Liberty

Many circumstances can deprive an individual of liberty. They include, but are not limited to criminal imprisonment, administrative or immigration detention, residential detention (electronic monitoring), institutionalized detention in a healthcare facility for physical or mental vulnerabilities, and more.

Regardless of the specific conditions, persons deprived of their liberty continue to enjoy their freedom of religion or belief. When interpreting Article 18 of the ICCPR, the UN Human Rights Committee has affirmed that these persons continue to have the right to identify with and **to practice** their religion or belief to the fullest extent compatible with the specific nature of the constraint or deprivation.<sup>125</sup>

International guidelines for the treatment of prisoners are not binding on States but provide the standards to follow in order to comply with international human rights law. The Standard Minimum Rules for the Treatment of Prisoners, also referred to as the Mandela Rules, provide that, as far as it is practicable, every prisoner has the right to satisfy the needs of their religious life. This includes attending services provided in the institution and possessing the books of religious observance of their religion.<sup>126</sup>

Under the Mandela Rules, an institution with a sufficient number of detainees of the same religion shall appoint a qualified representative of that religion to be available to detainees.<sup>127</sup> This representative should be allowed to hold regular services, and conduct private visits to prisoners of their religion, at appropriate times.<sup>128</sup> No prisoner can be refused access to a representative of *any* religion; however, prisoners always have the right to refuse the visit of any religious representative.<sup>129</sup>

## 6. The Intersection of Religious Freedom with Other Human Rights

The right to religious freedom is equal to other human rights and includes in its sense and substance other rights: i.e., religious freedom cannot be enjoyed without the rights to life, liberty, bodily integrity, free opinion, and expression, among other rights. It can also be limited in the absence of other rights, as violations of religious freedom often include violations of other rights and vice versa.

### 6.1 The Freedom of Expression and Freedom of Association

The freedoms of opinion and expression are closely intertwined with the freedom of religion or belief, particularly with the freedom to manifest one's religion or one's belief. Freedom of opinion and expression are both strongly protected under international human rights law. However, the freedom of expression may be limited when the expression is used for purposes that go against human rights principles of the UN Charter, such as non-discrimination, or infringing on the rights of others.

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<sup>125</sup> UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add. 4, para. 8: "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under Article 18.3, both as a matter of law and of their application in specific circumstances."

<sup>126</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 42.

<sup>127</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 41.1.

<sup>128</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 41.2.

<sup>129</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 41.3.

## PART 1. Defining Religious Freedom

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Under Article 19(1) of the ICCPR, everyone has the right to hold opinions, without interference. The UN Human Rights Committee has set forth that this protects all forms of opinions, including opinions of a religious nature.<sup>130</sup>

Article 19.2 guarantees everyone's right to freedom of expression. This right includes the freedom to seek, receive, and communicate information and ideas of all kinds, orally, in writing, in print, in the form of art, or through any other media of one's choice. This freedom applies everywhere, regardless of frontiers.

### CASE EXAMPLE: SAUDI ARABIA

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In 2015, Ashraf Fayadh, a Palestinian Poet and artist was sentenced to death in Saudi Arabia on the basis of apostasy. He was arrested two years earlier after a Saudi citizen complained that his poetry is spreading atheism and other blasphemous ideas. Despite several appeals, Mr. Fayadh remains in prison.<sup>131</sup>



Considering the significance and the effects that expression can have, the freedom of expression carries special duties and responsibilities. Under Article 19.3 of the ICCPR, this right can be restricted by law, as necessary, for two purposes:

- To protect the rights and reputations of others, or
- To protect national security, public order, or public health or morals.

In light of this, some forms of expression are prohibited, without exception. Article 20.2 of the ICCPR requires States to prohibit any advocacy of national, racial, or religious hatred that incites discrimination, hostility, or violence. States have the obligation to enact laws that prohibit this type of hateful expression.<sup>132</sup>

Regarding the expression of religious view or beliefs, the UN Human Rights Council has emphasized the above limitations, stating that the way religion or belief is expressed cannot be for purposes that are inconsistent with the UN Charter and other texts of the United Nations.

For example, some extremist expressions of religion that include advocating intolerance, discrimination, and violence could prove inconsistent with the UN principles of dignity, equality, and non-discrimination, and specific rights such as the right to life. This applies to expressions against other religions, or against persons from the same religious group.

Likewise, non-religious expressions (political, national, etc.) against all religion generally, or against specific faiths, that incite discrimination, hostility, or violence against specific groups could also prove inconsistent with human rights law.

## 6.2 The Right to Life and Liberty

Individuals and groups around the world face risks to their lives, liberty, or security from belonging to a particular

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<sup>130</sup> UN Human Rights Committee (HRC), *General Comment 34: Freedoms of Opinion and Expression (Article 19)*, UN Doc. CCPR/C/GC/34, (2011), para. 9, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

<sup>131</sup> A/HRC/40/58, para 45

<sup>132</sup> Human Rights Committee (HRC), *General Comment 22*, para. 7

## PART 1. Defining Religious Freedom

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religion or holding certain beliefs. Under international human rights law, every human being has the inherent right to life,<sup>133</sup> and the right to liberty and security.<sup>134</sup>

The UN Human Rights Council has urged States to ensure that no one within their territories is deprived of the right to life, liberty, security of person, subjected to torture, or arbitrary arrest or detention on account of religion or belief, and to bring all perpetrators who violate these rights to justice.<sup>135</sup>

Under Articles 6 and 9 of the ICCPR, no one can be arbitrarily deprived of life, or be arbitrarily arrested or detained. As part of the right to life, the death penalty cannot be imposed in a way that goes against the rights protected under the ICCPR.<sup>136</sup> This means that a person cannot be sentenced to the death penalty for having a certain religion or beliefs, since the freedom of religion or belief is protected under Article 18. The death penalty can only be imposed for the most serious crimes, in full compliance with all the elements of the right to a fair trial found in the ICCPR, and not contrary to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>137</sup>

### CASE EXAMPLE: PAKISTAN

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In 2010, Asia Bibi, a Pakistani Christian woman was sentenced to death for blasphemy. Asia was accused of using a cup of her Muslim colleague to drink water, and as a Christian she is considered unclean by Muslims and her colleague demanded that she convert to Islam. Bibi, was later accused of making insulting comments against the Prophet Mohammad. After one year of imprisonment she was sentenced to death on the charges of blasphemy. After a long and politically charged process of appeal that lasted eight years, the Supreme Court of Pakistan acquitted her and canceled the death sentence and released her on the basis of material contradictions and inconsistent statements of the witnesses.<sup>138</sup>



## 6.3 The Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

Under international law, torture is absolutely prohibited, in all circumstances, and for any reason. The prohibition of torture is a ‘peremptory norm’ of general international law. This means that **all** States are prohibited from engaging in acts of torture, regardless of whether they are party to a specific international treaty that prohibits it. This includes the prohibition of using any acts of torture against anyone based on their religion or belief. The prohibition is not subject to derogation, even in times of war or emergency.

The prohibition of torture is expressed in multiple treaties, such as the Convention Against Torture,<sup>139</sup> the ICCPR,<sup>140</sup>

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<sup>133</sup> ICCPR, Art. 6.1

<sup>134</sup> ICCPR, Art. 6.1

<sup>135</sup> Human Rights Council 6/37 (para. 9 (i)); Commission on Human Rights Resolution 2005/40 (para. 4 (f)).

<sup>136</sup> ICCPR, Art. 6.2

<sup>137</sup> ICCPR, Art. 6.2

<sup>138</sup> A/HRC/40/58, para. 39

<sup>139</sup> Convention Against Torture, Art. 1.

<sup>140</sup> ICCPR, Art. 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

## PART 1. Defining Religious Freedom

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and the Declaration on the Protection of All Persons from Enforced Disappearance. Under the Declaration, any act of enforced disappearance is a violation of the rules of international law that guarantee the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.<sup>141</sup>

The Convention Against Torture defines 'torture'<sup>142</sup> as any act by which severe pain or suffering (physical or mental) is intentionally inflicted on a person for the purpose of:

- Obtaining from them or a third person information or a confession, or
- Punishing them for an act they or a third person have committed or are suspected of having committed, or
- Intimidating or coercing him or a third person, or
- For any reason based on discrimination of any kind,
- When such pain or suffering is inflicted by, or at the instigation, or with the consent or acquiescence of a public official or other person acting in an official capacity.

Under this definition, discrimination includes discrimination on the grounds of religion or belief. Therefore, severe pain inflicted through a public authority for the purpose of discrimination based on religion or belief amounts to torture. States have a duty to their citizens and other States not to commit torture, to ensure others respect the prohibition of torture, and to provide reparation if torture is committed.<sup>143</sup> As part of the obligation to ensure the respect of the prohibition of torture, States have a duty to prevent non-state actors—private individuals—from committing torture.

**Cruel, inhuman, or degrading treatment** is also prohibited in international instruments that forbid torture, like the Convention Against Torture.<sup>144</sup> This treatment involves a lower level of suffering than torture and does not need to be inflicted for a specific purpose. It still needs to be committed through a public official.

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<sup>141</sup> Declaration on the Protection of All Persons from Enforced Disappearance (1992), Art. 1&2.

<sup>142</sup> Convention Against Torture, Art. 1.

<sup>143</sup> Under the ILC Draft Articles on State Responsibility and Principles 1-3 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States incur a primary 'negative' duty to refrain from violating human rights, a 'positive' duty to ensure respect for human rights, and, in case of breach, an obligation to provide reparation.

<sup>144</sup> Convention Against Torture, Art. 16: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

PART 2

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# Monitoring and Documenting Violations of Religious Freedom

# Contents

<b>1. Monitoring and Documentation</b>	<b>36</b>
<b>1.1 Distinguishing Monitoring from Documentation</b>	<b>36</b>
<b>1.2 Purpose of Monitoring and Documentation</b>	<b>36</b>
1.2.1 Initial Considerations	37
1.2.2 Best Practices of Monitoring and Documentation	37
<b>1.3 Specific Considerations for Religious Freedom</b>	<b>40</b>
1.3.1 Two Dimensions of Religious Freedom: Internal and External	41
1.3.2 Two Principles of Religious Freedom: Non-Discrimination and Non-Coercion	41
1.3.3 Two Types of Violations: Specific Violations of Religious Freedom and Religious Freedom as a Component of a Violation	43
1.3.4 Two Actors: State and Non-State	43
1.3.5 Resources For Monitoring Religious Freedom	44
<b>2. Documenting Violations of Religious Freedom – Key Principles of Documentation</b>	<b>45</b>
<b>2.1 Harm Reduction</b>	<b>45</b>
<b>2.2 Informed Consent</b>	<b>46</b>
<b>2.3 Confidentiality</b>	<b>47</b>
<b>2.4 Managing Expectations: Fulfill Your Mandate</b>	<b>48</b>
<b>3. Stages of Documentation</b>	<b>49</b>
<b>3.1 Understanding Documentation Requirements</b>	<b>49</b>
3.1.1 Understanding the Legal Framework Applicable To a Situation	50
3.1.2 Understanding Requirements for Evidence and High-Quality Information	54
<b>3.2 Preparing Documentation</b>	<b>56</b>
3.2.1 Creating a Documentation Plan	56
3.2.2 Implementing a Recording System	57
3.2.3 Preparing Safety and Security	61
3.2.4 Preparing and Training Team Members	78
3.2.5 Working with Interpreters	78
<b>3.3 Collecting Data and Information</b>	<b>80</b>
3.3.1 Physical Information	81
3.3.2 Documentary Information	85
3.3.3 Testimonial Information: Interviewing Participants	92
<b>3.4 Verifying the Information Collected</b>	<b>103</b>
3.4.1 General Principles: Credibility, Reliability, and Coherence	103
3.4.2 Specific Verification For Information Types	105
<b>3.5 Analyzing the Information Collected</b>	<b>107</b>

## 1. Monitoring and Documentation

### 1.1 Distinguishing Monitoring from Documentation

For the purposes of this manual, monitoring is a broad term that describes the gathering of information on a particular religious freedom situation or case through close observation and analyzing how over a protracted period of time the situation changes. Religious freedom monitoring often takes one of two forms: 1) situation monitoring and/or 2) case monitoring. *Situation monitoring* focuses on a general situation, such as the status of religious freedom in a country monitoring for compliance with international or domestic duties and obligations; or, monitoring legislation, laws, and policies—or their implementation—pertaining to religious freedom.<sup>145</sup> *Case monitoring* has a narrow focus to a particular victim or group of victims. This can include observing over a protracted time the legal process or lack of process and the adequacy of relief and rehabilitation provided to the victim(s). Non-government organizations (NGOs) working in the area of religious freedom conduct both situation and case monitoring, sometimes in combination for greater impact.

Monitoring religious freedom often requires gathering information to set the context and how the context has changed over time, which can include the historical, legal, political, geopolitical, economic, social, and demographic contexts for the select population and locality. It requires tracking and verifying the situation or case through multiple sources, including the media (traditional and/or social), radio, government and civil society reports, legislation, court records, and online sources.<sup>146</sup>

Though related, **documentation**, for the purpose of this manual, is the systematic collection of information pertaining to specific incident(s) or patterns thereof affecting individuals or groups, and that appear to amount to a violation of religious freedom. Monitoring benefits from analyzing the documentation of and trends revealed by incidents over time as part of the larger assessment of the situation.<sup>147</sup> When combined, monitoring and documentation lay the foundation of analysis and evidence that demonstrates the need for further action.

### 1.2 Purpose of Monitoring and Documentation

Monitoring and documentation seek the correction of or justice for violations of religious freedom or belief—whether justice is sought for an individual, a group of individuals, or to bring about institutional or policy changes. The most common purpose of monitoring and documentation is to be able to demonstrate violations of religious freedom that require correction through further action or to certify whether actions taken in response to previously identified violations are working. The analysis of monitoring and documentation can also identify possible root causes and recommended solutions to correcting the identified violations of religious freedom or belief. Primarily, monitoring and documentation are reactive in nature; however, monitoring can also serve as an early warning of possible trends or ongoing violations that could lead to greater conflict.

As both monitoring and documentation seek to demonstrate the need for a change, effective monitoring and documentation require mooring the processes to norms or standards that demonstrate how the situation or incident(s) violate such norms or standards. Commonly accepted norms or agreed-upon standards set the boundaries of behavior.<sup>148</sup> For norms or standards pertaining to the right of religious freedom or belief, we look both to national law and international agreements among nation States that concern the conduct or obligations of the State. This includes the state obligations to protect the right of religious freedom or belief from the conduct of others. Deviations from these norms or standards give rise to violations of religious freedom.

Seeking justice may require advocating for national policy change, presenting evidence and reports to multinational monitoring bodies (for instance, the United Nations, African Union), or seeking redress for harm done through judicial courts and quasi-judicial avenues (for instance, commissions). The ultimate venue(s) for seeking justice will

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<sup>145</sup> <https://www.huridocs.org/wp-content/uploads/2010/08/whatismonitoring-eng.pdf> , at 12.

<sup>146</sup> UKWELI, pp. 4, 8; <https://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap6.pdf>.

<sup>147</sup> UKWELI, pp. 4, 8; <https://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap6.pdf>.

<sup>148</sup> <https://www.huridocs.org/wp-content/uploads/2010/08/whatismonitoring-eng.pdf> , at 7.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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often dictate the manner of and the necessary intricacies to follow in monitoring or documenting religious freedom violations. For a greater discussion of how the venue affects the process and intricacies, please see [Part 3 – Avenues for Advocacy](#).

### 1.2.1 INITIAL CONSIDERATIONS

Before beginning to monitor or document violations of religious freedom, several key factors need to be predetermined to ensure an effective process and outcome: 1) the desired outcome of the project; 2) the specific elements of the right of religious freedom to be covered; 3) target group; 4) geographical scope; 5) duration of the project; and 6) intended audience and its standards of evidence or presentation. The following questions are helpful to identifying the scope and parameters of any monitoring or documentation project:

- 1 What is the purpose or desired outcome of the monitoring or documentation?
- 2 What is the scope of the monitoring or documentation?
  - Which specific element(s) of the right to religious freedom or belief will be the area of focus?
  - Who is the target group? (Monitoring can cover the whole population or be focused on specific sectors belonging to religious groups such as women, children, ethnic minorities, prisoners, etc.)
  - What geographical limitations should be placed on the project?
  - What timeframe should be covered in the project?
  - **Note:** It is best practice to know and limit the scope to ensure that the capacity allows for an in-depth process for best results.
- 3 Is the desired outcome investigative in nature or to spur further action to correct or redress the findings of any violation found?
  - If the latter, who are the potential audiences for the collected information, evidence, and analysis?
  - Do any of the potential audiences have higher standards (for instance, a judicial body) that should govern the standards of the monitoring or documentation processes from the outset?

This final question is critical, as the audience or venue with higher standards will set both the sufficient and necessary boundaries for collecting and analyzing information. It is difficult to attempt to meet the standards of some venues, for instance, a judicial court, if the strict or necessary boundaries set by the court are not followed from the outset of collecting information (See [Part 3 – Judicial Avenues](#)).

By addressing these initial considerations, the process and outcome will be tailored to have the greatest effect. Similarly, it will ensure that the process is best suited to meet the desired outcomes.

### 1.2.2 BEST PRACTICES OF MONITORING AND DOCUMENTATION

A common process to follow when conducting monitoring activities includes four key steps: 1) Plan; 2) Gather information; 3) Verify information; and 4) Analyze information. A fifth step might be identified in your planning phase and in answering the key initial considerations outlined above, such as defining the desired scope and objectives of monitoring. This fifth step would include presenting the findings to the intended audience or venue to ensure accountability, improve the religious freedom situation, or seek justice and redress for a particular past harm.

During the planning step, using human rights indicators (quantitative and qualitative) that are tailored to religious freedom can be helpful “in tracing the entire range of measures—from the institutional requirement for respecting, protecting, and fulfilling human rights to the processes that need to be implemented and monitored so that the

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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desired results for realizing human rights can be articulated and pursued.”<sup>149</sup> Indicators can be especially helpful in compliance monitoring—asking whether the State is upholding its duties and obligations toward the rights holder. Selecting indicators should be done early in the planning stage so they can help define the boundaries of information gathered. Human rights compliance indicators should be explicitly anchored in human rights norms and standards pertaining to freedom of religion or belief.<sup>150</sup> A starting place for setting indicators is to review what, if any, recommendations have made by treaty bodies or other human rights monitoring mechanisms regarding the issues pertaining to the right of freedom of religion or belief for the selected scope of the monitoring project.

When gathering information, doing so through diverse sources and data collection methods increases credibility in the end product and reduces bias within the information or data collected. Diverse methods include collecting information accessible through desk research and in-person collection, such as through surveys, focus groups, community meetings, etc. Diverse sourcing should include intentional efforts to hear from a broad cross-section of the society/community, including intentionally hearing from voices often underrepresented in the religious freedom world such as women, youth, and children. It should also include collecting “official” information from individuals and institutions with the duties and obligations to uphold religious freedom or belief as well as collecting from the rights-holders, individuals, organizations, and institutions tasked with monitoring and holding others accountable for such duties and obligations.

It is also crucial to consider how context and cultural dynamics might require adjustments in the methodology for gathering information related to violations of religious freedom. For example, consider whether a group fact-finding setting is likely to elicit the answers sought, or whether it might be a barrier to honest participation. Will fear of either real or perceived infiltration or retaliation influence the answers given or willingness to participate? Do power or gender dynamics influence the information being provided? For example, would culture allow a local religious leader closer to the situation to contradict a religious leader higher up in the hierarchy but further removed from the situation? Similarly, would an adherent of a minority religion speak openly in the presence of adherents of the majority religion? Or would a woman be able to share her experience and opinion in front of male participants or observers, or family members who may be unaware of her faith practices?

### CASE EXAMPLE: SOUTH ASIA

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When analyzing several years of incident reports of religious freedom violations in South Asia for evidence of how women belonging to a religious minority face intersectionality, both for their gender and their religion, it became evident that gender-based violence toward religious minority women was hidden in plain sight and traditional incident reporting failed to capture the depth of the issue. This was in part because of cultural practices, the perceived shame associated with gender-based violence, and because existing incident reporting methods often aggregate violations of religious freedom of both men and women.

Further research revealed that this traditional method of information gathering hides the different ways in which women and men face violations of religious freedom or belief, often focusing on the issues that are evident publicly. Collecting additional research demonstrated that the issues that religious minority women face are often hidden within families or communities and therefore is not easily monitored or reported. Culturally, persecuted religious women live in fear of shame, in fear of dishonoring their families, and in fear of reprisal if they report their suffering.

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<sup>149</sup> OHCHR. (2012). *Human Rights Indicators: A Guide To Measurement and Implementation*. (Chapter V), New York: UN. Available at [https://www.ohchr.org/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterV\\_en.pdf](https://www.ohchr.org/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterV_en.pdf) at 112; see also McInerney-Lankford, Siobhan; Sano, Hans-Otto. 2010. *Human Rights Indicators in Development: An Introduction*. World Bank Study, World Bank, available at <https://openknowledge.worldbank.org/handle/10986/2529> (License: CC BY 3.0 IGO).

<sup>150</sup> [https://www.ohchr.org/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterV\\_en.pdf](https://www.ohchr.org/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterV_en.pdf).

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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When monitoring legal compliance, it is important to consider how codified and non-codified laws impact compliance. Traditional human rights monitoring considers three levels of applicable law: 1) the international framework of human rights, or more specifically, the particular human rights conventions that the State in question has ratified; 2) the national laws and regulations; and 3) the legal practice of the state—or the actual situation in the country with regard to whether the above laws are respected by the State in practice.

A typical question in this respect would be whether the law is applied equally, without discrimination based on ethnicity or religion. However, when monitoring religious freedom violations in countries where religion plays a role in governance of a country, it can be particularly important to consider how “religious law” formally or informally interacts with the legal processes and compliance with the norms and standards for freedom of religion or belief.

### CASE EXAMPLE: IRAN

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In Iran, *fatwas*—religious declarations of Islamic law—have the effect of law and should be considered when the codified law is insufficient. Although apostasy (leaving Islam) is not codified in the Iranian Penal Code, Article 167 of the Constitution instructs judicial authorities to make their judgments based on “authoritative Islamic sources and authentic *fatwa*,” rather than dismissing a case for lack of a codified crime or sentence.<sup>151</sup> Additionally, Article 220 of Iran’s Penal Code instructs a judge to rely on Article 167 of the Constitution and *fatwas* to convict converts from Islam of “apostasy,” a charge punishable by death according to prevailing *fatwas*.<sup>152</sup>



When verifying the information collected, either through visual inspection, observation, or through multiple confirmed sources, special consideration should also be paid to potential dynamics that might intentionally or unintentionally bias the information.

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<sup>151</sup> THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN, Art.167.

<sup>152</sup> Ayatollah Ruhollah Khomeini, *Tahrir Al-Wasilih*, 494-95 (Vol. 2). Apostates are to be given three days to return to Islam. If they do not recant their faith they are to be executed on the fourth day.

**CASE EXAMPLE: INDIA**

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As smart phone access has increased across India, including into rural areas, the use of social media platforms to spread false information has grown rapidly. Evidence supports that social media platforms have been used to spread false information and ignite greater religious tensions between religions, often resulting in increased intolerance, hatred, and violence.<sup>153</sup>

Though not all religiously linked, in 2018, more than 30 people were assaulted by groups acting on rumors spread on WhatsApp.<sup>154</sup> This growing issue often implants rarely-corrected, false narratives in many minds regarding their neighbors of a different religion and may appear in information collected.



**CASE EXAMPLE: SYRIA**

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During the Syrian crisis that began in 2011, warring factions took over in-country media sources to spread propaganda either for their position or against their opponent. Double verifying media stories would not have eliminated the bias or false reports that made their way into local media sources.



Recognizing that certain geographic and political climates can make verification difficult, it is important to note that unverified data can still serve to inform when the analysis and presentation conducted and reported with transparency of such difficulties. By using strong standards for verification and transparency in the methodology or presentation of information, the monitoring activity and outputs will better withstand scrutiny to achieve the desired objectives.

**1.3 Specific Considerations for Religious Freedom**

Efforts to monitor religious freedom can be supplemented by an understanding of particular elements of the nature violations. As such, it is important monitors have an eye toward these specific considerations. The dimensions of religious freedom (both internal and external) mean that violations of religious freedom are not only those visible external actions but can also include more subtle restrictions as well. The two fundamental principles at the heart of religious freedom, non-discrimination and non-coercion are helpful tests for identifying violations. As previously described, freedom of religion is a universal and broad right that encompasses many dimensions

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<sup>153</sup> Maya Mirchandani, *Digital hatred, real violence: Majoritarian radicalisation and social media in India*, Observer Research Foundation, 29 August 2018, available at <https://www.orfonline.org/research/43665-digital-hatred-real-violence-majoritarian-radicalisation-and-social-media-in-india>.

<sup>154</sup> See <https://apnews.com/0597a58bc3d34f6c8ef3d7944ddff1e0>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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of life and intersects with other rights and freedoms. As such there are times in which violations are specifically focused on religious freedom and others in which it is a clear component of a broader type of violation. Failing to acknowledge type can lead to either over-reporting or under-reporting the severity of violations. Finally, considering the responsible parties of violations can encompass both state and non-state actors. The relationship is not always bifurcated but is often a complex interplay of both parties.

These specific considerations as discussed below can be of value in efforts to monitor religious freedom violations.

### 1.3.1 TWO DIMENSIONS OF RELIGIOUS FREEDOM: INTERNAL AND EXTERNAL

An important consideration within the monitoring of religious freedom is this right as codified in international agreements includes both an internal dimension (*forum internum*) and an external dimension (*forum externum*). Regarding the internal dimension, *forum internum* is understood to be an absolute right and is not subject to limitations of any kind, as discussed in [Part 1](#) of this manual. Both the UDHR (article 18) and the ECHR (article 9) recognize that the protection of the *forum internum* includes the right to change one's religion or belief. With this in mind, legal restrictions that require the involuntary disclosure of religious identity or other measures that would prevent the right to "change" or "to have or adopt" a religion or belief would run contrary to the internal dimension of freedom of religion or belief.<sup>155</sup>

In addition, religious freedom also includes an external dimension, *forum externum*, which provides that everyone has the freedom, either alone or in community with others, in public or private, "to manifest his [or her] religion or belief in worship, observance, practice, and teaching" (ICCPR, article 18.1). This provides for the protection of a broad scope of public manifestations beyond merely the "freedom of worship" or merely performance of rituals. These public manifestations may be either an individual or communal or institutional practice. While unlike the *forum internum*, *forum externum* may be limited in some cases, the qualified components of this right as described in [Part 1](#) of this manual, but these should be limited in scope and must be in keeping with appropriate limitation clauses (for example, ICCPR Article 18.3 or ECHR Article 9.2).

While standards for limitation may vary by state the following three inquiries are helpful for understanding if a limitation is lawful:

- First, is the limitation prescribed by law, meaning is it sufficiently clear as to give notice of what is and is not prohibited?
- Second, is the purported basis for the limitation identified in the limitations clause? (Note that "national security" is not a permissible limitation under ECHR art 9.2 or ICCPR Article 18.3.)
- Third, is the limitation proportionate to the public interest that is served?<sup>156</sup>

An understanding of these dimensions and the types of limits that can be applied to them is a critical element of appropriately monitoring violations of religious freedom as they can impinge in various ways on both dimensions of the right in various ways that may or may not be immediately visible.

### 1.3.2 TWO PRINCIPLES OF RELIGIOUS FREEDOM: NON-DISCRIMINATION AND NON-COERCION

Religious freedom is an extensive and a universal right. The broad reaching scope can introduce challenges in effectively monitoring and determining what violations or abuses impinge upon religious freedom. Two principles undergird many of the various elements of religious freedom: non-discrimination and non-coercion.

Freedom from discrimination on the basis of religion or belief means that there is full equality before the law for all people, regardless of their religious identity or belief or lack thereof. As stated in ICCPR article 26: "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this

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<sup>155</sup> OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, *Guidelines for Review of Legislation Pertaining to Religion or Belief*. Adopted by the Venice Commission at its 59th plenary session (Venice, 18-19 June 2004), p. 10.

<sup>156</sup> OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, pp., 18-19.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination based upon any grounds such as [...] religion.”<sup>157</sup> Discrimination can target either individuals or institutions and take a number of forms and violations can come from both state and non-state entities or individuals. The forms of discrimination could take the form of privileges granted to institutions or members of a particular faith community in the form of additional protections, privileges, tax relief or other benefits. Discrimination can also arise in the form of state mandated registration requirements that are not applied equally or by which certain communities or individuals are barred from exercising their religious beliefs.

The following basic questions illustrate some of the elements of discrimination:<sup>158</sup>

- Does the State show favoritism towards a particular religion or belief in such a manner that other groups are disadvantaged?
- Are there limitations on the social, economic, or civil rights of members of any groups?
- Is social and economic discrimination on the basis of religion or belief widespread in society? Does the State take measures to counter this?

Another fundamental principle underlying religious freedom is the immunity or protection from coercion.

As ICCPR Article 18 (2) states: “. . . no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”<sup>159</sup> In expanding on what coercion entails, the Human Rights Committee states: “. . . including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect [...] are similarly inconsistent with article 18.2.”<sup>160</sup>

This dimension is intended to guard against steps that move beyond reasonable persuasion and to compulsion or coercion “either by improperly inducing an individual to change a religion or belief, or improperly preventing an individual from changing religions or beliefs.”<sup>161</sup> Coercive acts can be perpetrated by both state and non-state actors and can go in both directions of forcing someone to accept a belief against their will or to recant their beliefs. Even the coercion to involuntarily reveal one’s religion or belief may be prohibited.<sup>162</sup> Targeted acts of violence or intimidation through words or actions may often be done with a coercive aim to force or threaten individuals to take a particular course of action.

According to the Organisation for Security and Co-operation in Europe (OSCE), the historical background for coercion concerns was the legal and social pressures that would prevent a person from changing religions than fears of proselytism or missionary work that may include improper inducements, though both are potential areas of concern.<sup>163</sup>

The following basic questions illustrate some of the elements of coercion:<sup>164</sup>

- Are religious or belief activities the target of mob violence? Are hate crimes related to religion common? Are individuals who leave a religion the target of violence? Does the State take adequate measures to prevent this and provide protection and justice?
- Do any State-enforced religious laws violate human rights? (State law may coerce observance of religious norms that violate human rights.)

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<sup>157</sup> ICCPR, Art. 26.

<sup>158</sup> SMC, “Useful questions to consider when evaluating the state of freedom of religion or belief in a country,” FoRB Learning Platform, 2018.

<sup>159</sup> ICCPR, Art. 18 (2).

<sup>160</sup> General Comment, para.2.

<sup>161</sup> OSCE/ODIHR, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, p. 11.

<sup>162</sup> Council of the European Union, *EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief*. Foreign Affairs Council Meeting, Luxembourg, 24 June 2013, p. 2.

<sup>163</sup> OSCE/ODIHR, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, p. 11.

<sup>164</sup> SMC, “Useful questions.”

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Do individuals, particularly women, face societal coercion to practice or refrain from practicing religion, or to follow religiously motivated codes of conduct? Does the State take measures to counter this?

As with the interior and exterior dimensions of religious freedom, the principles of non-discrimination and non-coercion provide a useful heuristic for assessing when a given violation or abuse may have a religious freedom component.

### 1.3.3 TWO TYPES OF VIOLATIONS: SPECIFIC VIOLATIONS OF RELIGIOUS FREEDOM AND RELIGIOUS FREEDOM AS A COMPONENT OF A VIOLATION

When considering violations of religious freedom, there are times in which restricting the freedom of religion or belief is the explicit aim of the violation. There are other occasions where the violations may not be explicitly aimed at restricting religious freedom but in which it still is a component of the violation. A danger in monitoring violations is either to be too broad and thus over-report violations of religious freedom or to be too narrow and thus underestimate the ways in which religious freedom is relevant in the forms of violations or abuses being committed.

In carrying out documentation of religious freedom violations it should be considered and, where appropriate, indicated whether religious freedom was the primary or a secondary factor. Considering these various distinctions is important for identifying the interplay between religious freedom and other related rights or types of violations.

### 1.3.4 TWO ACTORS: STATE AND NON-STATE

In monitoring and reporting on violations of religious freedom, incidents are generally divided among two primary actors: government restrictions and violations and non-state hostilities. A recognition of the responsible party for a particular violation is critical to properly assessing and pursuing efforts to redress the violation. There can often be an interplay between both the state and non-state actors in a violation. One example of how this might play out is an incident where a non-state actor might commit a violation and the state authorities fail to intervene and thus fail in their responsibility. Thus, it creates a second violation whereby the state may be either complicit or negligent in its duties.

The State bears the primary responsibility with regard to the protection and promotion of freedom of religion or belief within the area of its jurisdiction.<sup>165</sup> Therefore, this includes a responsibility to ensure that its laws, policies, and actions respect and uphold freedom of religion or belief for all of those within its jurisdiction. In addition, the role of the State is also to prevent violations of freedom of religion or belief by non-state actors and, when violations are committed, to bring the responsible parties to justice, holding accountable those who would violate this precious right.

When considering the State as the responsible party in a violation, it is critical to remember that governments are not monoliths and actions and violations can play out at various levels of the government. There can be wide variations in the respect for religious freedom from region to region within a single country. Even where there may be a strong central government that in general seeks to uphold religious freedom, violations may still persist at the regional or local level. Alternatively, a central government may seek to impose restrictive policies that violate religious freedom and yet the application may be uneven across various levels of government. The variations may not only vary across level (federal, regional, local) and geographically, but also branches of government. For instance, the military may possess significant control and influence in certain areas and enforce policies that differ widely from those enforced by the civilian government.

Non-State actors also encompass a wide variety of actors ranging from terrorist and paramilitary groups, to religious organizations and leaders, businesses, media, political parties, non-governmental organizations, local communities, and individuals.<sup>166</sup>

When appropriate, monitoring efforts may seek to identify individual responsibility for violations of religious freedom. Important steps must be taken to ensure that this process is handled appropriately.<sup>167</sup>

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<sup>165</sup> Marie Juul Petersen and Katherine Marshall, *The International Promotion of Freedom of Religion or Belief: Sketching the Contours of a Common Framework*, The Danish Institute for Human Rights, pp. 27-29.

<sup>166</sup> Marie Juul Petersen and Katherine Marshall, pp. 27-29.

<sup>167</sup> Office of the UN High Commissioner for Human Rights (OHCHR), "Who's Responsible: Attributing Individual Responsibility for Violations of International Human Rights and Humanitarian Law," in *UN Commissions of Inquiry, Fact-Finding Missions and Other Investigations*, 2018.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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### 1.3.5 RESOURCES FOR MONITORING RELIGIOUS FREEDOM

Effectively monitoring the situation of religious freedom in a given area, over an extended period of time can play an important role in building the evidence base and improving the respect for and protection of religious freedom for all people.

There are variety of existing efforts to monitor religious freedom violations that can contribute to the efforts focused on a particular geographic area. The following represents a brief introduction to those resources, which can be consulted for further information.

#### **Commitments to International Covenants**

- Office of the High Commission for Human Rights Ratification Database, available at <https://indicators.ohchr.org>
- United Nations Tracking, available at <https://track.unodc.org>
- United Nations Treaty Database, available at [https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=\\_en](https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en)
- Universal Periodic Reviews, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

#### **Religious Freedom Monitoring Resources**

These resources provide examples of existing global or regional publications that provide regular monitoring of religious freedom. These may be consulted along with other more focused country-level monitoring projects. In addition, general human rights monitoring projects may include specific sections or information on religious freedom violations that may also be of value in developing a monitoring project.<sup>168</sup>

United Nations Special Rapporteur on Freedom of Religion or Belief Annual Report: The Special Rapporteur on Freedom of Religion or Belief is an independent expert appointed by the UN Human Rights Council. Within the mandate of the Special Rapporteur there are two separate reports submitted annually, one to the United Nations Human Rights Council and the other to the United Nations General Assembly. These reports typically highlight key activities from the reporting period, general global trends, as well as a specific issue area or topic of focus for the report.

**The Special Rapporteur's Annual Report is available at:** <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>

**The United States Department of State – Annual International Religious Freedom Report:** The Annual Report to Congress on International Religious Freedom, also known as the International Religious Freedom Report, describes the status of religious freedom, government policies violating religious belief and practices of groups, religious denominations and individuals, and U.S. policies promoting religious freedom.<sup>169</sup>

**Annual Reports are available at:** <https://www.state.gov/international-religious-freedom-reports/>

**The United States Commission on International Religious Freedom (USCIRF) – Annual Report:** Created by the International Religious Freedom Act of 1998 (IRFA), USCIRF is an independent, bipartisan U.S. government advisory body, separate from the U.S. State Department, that monitors religious freedom abroad and makes policy recommendations to the U.S. President, Secretary of State, and U.S. Congress. USCIRF bases these recommendations on its statutory mandate and the standards in the Universal Declaration of Human Rights (UDHR) as well as other international documents.

**USCIRF Annual Reports are available at:** <https://www.uscifr.gov/reports-briefs/annual-report>

**The Pew Forum:** Annual Restrictions on Religion Report: The Pew Research Centre annually produces a report

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<sup>168</sup> For further analysis of the strengths and weaknesses of various monitoring resources see especially: Marshall, K. (2021) Towards Enriching Understandings and Assessments of Freedom of Religion or Belief: Politics, Debates, Methodologies, and Practices, CREID Working Paper 6, Coalition for Religious Equality and Inclusive Development, Brighton: Institute of Development Studies.

<sup>169</sup> "International Religious Freedom Reports," U.S. Department of State, <https://www.state.gov/international-religious-freedom-reports/>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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measuring restrictions on religion around the world. The report utilizes a scale that ranks each country on two indexes: a government restrictions index (GRI) and a social hostilities index (SHI).

**The Reports are available at:** <https://www.pewresearch.org/topics/restrictions-on-religion/>

**Religion and State (RAS) Project: RAS Dataset:** The Religion and State (RAS) Project is a university-based project located at Bar Ilan University in Ramat Gan, Israel. Its goal is to create a set of measures that systematically gauge the intersection between government and religion. Specifically, it examines government religion policy. Round 3 of the RAS datasets, which is currently the official version available for download, measures the extent of government religion policy for 183 States on an annual basis between 1990 and 2014. This constitutes all countries with populations of 250,000 or more as well as a sampling of smaller States.

**Reports are available at:** <http://www.religionandstate.org/>

### **Additional CSO Reports / Resources:**

- FoRB Learning Platform: <https://www.forb-learning.org>
- Open Doors International: World Watch List: <https://www.opendoorsusa.org/world-watch-list/>
- Religious Freedom Institute: Country Landscape Reports and Case Studies: <https://www.religiousfreedominstitute.org/publications>
- Aid to the Church in Need: Religious Freedom in the World: <https://religious-freedom-report.org/>

## 2. Documenting Violations of Religious Freedom – Key Principles of Documentation

### 2.1 Harm Reduction

Before moving on to consider the stages in documentation, it is of value to consider the mandate to ‘Harm Reduction,’ which serves as a key principle that should inform and guide any effort to investigate or document all human rights violations, including the violation of freedom of religion or belief.<sup>170</sup>

The commitment to ‘Harm Reduction’ serves as a fundamental ethical principle at the heart of all human rights activity. It requires, at a minimum, that the documenter have a clear understanding of the potential risks that are introduced for the victim of a violation, the family, or other relations of a victim, the community members, the witnesses, and even to documenters themselves. Given the potential risks that are present, appropriate measures should be taken to mitigate, as much as possible, those risks of added harm for those involved.

There are multiple sources of potential harm for victims, some examples may include but are not limited to: 1) the original suspected perpetrator(s) or those associated with the alleged perpetrators; 2) authorities or other officials, including health, law enforcement, or members of the legal community who are unresponsive or provide inadequate services to the victim; 3) members of the victim’s family or community who may be hostile or unsupportive of the victim; 4) and even by the individual or organization seeking documentation, which might unintentionally or inadvertently bring added harm to the victim or others involved.

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<sup>170</sup> These principles are drawn in large part from Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second Edition, March 2017; Global Rights Compliance, *Basic Investigative Standards for First Responders to International Crimes*, 2016; and “Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles & Best Practices.” Public International Law & Policy Group, 2016, <https://www.publicinternationallawandpolicygroup.org/toolkits-and-handbooks>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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There are also multiple types of harm that should be accounted for in the planning and actual process of documentation. These may include among others, 1) immediate physical harm, 2) secondary physical harm, 3) psychological harm; 4) socio-economic harm, 5) moral damage, and/or 6) legal harm.

Each of these factors should be taken into account by those seeking to do documentation work and appropriate steps put in place to address any potential negative impacts. Given that there can never be a full elimination of risks, the following principles that protect the agency of the victim are of critical importance for pursuing documentation of serious human rights violations. Advocates should bear in mind that a significant form of harm reduction can be achieved by seeking information from sources other than vulnerable survivors.

The points below provide additional elements to further elaborate elements of the 'Harm Reduction' principle and how this should inform documentation efforts.

### 2.2 Informed Consent

A critical initial step in the documentation effort is securing informed consent, which is grounded in the principle of autonomy and embodies the idea that an individual should be free to choose her or his own course of action regarding involvement in the documentation of a violation. Obtaining informed consent is a legal and ethical obligation of anyone gathering information from victims/witnesses about crimes under international law, including violations of human rights.<sup>171</sup>

As defined by the Public International Law and Policy Group (PILPG), informed consent is:

*Ensuring that consent is based on adequate disclosure and understanding of the potential benefits and adverse consequences of providing information, including the nature of the process, why the information is being sought, how the information will be used and possible consequences; their right to refuse to participate; and that consent is given voluntarily without coercion by others.<sup>172</sup>*

These basic elements form the fundamentals of *informed consent*:

- **Comprehension:**
  - Full disclosure of information regarding all aspects and stages of the documentation process, its risks and benefits, the mandate of the group or individuals documenting and those with whom information may be shared; the meaning of confidentiality and how it applies; and
  - Full understanding of the information disclosed to them in a language and manner that is accessible to them.
- **Voluntariness:**
  - Giving their voluntary consent without coercion. It is important to consider who is present and how relational or power dynamics may contribute to explicit or implicit forms of coercion.
- **Stated Permission:**
  - Indicating their consent in an explicit way, through a signature on a written consent form or sometimes an audio or video acknowledgment of consent. If written or oral recordings raise security issues, express consent is still required but can be verbal only.
  - It is also a good practice to ask the victim or witness to explain what they understand about the process because a simple "do you understand?" question may lead to an affirmation without full understanding.

It is important to note that seeking *informed consent* is a process that should include seeking consent to each of the relevant stages of documentation as well as the various aspects of documentation and potential advocacy or referral for services.

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<sup>171</sup> Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second Edition, March 2017, p. 89.

<sup>172</sup> *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles & Best Practices*. Public International Law & Policy Group, 2016, p. 9, available at: [https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations\\_c.pdf](https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations_c.pdf).

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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Stages of documentation where explicit consent should be sought may include consent for any of the following:

- to be interviewed and/or examined;
- to be photographed or recorded;
- to have information they provide recorded;
- to be referred to support services; and
- to have information and contact details shared with third parties.

If an individual is unwilling or unable to provide informed consent, then information should not be documented for the individual. It may still be possible or appropriate to offer comfort or encouragement or referral to other service providers, but caution should be paid to respect the desires of the individual.

### Informed consent

- Ensure that the purpose and process of documentation has been clearly explained in a language that the victim or witness can understand.
- Give special attention to avoid any elements of coercion to act against their desires.
- Secure explicit *written informed consent* (whenever possible) from the victim before beginning the documentation process and at key points during the process (for instance, discussion referral for support, sharing with third parties, etc.).

## 2.3 Confidentiality

The principle of *confidentiality* pertains to maintaining the privacy of the identity, information collected, referrals made, services provided and other information relative to documentation of an incident. Establishing and ensuring a *principle of confidentiality* can be critically important for establishing a relationship of trust between a documenter and a victim. Confidentiality should be understood as both an ethical obligation and an operational necessity.

The *level of confidentiality* is often closely connected with the intended use of information and desired outcomes of the victim. Some individuals may desire full disclosure and publicity of the details of the incident and their identity, while others want near total anonymity. The decision on what path to pursue is ultimately that of the individual them self. While the ultimate use of the information will dictate the level of information shared, robust procedures should always be followed to maintain integrity and operational security.

Information should be collected, used, shared, and stored in a confidential manner in line with the *informed consent* granted by the victim/witness. It is important to ensure that both procedures and facilities are in place to protect the *confidentiality of the information* collected.

Once a set of procedures have been established, it is critical that this information be regularly communicated to all members of the documentation team and anyone that may come into contact with the information collected. These procedures should include, among others:

- What information is and is not collected;
- Where and how it is stored;
- Who has access to it and under what conditions; and
- When information is disclosed or made public and what level of detail may be included.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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*Information protection practices* may include measures such as: coded language or passwords to anonymize information; redacted personal information; separation of identity of a source from the witness's statement, etc.

These established procedures should also include *guidelines* for ensuring precision of the information that is collected, including appropriate cross-checking methodologies and for how the information is distributed. These steps are necessary to protect both the wishes of the victim as well as to maintain the integrity and reliability of the documentation organization.

There are *limits to confidentiality* that need to be understood by all team members and clearly explained to victims/witnesses. An important *limit on confidentiality* is that there may be possible disclosure to criminal justice authorities. The confidentiality policies undertaken by NGO documenters may not qualify for legal privilege to prevent required disclosure in some instances. Therefore, documenters should make clear that confidentiality is only guaranteed in line with the intended usage of the information and abilities of the organization.

### Confidentiality

- Develop established *confidentiality procedures* prior to beginning a documentation project and ensure that they are regularly communicated to every member of the team who may have access to sensitive information.
- Ensure that information to be shared publicly is cross-checked for accuracy and for permission for public disclosure.
- Be certain that the *confidentiality policy and limitations* are made clear to the victim/witness.

## 2.4 Managing Expectations: Fulfill Your Mandate

The mandate of an organization must always be kept in mind as a guiding principle.

The *mandate of an organization* should be clearly communicated to those who are being interviewed to ensure they understand the purpose and potential outcome of the documentation process.

While maintaining principles of “Harm Reduction,” an organization’s mandate may often drive the focus of their research or documentation efforts in particular directions and these should be made clear as explicitly as possible. It may be the case that an organization or project has a particular mandate to focus on violations impacting women or a particular minority or faith tradition. The direction of the mandate should be made explicit to ensure clarity among participants.

The *purpose and planned outcomes of the documentation* should be clearly and regularly communicated to those being interviewed. Ensuring that this is understood will help to manage expectations and ensure a clarity of purpose and appropriate coordination among various types of organizations who may be working on differing but overlapping issues related to particular types of violations.

Documenting severe violations will often bring an individual and organization into contact with a wide variety of needs, which may or may not fall within the mandate of a given organization. It is important to be clear about this with victims or others with whom you might interact.

Clearly communicating the mandate of an organization or project can help to manage expectations. While some organizations are multi-sectoral and able to respond to a wide variety of needs, others are more narrowly focused and therefore are unable to provide additional support beyond their narrow mandate.

It is good practice to develop a procedure for referrals within the planning stage of a documentation project. Identifying options of referral for services likely to be encountered during the documentation process can help to manage expectations while still aiming to meet identified needs that may be uncovered. These referrals may be for health or medical services, psychosocial or trauma counseling, legal, economic, or other types of assistance.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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The available services may include local, national, and international NGOs, government-run programs, or informal community or faith-based programs. As part of the preparation stage, it is useful to collect the contact information for referrals and a thorough understanding of exactly what programs and services are available and how they might be accessed. Having this information readily available during the documentation process will enable documenters to remain focused on their task while providing added value to those with whom they are interacting.

A clear mandate plays an important role for clarifying the type of information to be collected, the purpose for which it will be used, and the things that fall beyond the scope of available resources.

### 3. Stages of Documentation

Human rights documentation follows four main stages: (1) planning and preparing for documentation; (2) collecting the data through various means; (3) verifying the information that was collected to assess whether it is sufficient, credible, and reliable; and (4) analyzing the information to determine whether it could amount to a violation of the freedom of religion or belief under the body of international law that applies (international human rights law, international humanitarian law (IHL), or international criminal law).

#### 3.1 Understanding Documentation Requirements

Preparing for documentation, when it is feasible, can be the most important stage of documentation. It includes planning the documentation, preparing how to collect and preserve information, and preparing to engage in documentation safely and securely for everyone involved. All team members participating in the documentation should be trained on these practices.

Circumstances and conditions do not always allow for full preparation and sometimes for none. In case of sudden and unexpected events that need to be documented, it may not be possible to assess the risks, determine security, create a documentation plan, or prepare team members. In such cases, the primary concern is the safety of documenters and individuals who share information with documenters (victims, witnesses, third parties), in accordance with the principle of Harm Reduction. Even if it may not be as illustrative, convincing, or indisputable, information can be documented after a crisis, though not without the risk of harm to stakeholders and teams conducting documentation; such decisions should be weighed carefully.

Documenters should familiarize themselves with best preparation practices in advance to apply as many of these practices in the situations they encounter, whether there is time for preparation or not.

#### **Prior to beginning to document violations, documenters should:**

1. Understand the context of the violation: the religion, the environment, the root causes, the actors present, and the socio-political situation.
2. Identify the legal framework under which documentation will be conducted:
  - Is the incident occurring in times of peace, armed conflict, or internal disturbance?
  - Which international or regional treaties can apply to the situation at issue? Is the State party to the treaty or treaties that apply?
  - Which international protections in which treaty, is not being respected or is being actively violated? Which aspects of the freedom of religion or belief seem to be implicated?
3. Understand principles and requirements of collecting high-quality information and evidence based upon the largest choice of procedures and avenues, domestic authorities, or international bodies.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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4. Determine how information will be stored and preserved, and how to record the collection and transfer (chain of custody) of any physical evidence or documents that could be obtained. This is key to ensure a thorough and complete record of the situation.
5. Prepare a Documentation Plan to determine who may have information, where information may be found, and how information will be collected.
6. Prepare conditions to conduct documentation safely and securely for both documenters and stakeholders. Assess the risks to documenters, individuals sharing information, and the information itself. Prepare where to store information and evidence securely, and the measures needed to ensure the *confidentiality of individuals who will be interviewed or share information*.
7. Prepare and train team members about the principles of human rights documentation, especially Harm Reduction. This should include determining whether documentation should be conducted alone, as a small team, or as a large team, depending on how the situation will be documented.
8. Work with a trusted interpreter and provide information to the interpreter on how to conduct human rights interpretation. This is key to respecting the interviewees' voices, and to collecting accurate and thorough information.

### 3.1.1 UNDERSTANDING THE LEGAL FRAMEWORK APPLICABLE TO A SITUATION

Documentation is strongly informed by the legal framework that applies, or that contains the protections documenters seek to demonstrate a violation thereof.

Different frameworks require specific elements to be documented and have standards to meet to assert that an incident amounts to a violation. Documentation should be conducted with the legal framework applicable to the situation in mind to collect the information required to demonstrate a violation or a crime.

#### **Which Legal Framework Applies?**

As outlined above, different bodies of international law apply in different circumstances.

- International Human Rights Law (IHRL) applies at all times: in times of peace and armed conflict.
- International Criminal Law (ICL) applies in very specific contexts that need to be documented for all the requirements of the crime to be satisfied. War crimes are committed in the context of armed conflict, crimes against humanity are committed in the context of widespread and systematic attack, and genocide is committed against a national, ethnic, racial, or religious group with the intent to destroy the group in whole or part.
- International Humanitarian Law (IHL) applies only in times of armed conflict: international armed conflict between two States, and non-international armed conflict between a State and one or more organized armed group(s), or between organized armed groups.

Once the applicable legal framework(s) is determined, documenters should be aware of the requirements under the treaty to show a violation. This requires showing that an international legal right was violated or that an international crime was committed and connecting the violation or crime to the responsible entity.

#### **What Do Legal Frameworks Require from Documentation?**

Different legal frameworks hold different entities responsible: either the State or a private actor (individuals or an enterprise). They also have different requirements to show that a situation amounts to a violation.

**International Human Rights Law (IHRL)** provides standards that **States** have agreed to comply with. Under IHRL, States have the obligation to respect, protect, and fulfill human rights. They must respect human rights by **not** acting in a way that violates them, and by actively taking action to protect and fulfill them. Realizing human rights is a duty of the State, not private individuals. Therefore, the entity responsible when human rights are not satisfied or violated is the State. This is different from other bodies of international law, such as International Criminal Law (ICL), under which individuals only can be responsible for—guilty of—international crimes.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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When documenting violations under IHRL, it is important to identify and document how the State is responsible. To hold the State responsible, the violation must be committed by public actors that work for, are representatives of, or given direction by the State. Documentation needs to show how State actors were involved and the role that they had in committing the violation (ordering it, acquiescing to it, not preventing it, etc.).

Human rights violations are also often committed by non-State actors, such as private citizens, corporations, or organizations. Under their responsibility to protect human rights, States can be responsible for violations committed by non-State actors, if they knew or should have known of an existing violation, or the risk of a future violation.

**International Criminal Law (ICL)** establishes the responsibility of *individuals* for international crimes. Individual and corporate citizens of States that are party to the Rome Statute can be held responsible for violations of ICL: war crimes, crimes against humanity, or genocide.

These three international crimes are divided into three elements. Each of them must be demonstrated to hold an individual criminally responsible:

- 1 **The act and intent of the crime** (the specific element): this requires proof of the crime that was committed (murder, rape, torture, slavery, or other), and of the intent to commit the crime. These elements are similar or identical to crimes found in domestic criminal law.
- 2 **The context of the crime** (the contextual element): this is the context in which the crime was committed.
  - **War crimes:** the crime must have occurred during international or non-international armed conflict to be considered a 'war crime.' International armed conflict opposes two or more States. Non-international armed conflict occurs between governmental forces and non-governmental armed groups, or between such groups only.
  - **Crimes against humanity:** the crime must have occurred during the commission of a 'widespread or systematic attack on any civilian population.'
  - **Genocide:** the crime must be committed against a national, ethnic, racial, or religious group, with the intent to destroy the group in whole or in part. Destruction is defined as biological destruction.
- 3 **The way the perpetrator participated in the crime** (the linkage element): this is the role of the individual in the commission of the crime. These roles can be committing the crime, co-perpetration, joint criminal enterprise, attempt, planning, indirectly perpetrating, ordering, superior or command responsibility, conspiracy, incitement.

The definition of each of these modes of liability are found in the Rome Statute.

Under International Criminal Law, crimes committed against civilians on the grounds of religion or belief need to show the perpetrator's intent to target civilians because of their religion.

For example, the destruction of a religious building in the context of high-intensity armed conflict may not have been on the grounds of a religion, if there was no policy or motive to attack the building because it was religious. The destruction of cultural property within a policy of extermination or discrimination may contribute to establishing that a given series of actions amount to crimes against humanity and/or genocide when accompanied by other factors that establish the intent and linkage of a crime.

**To illustrate this**, in Iraq, the Islamic State targeted and destroyed Yazidi, Christian, and Shia religious shrines in a regular and systematic way throughout 2014-2016. When religious sites were not completely destroyed the religious symbols within those buildings were often explicitly defaced or destroyed. In addition, the goal of eliminating the presence of Yazidi and Christian communities was repeatedly communicated in the organization's propaganda. In addition, the Islamic State's propaganda publications termed members of the Yazidi community 'infidels,' calling for their extermination. Christians towns were invaded, destroyed, and overtaken by the group, forcibly displacing the majority of the community.

Taken together, these elements demonstrate a clear act and intent, during the context of armed conflict, to commit a systematic attack on the civilian Christian population. Acts committed against the Yazidi

## PART 2. Monitoring and Documenting Violations of Religious Freedom

community were in addition committed with an intent to destroy a group(s) in whole or part based on religious identity. Thus, these activities could rightly be classified as war crimes, crimes against humanity, and genocide according to the definitions in international law.

**International Humanitarian Law (IHL)** holds parties to a conflict accountable for violating IHL. Parties can be State or non-State actors, such as armed groups. Both States and individuals can be held liable for violations of IHL. Individuals can only be held responsible if they are a member of, or acting on behalf of, a party to the conflict. Individuals can violate IHL by:

- Committing the violation themselves personally, ordering it, or directing others to commit it; and/or
- Failing in their responsibilities of leadership, such as command or superior responsibility (this can be civilian or military).

War crimes are violations of both IHL and ICL. For war crimes, one can seek the responsibility of individuals under both IHL and ICL and seek the responsibility of a State or non-State actor, *as a whole entity*, under IHL.

### **Summary: Entities Responsible under International Legal Frameworks**



Lastly, allegations of violations of international law need to meet a specific standard to hold the State or the individual responsible for an allegation to be credible and considered likely to have occurred, the information collected must provide **“reasonable grounds to believe”**<sup>174</sup> that the entity committed the violation. Most UN bodies will be able to

<sup>173</sup> International Committee for the Red Cross (ICRC), Customary International Humanitarian Law, Rule 149—four categories of individuals who can engage the responsibility of the State.

<sup>174</sup> OHCHR, Who’s Responsible? pp. 29 & 37.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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consider evidence of human rights violations that meet the “reasonable grounds to believe” standard.

### **Can the Perpetrator Be Held Responsible?**

In order for the entity responsible to be held accountable, the treaty or treaties of each legal framework should apply to the State where the alleged violation was committed, or to the situation itself.

- Under IHRL: the State where the violation occurred should be party to the ICCPR or other international human rights treaties. Some rights are considered peremptory norms of international law, which all States are required to respect and protect regardless of whether they are party to a treaty that protects them. These norms include: the prohibition of genocide, of crimes against humanity, of slavery, of torture, and or racial discrimination.<sup>175</sup>
- Under ICL: ICL offenses should be explicitly prohibited in a State’s domestic law. The State can decide to exercise jurisdiction if the crime occurred on its territory, or the perpetrator(s) or the victim(s) is a national of that State. For war crimes, crimes against humanity, and genocide, any State can exercise jurisdiction over the offense regardless of the place where they were committed or the nationalities of the perpetrator or victim. This is called ‘universal jurisdiction.’ Some States limit universal jurisdiction with time limits to bring a complaint, or requiring the presence of the perpetrator on their territory.



ICL application should not be confused with the jurisdiction of the International Criminal Court. For the ICC to have jurisdiction, either the State where the crime occurred, or the State where the perpetrator(s) is/are from, should be a party to the Rome Statute for the individual perpetrator(s) to be held accountable for the crimes contained in the Statute (*See Part 3 – Advocacy Avenues for an outline of the requirements to trigger ICC jurisdiction*).

- Under IHL: the State(s) party to the conflict alleged to have committed a violation should be party to the Geneva Conventions, the individual(s) alleged to have committed a violation should be a member of a party to the conflict (State or group).

These requirements will determine what forums or venues are available for redress, and what legal strategies can be used. When the legal framework does not specifically apply to the incident, advocates can pursue with documentation and consider alternative advocacy methods, such as the media or political avenues.

### **SUMMARY**

#### **Requirements for Documentation under International Human Rights Law (IHRL)**

- Demonstrating that a human right was violated, such as an element of the freedom of religion or belief; and
- Demonstrating State responsibility—attributing responsibility to the State:
  - Demonstrating that the violation was committed by public actors who work for, are representatives of, or given direction by the State; and
  - Demonstrating that the violation was committed by non-State actors, but the State knew or should have known of the violation and failed to protect against it.

#### **Requirements for Documentation under International Criminal Law (ICL)**

- Demonstrating that a specific crime occurred;
- Demonstrating that the crime occurred in the context required; and
- Linking the crime to an individual who may bear criminal responsibility.

#### **Requirements for Documentation under International Humanitarian Law (IHL)**

- Determining the existence of an armed conflict to which the Geneva Conventions apply;

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<sup>175</sup> United Nations Office of Legal Affairs, Peremptory Norms of General International Law (Jus Cogens), A/74/10, available at: <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Demonstrating that the incident violates the Geneva Conventions; and
- Demonstrating that the violation was committed by a party to the conflict: either a State, a non-State armed group, or an individual member of, or acting on behalf of a party to the conflict.

### 3.1.2 UNDERSTANDING REQUIREMENTS FOR EVIDENCE AND HIGH-QUALITY INFORMATION

#### **Information versus Evidence**

The material that documenters collect when documenting an incident is called ‘information’. Documents, objects, or testimonies can all provide information about a situation. ‘Evidence’ is information that is submitted to a court in the context of a judicial process.

There are three types of information: physical, documentary, and testimonial.

- Physical information includes objects, such as computers, equipment, weapons, clothing. It also includes materials detected through scientific means, such as DNA and fingerprints.
- Documentary information includes anything in or on which information or a description is recorded. This can be official documents, private letters, emails, databases, maps, photographs.
- Testimonial information includes oral or written statements by victims, witnesses, suspects, or third parties on matters of fact relating to the incident.

#### **Principles of Evidence and High-Quality Information**

When seeking accountability for an incident, different procedures have different requirements in terms of the quantity and quality of the information that needs to be presented to prove the allegation.

Therefore, the information documenters need to collect will depend on the purpose for which the information will be used. Judicial procedures, whether domestic or international, require a high standard of proof. By contrast, reporting procedures such as UN Special Rapporteurs may be able to act with little or fewer details.

While many bodies do not have standards as strict as courts, it is always very useful to collect information in a way that meets judicial standards, because it can ensure the information is of a strong quality: information that guarantees the rights of the victims, the rights of the persons responsible, and illustrates the facts without bias. Of course, conditions can prevent reaching the highest standard for information. Documenters should aim to obtain the best possible information and to use all the information available to them to build a strong allegation.

For information to be admitted as evidence in judicial procedures, the information must be **relevant, credible, accurate, and reliable**. These are the standards both domestic and international courts use to consider information.

**These principles are important:** even when a person is making an allegation based on their own experience, it is difficult for documenters to be certain that the information they collect is accurate, reliable, and therefore of high quality. Human rights violations and international crimes occur in contexts with strong allegiances and beliefs, which can influence the way allegations are reported. Human beings do not have perfect senses or memory, and events can be understood or interpreted in many ways.

Regardless of the documenter’s personal opinion on the content of the allegation, it is necessary consider whether, *objectively*, the information is sufficiently accurate, reliable, and of good quality to initiate an action before a domestic authority or an international body.

As mentioned, the degree of quality, accuracy, and reliability that the information will need to meet will differ according to the advocacy avenue selected. Regardless, documenters should always aim to reach the highest standard possible in the circumstances, if only to retain other possible courses of action. Importantly, the quality of the information is a reflection of the documenter’s own reliability. This will affect the documenter’s reputation with the authorities and bodies engaged with, as well as the seriousness with which the information presented is considered.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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### **When assessing information, judicial and advocacy bodies consider:**

- 1 Relevance of information:** Does the evidence relate to the subject under consideration (the incident), or a specific sub-issue (relating to the incident)? This includes who was involved in the incident, who was present at the time of the incident, where the incident occurred, or the guilt or innocence of the alleged perpetrator. In criminal trials, assessing the relevance of information will also include assessing its ‘probative value.’ This is the extent to which a piece of information proves or disproves one of the issues at trial. For example, if the issue is how the crime was committed, a video of the crime showing the weapons used will have value in proving the means of the crime.
- 2 Credibility:** Is the information believable? Is there anything that could make the information less believable? Can this be addressed?
- 3 Accuracy:** How accurate is the information given? For example, does a document name people or dates correctly? Is it consistent with other documents, or contradictory? Does a person describe events with detail that is convincing?
- 4 Reliability:** Is the source of the information reliable? If the source is an individual, do they appear to be truthful? Do they have a motivation to give false or inaccurate information? If the source is digital, can the source be trusted? Is there anything that could make the source of the information uncertain (including mistakes and inaccuracies) and therefore unreliable? **Remember that reliable sources can still produce non credible information, including unintentionally.**
- 5 Authenticity of documentary information:** To be considered reliable, documentary information must be shown to be authentic. Authenticity considers where the information or evidence came from. To be considered authentic, the provenance of the information should be clear. For example, an official document without a stamp or signature is not certain to be official. It can otherwise be authenticated by a witness, for example a government worker who testifies that the document is an official document with other details that can authenticate its origin. *(For guidelines on how authenticate a document, see 3.4. “[Verifying the Information](#)”.)*
- 6 Corroboration:** Is the information confirmed or supported by other information of any kind? Information that is corroborated by other information is likely to be considered more convincing, but should still be rigorously analyzed for reliability and credibility. This is particularly important for statements and testimonies since they recount an individual’s perspective, and are inherently subjective.
- 7 Weight to give the information:** What importance should be given to a piece of information in deciding whether an issue has been proven or not? Considering the weighting of the information relates to whether the information is relevant, reliable, credible, accurate, and corroborated.

### **Criteria for Best Quality Information**<sup>176</sup>

Factors that contribute to ensuring the best quality information that will meet most of the above requirements for evidence, include:

- 1 First-hand information:** This is information observed or obtained directly, rather than through a source/someone else (second-hand information). It can be a testimony recounting first-hand observation of events (from a victim, family, friends, witnesses), or the direct collection of physical information from a location. Testimonies of information heard from someone else, or media reports, are second-hand information. The more distance there is between information and an incident or victim, the less dependable the information will be.
- 2 Detailed information:** Information that contains a *spontaneous* high level of detail will be considered more credible. Accounts that contain only bare facts, or that have unexplained gaps are less helpful in understanding what actually happened.
- 3 Consistent information:** Good information should be consistent or provide a reason for inconsistencies. *Minor inconsistencies* are common as memory is imperfect, and often do not affect the overall quality of the information. *Major inconsistencies* should encourage further verification of the information. For example, if a

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<sup>176</sup> C. Giffard, *The Torture Reporting Handbook* (Essex: The University of Essex Human Rights Centre, 2000) at II.2.2, available at: <http://www.essex.ac.uk/torturehandbook/>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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witness makes two statements that contradict each other, this could be the result of external influence.

- 4 **Corroborated from several angles:** Information that is consistent with other information collected or received from different sources presents a more reliable representation of the facts. Witness statements can confirm a victim's account; medical certificate or reports gathered by qualified professionals can confirm injuries. The more supporting documentation provided, the stronger the allegation.
- 5 **Demonstrates a pattern:** evidence of a regular practice tends to be convincing. Allegations that are one of a kind in a particular area are not to be discounted, but multiple allegations presenting many similar facts can support each other.
- 6 **Recent information:** Information that is very recent is easier to investigate or verify. Allegations of facts that occurred several years prior may be more challenging to assess for credibility and reliability.

These criteria indicate a high standard for evidence. It is often not possible to obtain information of this quality. This does not mean that documenters cannot use information that does not meet these standards. Rather, the availability of information should be taken into consideration when determining how it can be used within the mandated purpose of the documentation. Information collected to the highest standard allows the widest choice of strategy, forum, venue, or procedure.

### 3.2 Preparing Documentation

Before beginning documentation, *three frames* should be put in place to guide the process and address the incident comprehensively:

- **Preparing a Documentation Plan** to determine what the specific incident to be documented is; where and from whom information about the incident may be found; and how the documenter will proceed to collect this information.
- **Implementing a system to record the documentation steps** that documenters take, to record their actions, for themselves and for judicial or advocacy to follow-up or present in their process/procedures.
- **Implementing a system to record and preserve the information** that may be collected, with a specific system for different types of information (objects, documents, and individual statements).

#### 3.2.1 CREATING A DOCUMENTATION PLAN

For situations that do not involve a rapid response, it can be useful for the documentation team to prepare a plan for how they intend to conduct documentation.

The **Documentation Plan** that the team prepares should be realistic and flexible: it should be a tool for the team to have a sense of direction and to collect the team's ideas. It should also be an important preparation for risks or dangerous situations that can come up during documentation, on location, or with individuals being interviewed.

Preparing a Documentation Plan is not always possible: some documenters may observe a situation and respond in the moment. At other times, an individual may come forward to say they were the victim of a specific abuse, asking to give a statement. Some of the following questions for the Documentation Plan can also be helpful at later stages, to follow up on an allegation with further documentation or to continue documenting a pattern of violations.

The elements to be thought through include:

- **Who are the stakeholders in the situation:** Who is involved in the incident; are there public or institutional actors, private or individual actors; who is responsible for the incident and how; who is directly and indirectly affected by the incident, and how?
- In thinking about stakeholders, it is important to protect against assumptions and attempt to be objective. To do so, it is important to consider how documenters know who the victim or the perpetrator is. In some cases, the responsibility may not be obvious—victims may be perpetrators, or perpetrators victims.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **What are the steps that could generate information:** Visiting locations, engaging with individuals.
- **Where can information be found:** Where the violation took place; where victims and witnesses were before, during, or after the violation; where potential perpetrators were before, during, or after the violation; other locations where similar violations occurred.
- **From whom information can be collected:** Which individuals could have relevant and probative information about the incident or could provide information that leads to further information about the incident; how to find, engage, and follow up with different individuals.
- **How to visit the location of the violation safely:** How to approach the location; what the team expects to find; how to approach the location without danger or damaging evidence; and prioritizing the locations to visit if there are more than one.
- **Preserving physical or documentary information:** What means will be used to securely collect or store evidence that could be found at the scene.

### 3.2.2 IMPLEMENTING A RECORDING SYSTEM

The way in which documentation is conducted and recorded can be as important as the information itself. Documentation should be recorded carefully, transparently, and verifiably.

Two aspects of documentation should be recorded and preserved:

- The process—the documentation steps and actions taken
- The results—the information collected.

*Before beginning documentation*, documenters should put in place an organized system to record their documentation steps and the information they collect so that the process is uniform and every part of it is documented. The whole team should be trained on the recording system and use it accordingly.

#### 1 The Process: Recording Documentation Steps

It is very important to record all the steps taken in documenting an incident to provide information and detail on the documenter's actions.

There is no standard way of recording documentation steps. However, basic steps are important to implement when recording the information in case it is shared later within advocacy or judicial contexts. This recording should be able to present the methodology of documentation that can later be analyzed by documentation or investigation experts. Documenters should record two aspects of the documentation separately:

- **The objective steps** of the documentation, in detail
- **Their subjective personal** comments and analysis.

This is best achieved by keeping two separate recording systems (for instance, notebooks, papers, files)—utilizing one that records the steps, and one that records the documenter's opinion. Files that record objective steps may be necessary for advocacy or court processes. Files that record opinion are necessary for the documenter to continue their documentation and analyze their information.

It is fundamentally important that any opinion or input from the documenter is clearly separated from the objective recording or facts or testimony.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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When objectively recording the documentation steps, documenters should record facts. This includes anything that occurred, the actions they took, and the details of the documentation process, specifically:

- Recording an objective step-by-step description of the documentation: where the documenter went, who accompanied her or him or who was present, what the documenter observed, and when.
- Describing all the information received, any leads provided to seek further information, and any other relevant events.

When recording personal comments, the documenter should include her or his own reflections, conclusions, notes about information received, or individuals they engage with (victims, witnesses, third parties). This should assist in formulating ideas and determining the next steps in the documentation. For example, if a witness provides important information but the documenter does not feel that the witness is trustworthy, the information provided should be recorded in the factual notebook, but the documenter's opinion should be recorded as personal opinion. The documenter may then choose to take extra steps to verify the information provided by the witness.

Documenters should record steps and information as they are documenting, while the information is fresh in mind. Details become difficult to recall after an hour or a day, after other events occurred.

### 2 The Results: Recording the Information Collected

Recording the information collected has two aspects:

- Recording what the information is; and
- In case of physical and documentary information, recording how the information was obtained, and all movements and known persons who have been in possession of the information (the *'chain of custody'*).

Thoroughly recording the information collected will greatly serve advocacy conducted as an outcome. A court or advocacy body must be able to trust the information documented. Records must be thorough and complete.

For the documenter, the recording system should be logical, easily understood, and allow information to be retrieved quickly. The recording system must also conform with the *confidentiality policy* and ensure careful control of who is able to access sensitive information and in what manner. Below is a suggested methodology for how to record information and the chain of custody.

#### **Creating a Documentation Folder**

Before beginning, documenters should create a Documentation Folder for the incident they will document. This folder can be for a larger incident or patterns of incidents, with divisions for each individual occurrence.

The Documentation Folder for an individual incident should be divided into individual **Files** that record the documenter's activities and the types of information received. The divisions of the Documentation Folder can be adapted or removed according to the information received, or not received. For example, if there are no sketches and diagrams, there is no need to create a separate file for them. To record information consistently among cases, documenters should create templates of each File ready to be used for each new Documentation Folder (see the [Appendices](#)).

A **Documentation Folder** should contain the following **Files**: (this could be physical or digital)

- **An "Activities" File:** This file should record and describe all documentation activities undertaken for the specific incident, copies of all documenters' notes with the steps they took and the facts they recorded. If documenters keep a notebook or file with objective documentation steps, and a file recording personal opinion, this File should contain copies of the objective steps.
- **A Communications File:** This file should contain the records and copies of all written correspondence. This includes private and official letters, emails, text messages, and other communication records. Correspondence should be organized chronologically. If the subject is not clear from the correspondence, documenters should add a brief summary and explanation of the context and purpose of the communication on a *separate page*.
- **An Interview File:** This file should record the statements obtained from interviews with victims, witnesses,

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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and third parties. It should contain **a copy** (not the original) of the documenter’s notes and the interviewee’s statement, with the date of the interview. Preferably, interviews should be organized chronologically. There should be **no** identifying information about the interviewee in this file (see the section on “**Safety and Security**”). All interviewee names should be replaced with a code. A separate list should be created with the code associated to an interviewee, their names, and information about them. This list should be locked away in a confidential and secure location, with the original notes and statements from the interview.

- **A Physical Evidence File:** This file should record all the physical objects and a description of the objects that were obtained or collected during the documentation. The evidence itself should be stored separately in a confidential and secure location, with a form registering the chain of custody.
- **A Document File:** This file should record all the documents obtained or collected during the documentation. Copies of the documents should also be added to the file. The original documents should be stored separately in a confidential and secure location, with a form registering the chain of custody.
- **A Video and Photography File:** This file should record all the video information or photographs that were taken or obtained by the documenter. It should include information about the photographer or video-maker, the time, and the place where the video or photograph was taken, and what it portrays. Copies of the photographs should be added to the file. The evidence itself should be stored separately in a confidential and secure location, with a form registering the chain of custody.
- **A Sketching and Diagram File:** This file should record all the sketches and diagrams created as part of the documentation, by the documenter, interviewees, or third parties. These sketches can be of anything: locations, scenes, routes taken to escape, mapping the layout of villages, routes that perpetrators took, drawings of house or building plans, etc. Individuals who created the sketch should be given a code name. Information about the individual who created the sketch, the date and time it was made, and what it attempts to portray should be kept separately in a secure and confidential location. Copies of the sketches should be added to the file. The sketches themselves should be stored separately in a confidential and secure location, with a form registering the chain of custody.



All original information—statements, objects, documents, sketches—and confidential identity information—the list of code names—should be stored separately in a secure and confidential location. This location should be locked with strictly limited access and be kept safe from the elements.

Each File should have a **File Log**: a separate document listing what the file contains, incoming and outgoing activity and information. This File Log should be kept in the File and be numbered. (Examples of File Logs can be found in the [Appendices](#) under “Basic Investigative Standards”).

### **In summary, each File should contain:**

- A File Log that lists what each File contains; and
- A copy or description of the information collected: copies of interview notes, descriptions of physical objects or documents.

For example, the Interview File should contain:

- A File Log listing all the interviewee statements that are contained in the Interview File.
- A copy of all the interviewee statements with code names.

In a separate, secure location, the documenter should keep the originals of interviewee statements and the **Code Sheet** with the interviewee names corresponding to the codes.

## PART 2. Monitoring and Documenting Violations of Religious Freedom



While this system appears to be elaborate, it does not require much to be implemented. The key to this system is ensuring that the recording is detailed, well organized, systematic, and presents all of the above-mentioned information that documenters are able to obtain. It does not need to be computerized. The Documentation Folder can be a simple plastic file, with paper divisions, and everything can be handwritten.

### 3 Recording the Chain of Custody of Information Collected

For physical and documentary information, a key element of any system is recording the chain of custody. The chain of custody of an item records every person who has had possession or custody of the item, from the time it was collected to the time it is transferred during an official process.

*Chain of custody* is necessary to determine whether the information is in its original condition. If a link in the chain is missing or questionable, the investigative, judicial, or advocacy process that is considering the information will need to consider whether the item has been damaged or altered. Alterations could be voluntary or inadvertent, but both can negatively impact the quality or reliability of the information. Information that may have been altered is no longer fully accurate, reliable, or credible.

Protecting the integrity of the information, object, or document therefore reduces the suspicion that it may no longer be reliable.

Once information is moved or removed from its original place, there should be a record of every person who had control or possession of it, as well as when, where, and why. This applies to all information, whether collected from crime scenes or from persons. The fewest possible persons should have access to and handle information.

Comprehensively recording the *chain of custody* requires:

- Recording the origin or the source of the information or item (where it came from);
- Labeling the information or item; and
- Recording all removals from its original place and its storage until it is transferred to authorities, a court, or an advocacy body.

See the Appendices for a sample [Chain of Custody Form](#) for physical and documentary information.

#### When collecting or receiving physical or documentary information, documenters should:

1. Place the information in a storage bag or envelope.
2. Create a **Chain of Custody Form** with the following information:
  - A description of the item (appearance, quantity, size, weight, distinguishing features);
  - The name of the person who received or collected the information;
  - The date and time it was collected or received;
  - Where it was collected or received; and
  - From whom it was received.
3. Create a copy of the Chain of Custody Form:
  - Attach the Chain of Custody Form to the bag or envelope; and
  - Keep the copy in the **Documentation Folder**, in the Physical Information File or the Documentary File, according to the type of information.
4. Seal the bag or envelope with adhesive tape in a way that can detect whether the bag or envelope was opened; and
5. Store the information in a secure location.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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From this point onwards, **any** handling of the information should be recorded on the **Chain of Custody Form**. This includes handling by internal staff who remove the item from storage to observe it and persons external to the organization to whom the information is transferred, *even if it is returned*.

The Chain of Custody Form should record:

- The name of the handler;
- The date and time the information was removed from storage;
- The name of the person(s) handling the information; and
- The reason why the information was removed.

Items and documents should be handled with care. However, some may be fragile. Any alterations (such as incidental damage) to the information as a result of handling should be recorded, with the date, time, how the item was altered as well as why the item was altered.

The above action begins the *chain of custody* from the time when the documenter collected or received the information. If the documenter has credible and reliable knowledge of others who have handled the item, this is useful to record but should be done separately from the Chain of Custody Form, for example, in notes or in a separate document included in the Documentation Folder.

The accuracy of the information should also be noted. For example, if a team member has knowledge of persons who handled the information before the documentation team received it, the names of such persons should be recorded, as well as the name of the team member, how the team member learned about this, and whether or how this knowledge was verified.

### Before starting work, documenters should ensure that they have:

- **A Documentation Folder** to record and store copies of information collected, divided by type of information (physical, documentary, testimonial, sketches, other);
- **A confidential and secure storage** for original and sensitive information;
- **A Documentation Plan** to prepare for the documentation;
- **Two separate documents** or notebooks to record the documentation steps as they take them as well as the documenter's personal reflections; and
- Template **Chain of Custody Forms**.

### 3.2.3 PREPARING SAFETY AND SECURITY

#### 1 Security for Stakeholders: Documenters and Participants

As mentioned above, a key principle of documentation is **Harm Reduction**, which means that the documentation should not leave anyone in a worse position than they were prior to engaging with the documentation process or documenters. This is particularly important when it comes to the security of individuals who documenters engage with. It also includes the security of the documenters themselves.

When planning and preparing to document an incident, documenters must assess the risks the documentation could have to (1) all those who will be interviewed or from whom information will be collected (victims, witnesses), and (2) all members of the documenting team. Risk should be assessed for every incident or situation that will be documented. If situations are similar, risks should be re-assessed to make sure that no other risks arose, and that security measures remain adequate.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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From this assessment, documenters can create a written risk assessment with the following information (See *Appendices, "Sample Risk Assessment"*):

- The nature of the risk
- The person(s) affected by the risk
- The reason why the person(s) is affected by the risk
- The measure(s) that documenters will take to address the risk, to mitigate it, or to avoid the risk occurring.

Below are some of the risks for documenters to consider, as well as measures to take, for their assessment. Risks are specific to each situation, and the list below is not exhaustive. Ultimately, documenters operating in their environment will have strong knowledge about the types of risks they face. For security reasons, written risk assessments should be kept in a confidential and secure location.

**The physical safety and security of victims, witnesses, and documenters should always take priority over documentation.** If it is unsafe to document a violation, measures should be taken to mitigate the risks of documenting. If it is not possible to address the risk, advocates should determine alternative ways of documenting.

Safety is of special importance for individuals interviewed about an alleged violation, and this importance increases with the seriousness of the incident. Victims and witnesses should be fully informed of the risks associated with contributing to documenting the alleged violation and must give informed consent to contribute.

Lastly, safety and security take full precedence over obtaining, gaining access to, or preserving information. If risks materialize during the collection of information, security should be prioritized over preserving the information collected. For example, if a documenter has scheduled an interview with a witness but adverse groups (government, militias, adverse individuals, and groups) are present and risk retaliation, the interview should be canceled and rescheduled only if safe to all parties.

### ■ **Assessing the Risks to Participants: Victims, Witnesses, and Third Parties**

There are both physical and mental risks to the individuals that documenters will interview. These risks come from alleged perpetrators, but also from other individuals and groups around the interviewees, such as communities and families. Risks often increase with the seriousness of the violation.

To assess the risk to interviewees, documenters should determine what the risks could be, and from what or whom they might come from.

Sources of risk include:

- **Perpetrator retaliation:** Is there a risk of retaliation, intimidation or threats by alleged perpetrators, their supporters, or their families?
- **Social circle retaliation:** Is there a risk of retaliation, intimidation, threats, or punishment by members of the interviewee's social circle, such as their community, family, or caregivers?
- **Forced reconciliation:** Could victims or witnesses be encouraged or forced to reconcile with the perpetrator(s)?
- **Rejection or abandonment:** Is there a risk that victims or witnesses may be rejected or abandoned by family members or the community? This is often the case in cases of sexual or gender-based violence, where survivors or children may be abandoned.
- **Loss of livelihood:** Is there a risk of interviewees losing their livelihood, such as their home, their work, their positions, access to education opportunities and schools, or access to work?
- **Arrest or imprisonment:** Is there a risk of interviewees being arrested and imprisoned for acts that are criminalized?

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **Conflict or displacement:** In case of armed conflict, is there a risk of interviewees being targeted or displaced because of the conflict?
- **Linking Interviewee and Information:** Is there a risk that the information provided by the interviewee can be traced back to the interviewee based on its content? Is there a risk to the interviewee if the information is linked to them? If so, what are these risks?
- **Linking the interviewee with the documenter:** Is there a risk from documenters being seen with the interviewee? Is there a risk from interviewees being seen going to a particular location or crime scene that could place them in danger?
- **Re-traumatization:** Victims or witnesses may experience the trauma of the incident again from having to tell or re-tell a story, from the conditions of the interview, or from consequences of the interview. ([See 3.3.3 “Interviewing.”](#))



Interviewees, especially victims and witnesses, will have knowledge as to the importance of some of the above risks. In many cases, interviewees are the only ones to be aware and able to evaluate the full extent of the risk to her or his person. As much as possible, and if this is safe, interviewees and relevant local actors should be consulted about local, community, or family-specific risks in advance.

### ■ **Assessing the Risks to Documenters**

Documenting human rights violations can present a serious risk to the documenter, particularly for grave violations. The most apparent risks stem from being a documenter, possessing information, traveling to the location of a violation, engaging with individuals involved in the incident, and working with partners. Documenters should assess other sources of risk that exist in their specific work and context.

To assess the physical risk to themselves and their team, documenters should consider the following:

- **Travel to an area:** Is travel to and within the area unsafe or dangerous? Do documenters have to travel multiple days and stay overnight? Are there armed groups in the area, such as terrorist or criminal groups? Are there adverse government authorities or forces?
- **Safety of the location of the incident:** Is the location of the incident safe to visit? Is access to the area safe? Think about: ongoing fighting; landmines or unexploded ordnances; chemical or biological contamination (from bombing or other); collapsing infrastructure or buildings; natural elements such as flooding, landslides, or extreme weather.
- **Documenter targeting:** Is there a risk of retaliation, intimidation, or threats by perpetrators, their families, or supporters *against documenters*? By government officials, police, or armed forces? By other actors? Is there a risk from victims themselves?
- **Possessing the Information:** Is there a risk to documenters if they are found in possession of the information collected (interview notes, physical evidence)? Is the information collected from a party to a conflict, from the authorities, from a connection to the perpetrator?
- **Risk to partner organizations:** Is there a risk to partner organizations assisting with the documentation? Is this risk different from other organizations? Is there a risk to the staff of the partner organization because of their positions, group membership, communities, public profile, or mandate? How does this risk impact the rest of the team?

### The Psychological Impact of Documentation—Documenters’ Vicarious Trauma

In their work, documenters may be exposed to traumatic situations and engage with traumatized individuals. They may work in insecure locations, visit physical locations of abuse, review photographic or video evidence, some of it graphic. They may themselves be the subject of threats and harm.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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Dealing with the trauma of others and the difficulty of a situation can have a strong impact on documenters. This condition is called **vicarious trauma**. Some documenters have personal connections to the issue they are documenting—they come from the same community, the same region, they are of the same gender, or they can identify with the situation or the victims in another way. Familiarity or identification can be both a source of knowledge and vulnerability when documenting. Some documenters may be both survivors of a human rights violation and a documenter of these violations.

Some symptoms of vicarious trauma include:<sup>177</sup>

- **Re-experiencing a situation through intrusive thoughts:** This is when the documenter re-experiences their work or the traumatic elements of their work through intrusive thoughts. This can include nightmares, flashbacks triggered by seeing, smelling, touching, or sensing something, or other triggers that arouse intense distress and/or physiological reactions.
- **Avoidance:** This is when the documenter seeks to avoid people, situations or circumstances that resemble or are associated with a trauma. This can include avoiding certain cases, clients, witness accounts and interview questions; dreading work; keeping busy; and being late or absent from meetings and work.
- **Heightened Emotional Sensitivity:** The documenter can become hyper-vigilant, with intense concern for client, self, or family safety. This can include experiencing excessive work ruminations, an excessive emotional client involvement, or preoccupation that potentially goes beyond or threatens professional boundaries. It can also involve becoming more easily upset or increasingly irritable, argumentative, or impatient with others, as well as having difficulty concentrating, remembering things, and sleeping.
- **Emotional numbing:** This involves experiencing decreased client empathy or detachment from family, colleagues, and friends. It can include feeling pessimistic, cynical, or losing hope. It can materialize in increased engagement in unhealthy 'comfort activities or risk-taking behavior.

Carrying out human rights documentation work can have a strong impact. It has the potential to alter documenters' core beliefs about themselves, others, and the world, and have a strong impact on their personal identity, confidence, and relationships. It is key to identify when this impact is negative and take measures of self-care in advance to mitigate vicarious trauma and have strong protocols in place to address it when it occurs as early as possible.

**Vicarious trauma is not a sign of weakness.** It is the body's expected reaction to a difficult situation. It is very important to acknowledge and recognize. A documenter who is not aware of these potential reactions or does not acknowledge them will not be able to properly perform her or his work. This can have a serious impact on the quality of the information documented, the safety of individuals who share information, and the safety of the documenter's team.

All members of the documentation team should be aware of any feelings or physical impacts due to the stress of documentation and trauma.

### **Some personal factors can increase the likelihood of vicarious trauma:**

- Being regularly exposed to trauma, in expected or unexpected way
- Having personal experience of trauma in the past (particularly if being exposed to the details of a similar trauma)
- Experiencing a change in personal circumstances that makes one identify more with a situation. For example, having children could increase vulnerability when exposed to child trauma
- Experiencing other stressors which lower coping resources, such as stressors that come from personal life. These are specific to everyone, but often include health issues, family issues, economic security issues.

**There are measures that can help to mitigate or address vicarious trauma.** These should be taken by documenters individually, but also implemented institutionally within teams and organizations, who have the responsibility to take care of each other and their staff.

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<sup>177</sup> See <https://www.lawsociety.org.uk/news/blog/trauma-exposure-in-law-what-you-need-to-know-and-do/>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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They include:

- **Taking rest or leave:** When vicarious trauma is present, taking rest and regaining energy before continuing work is important. Physical energy is necessary to build both physical and mental resilience for difficult documentation, post-documentation, and processing information.
- **Speaking to others:** To speak about stress and what one is experiencing with trusted persons can help relieve the stress to be able to process the information and trauma. Trusted persons can come from within the organization, with other organizations, or outside of the work context.
- **Having strong social and emotional support:** external support can make a large difference in resilience to vicarious trauma. It can provide a source of physical and emotional strength and operate as a motivator for work. When documentation is particularly strenuous, and the violations the documenter is exposed to particularly heinous, trusting in the meaning of one's work can be trying or impossible. Family, community, friends, and colleagues can help sustain this trust and the documenter's belief in the importance of their work.
- **Seeking professional assistance:** At times, mitigating measures can be insufficient, or the documenter could be experiencing a vulnerable time. For some documenters, it may prove easier to speak openly to a professional with the guarantee of confidentiality. In this case, psychological assistance can be very helpful or necessary. Psychological assistance could be found within the organization, with other organizations, or outside. It is very helpful to speak to a qualified professional. Depending on the context, availability, and level of comfort, speaking to other individuals such as religious or belief representatives can prove helpful.

Considering all the above factors, documenters should evaluate the likelihood of each risk occurring and whether these risks are worth taking for the documentation. If so, documenters should determine all the measures that can be put in place to mitigate those risks or respond to them if they occur. Documentation itself will retain inherent risks that cannot be mitigated or addressed. If this is the case, documenters should always inform and seek the consent of participants (their team), and individuals contributing information before moving forward.

### ■ **Organizing Security Measures**

Once they have assessed the risks that documenting a specific situation presents, documenters should think through security measures that can be taken. Measures should aim to prevent physical and mental risks to the individuals that documenters will engage with, as well as to themselves.

Security measures can include:

- Caution exercised by being aware of the risks;
- Procedures put in place to prevent or lessen the risks;
- Procedures to respond to the risks if they occur; and
- Contacts with partner organizations or favorable actors who can assist in mitigating risks or responding to risks that materialize.

### ■ **Security Measures for Participants**

Safety and security measures for individuals that share information with documenters should consider and address their varied vulnerabilities as a result of contributing to documentation. Measures must provide for their physical safety and emotional welfare.

These measures include:

#### Confidentiality

The primary security measure to protect individuals who share information with documenters is confidentiality. This is a key aspect of the principle of **Harm Reduction**: anyone interviewed or spoken with should not face greater risks to their personal safety because they shared information with the documenter.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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By keeping information confidential, documenters prevent risks to individuals who share information with them but can also encourage individuals to share information that they would not share if they were identified. For example, members of organizations who are not allowed to speak to documenters (such as law enforcement, government, or armed groups) may be able to do so if what they share is confidential.

*Confidentiality* is threefold: the confidentiality of the identity of the person sharing information, of the information shared, and that the meeting or interview took place.

**Confidentiality of identity:** Information that can identify individuals should be kept confidential and stored securely. This can include notes from an interview or meeting, agendas, interviews, or meeting content that identifies other people. Individuals may also share documents or evidence. *Chain of custody forms*—the documents that identifies how evidence or documents were obtained by the documenter—can also identify the source.

**Confidentiality of the meeting:** in some circumstances, any link between the person sharing information and the documenter can present a risk. This can include being seen in the presence of the documenter, being present in particular locations with the documenter (such as where the violation(s) occurred), being heard speaking to the documenter over the telephone, having written communication with the documenter, and any other link.

When the mere link between a person and the documenter could place the person in danger, documenters should assess the feasibility of **working through intermediaries or use secure communication (i.e., Signal, Telegram applications)** to mitigate the risk. This can be partner organizations or individuals who conduct documentation, or who have an unrelated activity which is less obvious. In all cases, intermediaries should be prepared in the same way as documentation team members on Harm Reduction, Safety and Security, and documentation methods to collect information.

**Confidentiality of information shared:** Interview notes, general notes, and evidence that contains the substance of the interview should be kept confidential in a secure location, especially if the content can identify someone.

*Confidentiality* requires a system to prevent the identification of individuals who shared information if the information is discovered or stolen:

- **Safe and confidential storage:** identifying information (objects, documents, interview notes) should be stored safely, and the location of storage should be kept confidential by the organization's staff.
- **Coding names:** Identity should be kept confidential by not writing down the names of interviewees in interview notes or other general notes, but instead associating the name of an interviewee with a code and keeping a list with names corresponding to codes in a separate, secure location. Photos and documents that identify interviewees should also be stored safely.
- **Need-to-know:** Within the organization, sharing information and evidence should be restricted to a 'need-to-know' basis. This means only sharing and providing access to information to staff within the organization who need to know the identity of who shared the information and the substance of what they shared. Sharing information only with specific teams or a limited number of individuals who need to know can help prevent accidental dissemination of information.



**For interviews and meetings,** the fact that the interview took place, the substance of what was shared, and the reasons for the interview should all be kept fully confidential. Without consent, documenters cannot disclose information to anyone. This includes not disclosing information to individuals who are part of the social circle of the person interviewed, such as families, friends, and communities. There may be serious consequences to the interviewee from disagreements or misunderstandings over the interview, the reason it took place, and what was discussed. Risks with disclosure often cannot fully be foreseen—confidentiality is therefore a key measure to abide by.

When interviewing someone, the documenter needs to request and obtain informed consent from the person interviewed to share the information that they receive from the interviewee. Regarding sharing within the organization or team conducting documentation, the interviewee needs to consent to which individuals this information will be shared with: the entire organization, a specific team, or a specific individual only. For example, consent to share information with the documenting team does not include consent to share with a team or individual

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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providing psycho-social support. Sharing can be different for different types of interviewees: some interviews can be shared only with the documenter(s) and interpreter(s), others can be shared with other teams.

To share beyond the organization or documentation team, the documenter needs to explain **which avenues** they envision sharing the interviewee's information with, **for what purpose**, and **how** the information would be used. For example, using the information anonymously in human rights reports, only for redacted disclosure to law enforcement or United Nations bodies, for litigation, for media work, for fundraising, or other uses still. The documenter needs to obtain informed consent to share from the interviewee for each specific avenue envisioned.

If information needs to be shared beyond what was agreed to by the interviewee, the interviewee's further consent is necessary. **Information should never be shared publicly without informed consent** and discussing with the interviewee the potential consequences of sharing the information publicly.

### Measures to ensure information and sources remain confidential include:

- Determine confidentiality measures before contacting a source and continuing these measures throughout the contact.
- Anticipate which information may need to be shared in the future and seeking consent to share with third parties directly when collecting this information from sources.
- Ensure that sources remain unnamed in any information shared or recorded by coding the names. Ensure that information cannot be traced back to the interviewee.
- Do not make any information public without the source's informed consent. Ensure the source is made aware of and fully understands the risks that come with disclosing the information.
- Not making any information until it is safe to do so. Before making the information public, assess the risks to the source and the documenter. If possible, assess the security risks with a qualified person.
- Treat all information as fully confidential unless the source expressly agrees to pass it on to a third party. Obtain informed consent from the source on what to pass on and who to pass it on to.
- Do not make information public or share it with third parties unless strictly necessary.

### Physical Safety Measures

Beyond confidentiality and efforts to minimize security risks, many risks may materialize. If victims, witnesses, organizational partners, experience threats to their personal safety, it is important to assist them with support and security.

In some contexts, the police or other law enforcement can be relied upon to provide security. In other cases, this may not be safe, adequate, or enough. Documenters should discretely research international or domestic organizations with the expertise and resources to provide security services. Contact can be established in advance with these organizations to see how they can assist if necessary. They may also be able to provide additional information to assess risks.

In case of identification, high risks, or concrete threats, intimidation, harassment, assault, or property violations to someone because of engaging with documenters, the documentation team should consider additional measures to support the person, including:

- Arranging a temporary change of residence—a relative's house or in a different town.
- Providing emergency contacts: the police, the documentation team, other organizations, trusted partners, medical services.
- Arranging a regular change of telephone number

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Installing security devices in the individual's home (alarms, fences, strong doors)
- Providing electronic devices or mobile phones to warn emergency contacts
- Meeting the person in discrete and safe places



The extent to which these measures can be put in place will depend on the resources, contacts, and expertise available to documenters. Documenters should never promise support that they cannot or will not be able to provide. It may be necessary to refrain from documentation if it is not possible to mitigate serious security concerns.

### Psychological Safety Measures

When documenting serious human rights violations, documenters will inevitably engage with victims, families of victims, and other vulnerable individuals. As they assess safety risks to these individuals, documenters must remember that engaging with individuals who have experienced trauma can require or cause the person to relive the trauma of a situation while attempting to describe the incident(s)/event(s) and/or while listening to others describe the incident(s)/event(s).

*Re-traumatization* should be considered in advance and be taken very seriously. Documenters should always explain the information they are seeking, and **always** seek the informed consent of a person to discuss sensitive information.

Important steps that documenters should take **before** engaging with anyone vulnerable or who has been the victim of trauma include:

- **Researching access to nearby and accessible services:** Documenters should research available medical facilities, clinics, social workers, or government or NGO services that can assist a person experiencing re-traumatization. This information should be shared with vulnerable individuals. If possible, documenters should try to create contacts in these service communities to ensure their responsiveness. In the context of an interview, documenters should prepare to assist the person with transportation to access services if necessary.
- **Referrals to care providers:** to the maximum extent possible, documenters should ensure that resources are available to persons sharing information should they experience re-traumatization. Ideally, documenters should have a network of trusted partners who are professionals in providing care to vulnerable individuals, who can be trusted to keep the documenter's work confidential, and to whom individuals can be referred.

For the symptoms of re-traumatization and how documenters should respond during an interview, see [Section 3.2.3 Testimonial Information: Interviewing Survivors, Witnesses, and Third Parties](#).

### Security Measures for Documenters

Documenters are the most familiar with the environment they are operating in. They should design and implement all the security measures considered necessary to ensure their safety.

At a minimum, documenters should:

- 1 **Regularly evaluate risk and updating risk assessments.**
- 2 **Determine trustworthy actors with whom to collaborate.** Documenters should consider the documentation that can or needs to be conducted with other organizations or local actors. This can be for: reasons of access to the location, access to the victims or witnesses, trust and support of victims and witnesses, good relations with forces present in the area (armed groups or government forces), to provide a public reason for travel without disclosing the documentation purpose, etc.
- 3 **Determine a communication plan:** Documenters should determine how to liaise with team members who are not traveling and who can alert or organize assistance in case of an incident. Communication networks may be poor in the areas traveled. Helpful contacts in law enforcement, police, local groups, or political officials who

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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could provide assistance in case of need should be listed and communicated to the non-traveling team. Trusted local partners may be able to relay security information and updates.

- 4 **Before traveling to a location or documenting, determine how to transport the information gathered.** Information to be safeguarded includes interview notes or physical evidence if documenting the scene of an incident or when receiving sensitive information at the location. Alternative routes should be discussed in case of checkpoints, armed group presence, police or government presence, or other obstacles that would prevent safely traveling home. Local partners that can be trusted may be asked to collaborate and assist. Lastly, documenters should identify nearby medical facilities accessible to the documenter or other individuals, such as victims or witnesses. This is important to aid victims and witnesses who may experience physical reactions and re-traumatization when being interviewed. These considerations should draw on established referral procedures.
- 5 **While documenting, remain aware** of their surroundings and increase their attention to anything that could affect the security of a documenter, the team, or individuals with whom the documenter is engaging. Documenters should avoid attracting attention, including through clothes, means of travel, expression, voice. Documenters should avoid being alone unless the context requires it (for example, an interview with a victim who would not be comfortable with more than one interviewer). It is important to remain aware of where means of transportation are located, and how to get to it in case needing to leave rapidly.
- 6 **After traveling, gather the information collected on phones or computers and transfer it to secure devices** and deleted from on phones or computers carried around day to day. Documents and other evidence should be stored in a safe and confidential location (See Below, Protecting the Information Collected).

### 2 Protecting the Information Collected

Protecting the information collected is important for the security of stakeholders (victims witnesses, contributors to the documentation), of the documenter, and for advocacy to be based on complete information.

There are multiple risks to the security of the information collected: risks from material storage, risks from interference by individuals, and risks from digital storage. *Protection measures* depend on the type of information and evidence. Physical notes and evidence will face different risks from digital information and therefore require different methods of protection.

#### ■ Assessing Risk to Physical Information

Physical information, such as notes or evidence, can be at risk of discovery, theft, interference, curiosity, or weather elements.

Specifically, risks include:

- **Deterioration:** The way the information and evidence are stored may place them at risk of deterioration due to weather elements, such as fire, water, heat, and humidity. The ink of written documents and other physical evidence can fade if placed in sunlight or could begin to mold if stored for a long time in an overly humid location.
- **Discovery:** Information and evidence may be discovered by expected and unexpected actors. *Expected actors* include adverse individuals, whose interests are impacted by the information. These actors could be government actors, political groups, social groups, communities, armed groups, and families. *Unexpected actors* could be family members, children, friends, colleagues, and other members of a social circle. Individuals who discover information inadvertently may not understand the nature of the information and the importance of confidentiality. They may convey the information in good faith, without an understanding of the risks involved

The discovery of information places the documenter at risk, the advocacy at risk, and most importantly the victims, witnesses, and communities who are identifiable from the information and evidence.

- **Theft:** Information and evidence may be purposely stolen or inadvertently stolen when stealing something else. Security risks from theft are similar to discovery, and higher if the information and evidence was stolen on purpose.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **Interference or tampering:** Individuals who have access to information or evidence may interfere with it inadvertently or tamper with it. As with discovery or theft, this could be by *expected* individuals who have an interest in destroying or modifying the evidence. It may also be individuals with more complicated interest in the information not being known, such as family members who disagree with the information provided by another family member. Lastly, it may be *unexpected* individuals who do not have knowledge of what the information represents and inadvertently interfere with it, such as office staff, volunteers, or children.

Any interference, voluntarily or not, damages the information and breaks the *chain of custody*, which means the evidence may no longer be in its original form. This makes it no longer fully reliable for judicial purposes.

### Documenters should assess the risks to the information collected in advance by asking:

1. Who has knowledge that the information was collected?
2. Whose interest does the information or evidence harm?
3. Who has an interest in destroying the information or evidence?
4. Is there a risk that information or evidence will be damaged by the elements? How?
5. Is there a risk that information or evidence will be discovered? How? By whom?
6. Is there a risk that information or evidence will be stolen? How? By whom?
7. Is there a risk that information or evidence will be interfered with or tampered with? How? By whom?

### ■ **Measures To Protect Physical Information**

- 1 **Keeping and storing all information and evidence collected in a safe location that is kept confidential:** Records and notes should ideally be stored in a coded safe, or on secure computers. Knowledge of the location of the storage and access to the storage should be carefully limited only to individuals who have collected and need to have access to the information. This also protects third parties from being compelled to disclose the location in case of questioning.

Documenters should avoid storing evidence and information in an expected location, bearing in mind potential risks to personal safety. For example, the workplace can be an expected location, but keeping evidence and information at the documenter's home can place their personal safety at risk. The risks should be weighed to determine the place that is safest and most confidential.

- 2 **Preserving information from the elements and other risks:** The information or evidence should be stored and remain in this location for a long period of time. Notes and evidence such as documents and physical objects should be stored and isolated so that they do not deteriorate or fade. It is important to preserve interview notes, general notes, and other documents that could become useful evidence later before advocacy or judicial bodies.

To avoid losing the information contained in the notes, documents, or evidence, documenters should take pictures or make copies of these that can be stored elsewhere.

- 3 **Confidentiality:** The information and physical evidence should be kept confidential. Interview notes, general notes, and evidence that can identify victims, witnesses, perpetrators, and any sensitive interviewee should be stored in a safe and confidential location. Identification can be prevented by associating the name of an interviewee with a code and keeping a list with the names corresponding to codes in a separate location. Photos of individuals should also be stored safely.

### To protect physical information, documenters should take the following precautions:

- To protect physical information, documenters should take the following precautions:

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Be aware: Locked or guarded premises may not be enough to protect information. Premises may be vulnerable when empty or outside office hours.
- Separate confidential information from non-sensitive information. **Do not label confidential or sensitive information as 'confidential'** to avoid attracting attention.
- Keep sensitive information and evidence in a safe, secured location where it can be stored for a long time. **This location should not be an expected location, and should not risk fire, water, sunlight, or humidity.** Documents should be stored in a lockable cupboard or cabinet.
- Make copies of all important information. Keep the copies securely and separately from the originals. If photocopies are not possible, photos of the information can be taken, sent to someone else for storage, then deleted. No photos should be carried around or kept on mobile phones.
- Restrict the number of people who have access to confidential information to only those who have a need-to-know or use the information.
- Create a method to keep the information confidential. *Encode* the names of individuals who shared information *by using a code instead of their names* to identify them. Codes should not include the interviewee's initials. Create a list with the names of individuals and their corresponding codes. Keep the list in a separate and confidential, separate location.
- Avoid carrying sensitive information unless transporting it to mandated actors or moving it to a safer location.
- If applicable, determine how to safely transport information and evidence to a second location.
- Determine the information that should be destroyed if discovered and creates a risk to the personal safety of documenters and individuals that can be identified from it (victims, witnesses, interviewees). Determine how to destroy it (shredder, fireplace).

### ■ Assessing Risk to Digital Information

When documenting, a large amount of information can be digital. Information is sent or received by email, transferred through USB memory sticks, hard drives, or other devices, or scanned and copied to a computer. Information can also be searched and found on the internet on specific websites, such as social media. The internet network used may be monitored, and documenters may not have access to their personal computer or a secure network.

All of the above presents risks to the information and the documenter. A thorough digital security plan should be developed covering:

- Ensuring the safety of digital data collected by securing electronic devices used for documentation (computers, mobile phones, laptops, tablets, etc.)
- Ensuring the safety of documenters, participants, and the documentation by protecting online activity from being monitored by hostile actors.

The level of protection should be proportional to the risk that the documentation presents, including the risk of identification, the scope of documentation, and the threat that documentation targets (individuals or groups that the documenter is gathering information about) can present. Documenters who work online, who collect data from the Internet, and receive information must take the strongest possible measures to ensure their security and that of colleagues and documentation contributors.

1 Sources of risks to digital data include:<sup>178</sup>

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<sup>178</sup> FRONTLINE, *Digital Security and Privacy for Human Rights Defenders*, page 9.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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**Loss, theft, intrusion:** the majority of security incidents that affect work and digital information are related to physical violence, intrusion into the work environment, and theft of equipment.

To assess risk to the office environment, documenters should consider:

- If the computer protected by several layers of access: the computer itself, the room the computer is in, the building where the workspace is?
- Can intruders gain access to the office and working space? How easily? (Breaking windows; forcing doors)
- Is the office on the ground floor of a building? Are workspaces with computers located near windows that can be broken? Are there bars on the windows, or is the office on the higher floor of a building?
- In case of intrusion, is there an alarm system? Are the authorities responsive to the alarm? Can the responding authorities be trusted?
- Is there a waiting room or reception in the office where visitors can remain before entering areas where there is confidential or sensitive information?
- Is the computer itself securely attached to the workspace, or can it be easily removed (for example, a laptop)?
- Are work files kept on an external USB or hard drive, separately from the computer? Are external drives kept securely at all times (in a locked safe in the office, or with the documenter)?
- Do documenters carry around their computers and hard drives on their persons? Is there a risk of police or other control and search?

**2 The workspace and working environment:** the workspace and working environment can be vulnerable to unwanted attention. This applies to working in an office, working from a portable laptop, or using only internet cafés.

To assess risk to the personal workspace, documenters should consider the following questions:

- Is the computer screen visible to others while working?
- Are passwords shared in the office? Are there shared passwords to drives, clouds, office software?
- Is access to the computer restricted when its user is away from their desk or office?

Some documenters may have to work from a public place to access the internet. This includes public offices, internet cafés, regular cafés, and any other location with public internet access. Documenters should know that using a public internet café is generally insecure, and that sensitive information should not be consulted in public.

To assess risk to a public environment:

- Does the owner of the location know the documenter, their name, or other details?
- Does the café monitor customers' internet use?
- Is internet browsing history recorded on the computer?
- Can other customers see the computer screen?
- Is the computer free of spyware?

**3 Surveillance and monitoring:** surveillance and monitoring is a serious, and often materialized risk to the work of documenters. Governments around the world have installed systems to access and monitor the internet use of citizens and persons on their territory. Surveillance and monitoring actors may be obvious, such as

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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government agencies, others may be less obvious private actors or companies. Both can collaborate: data collected by governments can be transferred to security agencies. **When conducting documentation on the Internet, documenters should expect that their activities may be monitored and analyzed.**

Two of the main techniques that surveillance actors use are monitoring internet traffic and infecting computers with viruses to access its programs and files.

Surveillance technologies can monitor keywords that appear in email or internet searches. This does not discriminate between suspicious persons and other, and can result in monitoring everyone. The use of keywords can alert surveillance teams, which can result in deepened surveillance, questioning, arrest, and detention.

There are many types of software that infect a computer to survey its activity, access its files, or destroy its data. They can be transmitted from computer to computer, by clicking on a link, opening an unknown email, and other ways. If they infect a computer, they can cause unlimited damage to information.

- **Viruses** damage the software of a computer; they cause the computer to malfunction and to lose data. They come as email attachments, links, files loaded from USBs or other removable devices.
- **Trojans** give full access to the computer to an outsider, including to programs and documents. They can also record keys typed, and send this information along, for example to obtain passwords. Trojans usually present themselves as legitimate software, or are installed with a virus.
- **Spyware** tracks a person's movements on the computer and on the internet, and send this information to an outsider. The objective is to reveal information about the computer's user. Spyware can appear in emails, in email attachments, get installed with a virus, be embedded in programs that the computer installs, get installed through visiting web pages, or be received through a file-sharing software (for example a shared-drive or a cloud-based system).

To assess risk to files and data:

- Does the computer have a password to enter every time it switches on or returns from standby?
- Does the computer have an anti-virus software and anti-spyware? Does it have the latest update?
- Do files have multiple levels of protection: password protection and encryption?
- Is there an external copy of all the data on the computer (USB, hard drive)?
- Do documenters know the precise location of their files and duplicates, to be able to identify whether they have been moved or interfered with?
- Is browsing history automatically saved? Are downloads automatically saved?

**4 The legal frameworks that apply to digital data:**<sup>179</sup> a large amount of information useful to documentation can be consulted on and collected from the Internet.

Generally, publicly available information acquired on the Internet is considered '**open source**' information.<sup>180</sup> This is information that is publicly available for any member of the public to observe, purchase, or request without requiring a special legal status or unauthorized access.<sup>181</sup> It includes public websites, Internet databases, social media platforms, or requests for information from State agencies under access to information laws.

By contrast, '**closed source**' information is information with restricted access, or access that is protected by law,

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<sup>179</sup> United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations* (2021), page 28.

<sup>180</sup> Id., page 6.

<sup>181</sup> United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations* (2021), page 6.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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but that can be obtained legally through private channels, such as judicial processes, or offered voluntarily.<sup>182</sup> Any information that involves interacting with or soliciting information from individual Internet users, companies, or organizations is considered **closed source**.<sup>183</sup>

While information collected on the Internet is publicly available, there are nonetheless legal and ethical considerations on whether and how it can be used and stored.

Firstly, collecting information about individuals may raise issues regarding **their right to privacy**. The right to privacy is a fundamental human right, that everyone enjoys. An important element of this right is the **right to protection of personal data**. Documenters should therefore be aware of the specific articulations of data protections in the legal system in which they operate, including what type and what quantity of data they may collect about individuals - if any - and how long they may preserve it for. Unauthorized access to personal data, for example through leaked passwords, is prohibited. Before the International Criminal Court, a violation of the right to privacy is one of the grounds on which judges may exclude evidence.<sup>184</sup>

Secondly, security practices of online documentation involve the use of virtual, and therefore false, identities when conducting online work. (See below, *Protecting Online Activity From Monitoring*). However, the ‘Terms of Service’ of many platforms, such as social media, prohibit the use of virtual identities.<sup>185</sup> Violating the Terms of Service of a platform is considered a breach of contract. The most common remedy is to disable the user’s access to a platform. Documenters must therefore balance the security benefit in using a virtual identity with the potential harm for breach of contract.

Additionally, **soliciting information under a virtual – and therefore false – identity is deceptive, and in many countries a serious breach of the law**. If using a virtual identity for online work, documenters should restrict this work to research. They should **not** seek to obtain closed-source information using this virtual identity, as it requires interacting with individuals.

Lastly, documenters should be weary of any intellectual property laws and copyright protections for any online tools software they might use or rely on. Using content created by someone else without permission is unlawful, as is creating content with online tools without copyright permission. This could result in the inability to use or refer to the results of the documentation.

For further information on the effective use of digital information in documenting human rights violations, please consult the United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations* (available in English, French, Arabic, and Spanish).

**5 The documenter(s):** documenters are the most important source of risk to the material they receive or collect, and to all individuals involved in communicating or consulting this information. If users do not strictly follow measures to protect their information and their activities, even a momentary gap in protection can be easily and quickly exploited by hostile actors.

### ■ **Measures to Protect Digital Information**<sup>186</sup>

The risks to digital information are similar around the world, but each country context will have its specificities. Based on their knowledge of the context, documenters should create a list of possible threats to the security of the information<sup>187</sup>, and take necessary measures to prevent these threats.

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<sup>182</sup> Id., page 6.

<sup>183</sup> Id., page 6.

<sup>184</sup> Rome Statute of the International Criminal Court, Art. 69(7).

<sup>185</sup> United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations* (2021), page 29.

<sup>186</sup> See generally, FRONTLINE, *Digital Security and Privacy for Human Rights Defenders* (February 2007); and United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations*.

<sup>187</sup> Contact groups like the Citizen Lab based in Canada can, **for free**, give a detailed outline of all the surveillance technologies in a given country.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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Some preventative measures include:

- **Use different equipment for professional activities:** if possible, documenters should not use personal devices to conduct professional activities. This includes mobiles phones, cameras, computers, tablets, or other technology. If possible, avoid purchasing equipment that needs to be registered to a person's name, such as mobile phone credit. If documenters must register a telephone line to a name, preferably use the name of their organization to avoid specific individual identification. Using separate devices may not be accessible to all documenters. If so, documenters should take utmost care to separate their professional activity from their personal ones, and ensure to take all precautions against surveillance and monitoring (*See below, [Protecting Online Activity From Monitoring](#)*).
- **Do not mix information from different documentations:** documenters working on documenting several unconnected events should maintain their information separate. This includes separate folders on devices, and different devices if accessible.
- **Create very strong passwords:** having good passwords is essential to protect a computer. They act as a security barrier, like a key to a door. The stronger the password is, the stronger the protection will be. Some programs suggest passwords that are strong, but the same programs save the password automatically. This can be useful to create a password (if it can be remembered), but saving a password in the computer or program defeats the purpose of having one, since login will be automatic rather than password-protected.
  - Strong passwords:
    - Have 9 characters or longer. They can be a short sentence.
    - Use numbers, small letters, capitals, and symbols, all in one password.
    - Do not relate to personal life or interests.
    - Are changed every three to six months.
    - Are **never** saved automatically by computer or programs settings.
    - Are **never shared** with anyone. If a password must be shared for legitimate work reasons, such as a colleague needing to access a computer or document, the documenter should change it immediately.
  - Mnemonics are helpful to create strong passwords. For example, for the sentence 'Are you happy today?', the password could be: 'rU:-)2d?'
  - Documenters should **never** use an empty password.
- **Do not use the 'secret question' option:** some websites or emails give the option of answering a secret question, usually providing options of questions to answer from. Such questions are usually about personal information. The response to these questions will be a simple word, and can be very easily deciphered by malicious software or someone who knows the documenter.
- **Do not use the same password:** passwords are like keys to a door, it is important to have different keys for different doors in order to provide multiple layers of protection. Documenters should use different passwords for different logins (computer, encrypted files, emails), so that if one is discovered, other protections are still effective.
- **Have multiple layers of passwords:**
  - **For the computer:** a computer should have a strong password that needs to be entered when the device is switched on, in order to gain access to the desktop with any files on it.
  - **For the files on the computer:** almost all computers with Microsoft Word or equivalent software allow to password-protect a document before opening it and modifying it. Documenters should password-protect all of their work files.
  - **For emails:** all email accounts should have different passwords, that are not saved in the computer.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **For external storage devices:** such as hard-drives, USB sticks, CDs etc.
- **Any other online activity** that can be password-protected, such as online banking.
- **Switch the computer off when not using it:** Documenters should switch their computers off when it is not in use. Switching a computer off, rather than keeping it on standby, disconnects it from the internet and enables password protection. While these should be removed as soon as possible, switching off can also cease monitoring activity from cookies or malware installed on the computer.
- **Use external storage devices to store files:** it can be safer to use external, password-protected, and encrypted storage devices than storing them on a computer. External storage devices can be USB sticks or external hard-drives. These devices can be removed, hidden, transported discretely to a secure location. If a computer is examined, stolen, lost, or damaged, the consequences for stakeholders and documenters will be less severe if there is no confidential or sensitive information on it.
- **Regularly back-up electronic files:** documenters should regularly save electronic files to another device, so that they always have a copy of files in case the main storage space is lost or damaged.
- **Encrypt all files and devices:** as well as protecting documents with a password, documenters should encrypt all sensitive electronic files. Free encryption tools are available on the internet, for both Windows and Mac computers. Mac computers have the built-in encryption system *Vault* that can be activated safely. If files need to be consulted by multiple persons, it is more practical to rely on secure, encrypted systems or devices but have accessible files without password-protection. This prevents losing access to the information if the file's password is lost. Additionally, unless the documenter is directly using an encrypted software, images, videos and pdf documents cannot be password-protected.
- **Equip computers and devices with anti-virus software:** documenters should equip all of their computers with a recent anti-virus, and update it as regularly as necessary to ensure the anti-virus software has the latest protections. A strong anti-virus should also protect from spyware. If possible and relevant, some anti-virus software can be installed on mobile phones. Despite updated anti-virus software, there remains a risk of being infected by a virus that is undetected. Documenters should learn how to detect this and respond accordingly.

### 3 Protecting Online Activity From Monitoring

Internet activity can be very easily tracked and many actors have an interest in doing so. It is a highly valuable source of information for unaware or unfriendly actors, such as it can provide these actors with a large amount of data on the documenter's research, activities, and personal information. All this can be exploited and used against the documenter.

The primary actor that can control and record internet activity is the Internet Service Provider. Many countries have only one Internet Service Provider, usually controlled by the government. Other countries have regulations that oblige the Provider to monitor internet activity, and report it to the government.

To mitigate the risk of their online activities and digital information being monitored, documenters should adopt the following practices:

- **Never conduct online documentation activities using personal accounts:** to protect themselves and others, documenters should keep their professional work as separate as possible from their personal online activities. Documenters should never use personal accounts for professional purposes. They should create separate emails, social media, and other accounts as necessary to conduct Internet research and collect information about the documentation.
- **Use encrypted email providers,** such as *ProtonMail*, that provide free and encrypted email service. The server for *ProtonMail* is based in Switzerland, and not accessible by other countries.
- **Use the Internet anonymously:** when surfing the internet, documenters should ensure their internet browser is set to not save information automatically, such as logins and passwords, browsing history, favorite pages, bookmarked pages etc. Documenters should avoid disclosing identifiable elements about themselves, their organization, or their partners to third parties.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **Create a virtual identity:** one way to ensure anonymity is to create a virtual identity for professional activities. This is a false online profile that can be used to conduct secure documentation activities online. Documenters can use a false identity rather than their real-life identity to create a professional email account, social media profile, messaging service database, application, and other.
- **Use a Virtual Private Network:** a virtual private network (VPN) encrypts the internet traffic from a device and allows a computer user using the internet to appear to be someone else, in a different place and country. The VPN masks the computer's IP address and location, to prevent it from being identified, and it secures the traffic between the computer and internet servers. VPNs range in strength and quality. They can be downloaded from the internet for free, or for a fee with higher protection features and discretion.

**ProtonVPN** is a free VPN service provided by the same service as *ProtonMail* above, with the service being based in Switzerland, and allowing the device using the VPN to connect to a variety of countries. Upon connecting to their VPN, documenters can choose which country their device will appear to be in. Documenters should regularly change their country selection, in order to be less easily identifiable. For example, if the VPN offers to appear to be in Germany, the documenter should not always select Germany, but diversify and select other countries, for example Sweden, Japan, or others.

- **Avoid using public wi-fi networks:** public wi-fi networks from internet cafés, regular cafés, or other spaces are very insecure. Documenters should never use public wi-fi networks to access information relating to their documentation or other work. If documenters have to use public wi-fi, it is always advisable to use a VPN service to secure information, and make sure that the computer or device does not connect to the Internet before the VPN has been activated, to prevent identifying the device before the VPN has time to connect to the network.
- **Delete browsing history and cookies:** many websites now request a surfer to accept cookies before accessing the website. Cookies record the user's browsing history, and will create a record of the types of websites the user consults. Companies collect this data to share it more widely. After using the internet, documenters should delete all cookies and browsing history from their computers, both in the computer's settings and the internet browser's settings as cookies and history are sometimes saved on both. This is key to avoid being profiled by the data collected from cookies and browsing history. It also prevents the documenter's work being identified if the computer is taken, or if it is infected by a virus.
- **Diversify digital tools and sources:** overexploiting a single online source of information, such as a specific browser or website, can increase the risk of monitoring. Documenters should search information from a variety of websites, even if only one website is fruitful, to avoid highlighting their interest in the specific website. This includes using a variety of browsers to search the Internet, which will have the benefit of providing the documenter with complementary search results.
- **Avoid predictable or identifiable online behavior:** repeating similar searches, even more so on the same web browser could facilitate a third party's understanding of the objectives of the online research, and therefore the documenter's activities. By avoiding repetitive behavior online, the object of the documenter's search is much less obvious to potential monitoring actors.
- **Do not save passwords and downloads:** documenters should **never** save passwords on a computer, and should regularly check that no password has accidentally been saved. Additionally, web browsers sometimes save the list of files that were downloaded, even if those files were removed from the computer. Documenters should remove all downloaded files from the computer and delete them from the web browser.
- **Be careful when opening emails:** viruses and other malware can come through unremarkable emails. Documenters never open a suspicious email or click on a link that comes to a work or personal email, especially if both emails are consulted from the same computer or device.
- **Know the precisely location of data files and duplicates:** documenters should know where in which locations their files are saved on their computer. This can help identify any interference, from outside persons or from viruses. Some viruses or malware can act on the computer and its files when it is connected to the internet (and sometimes even when the computer is not connected).
- **Keep up-to-date on threats and vulnerabilities:** the online environment is constantly evolving, including the threats to digital information, devices, and the identification of persons using them. Documenters should seek

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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on-going security training on general digital vulnerabilities, and specific threats relevant to their context. The Citizen Lab, based in Canada, is one of several organizations that can provide country-specific information on surveillance and monitoring practices.



**An important measure to protect digital data is documenter self-care:** security measures will only be effective if they are followed as carefully as possible. Tiredness, exhaustion from overexposure to traumatic material, and other vulnerabilities may not allow for the level of self-care that is necessary to work as carefully as necessary. Documenters must therefore be accountable towards themselves to be in the proper form to work with all due care.

### 3.2.4 PREPARING AND TRAINING TEAM MEMBERS

Team preparation and training is an essential part of documentation. An appropriate level of skill is necessary to document human rights violations. All members of an organization who engage or may come to engage in documentation work should be trained on preparation principles, Harm Reduction, how to document incidents and collect information. Methodology and knowledge should be uniform across the team for the team to function efficiently.

Team or organizational leaders should:

- Appropriately select members of the documentation team, including documenters, interpreters, and support staff. This selection should be sensitive to gender, culture, religion, and ethnicity.
- Appropriately select external partners (organizations or individuals) who may come to assist in the documentation, or act as intermediaries.
- Ensure that all members of the documentation team are trained and have knowledge of human rights documentation standards.
- Ensure that all members of the documentation team prioritize individuals' safety before obtaining information. If obtaining information presents a risk to a person's safety, the person's safety is the priority.
- Ensure that all team members understand informed consent.
- Ensure that all team members who come to engage with vulnerable individuals or individuals who have suffered trauma have the appropriate training to recognize trauma, and work with the support of professional staff (psychologists, social workers). This is particularly important for sexual and gender-based violence, and minors.
- Ensure that all team members understand what vicarious trauma is, how to respond to it, and who to reach out to within the team and the organization for support.
- Ensure accountability of team members, by informing them of the consequences that not meeting documentation standards may have, including harming individuals, damaging the information collected, impede prospects of accountability.

To conduct documentation safely, teams performing work in the field should be limited to the minimum number of documenters necessary, depending on the need.

### 3.2.5 WORKING WITH INTERPRETERS

It may be necessary to rely on an interpreter to collect information. In such circumstances, the quality of the interpretation will directly impact the quality of the information collected, and the safety and security of individuals engaged in documentation.

Interpreters must be:

- Qualified to interpret into and out of the languages required, and familiar with any dialects that may be encountered;

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Selected with consideration of characteristics such as gender, age, community, ethnicity, religion, and their ability to remain neutral and impartial in their work;
- Trained and understand principles of interpretation that apply when documenting human rights violations.

Interpreters should be trained in:

- 1 Subject-specific and cultural interpretation:** Interpreters should be as precise and accurate as possible and should never change or influence any statement of the person speaking. Therefore, they should possess terminology specific to the subject. They must know how to interpret keywords, behaviors, and expressions relevant to the specific human rights situation. For example, interpreters should be familiar with how sexual or gender-based violence may be described in a particular culture.

Interpreters should also possess cultural knowledge. They should understand the local context and be comfortable working in the area. They should speak the same local language or dialect as the interviewee. They should know translations of cultural expressions and behaviors. Cultural expressions and euphemisms should not be changed for the interviewer but explained to the interviewer if necessary.

- 2 Working with victims and witnesses of human rights violations:** Interpreters should be prepared in advance for the nature of the information that will likely be obtained. They should be comfortable with having to interpret detailed statements of serious violations. Interpreters without experience in this area may be psychologically unprepared for the information that they will be confronted with during meetings and interviews. This could have a negative impact on the translation and on the well-being of the interviewee and the interpreter.

Interpreters should be sensitive to the interviewee's needs and the capabilities that vulnerable individuals have. They should be aware that their presence may have an impact on the interviewee. It is important to be careful not to intimidate an interviewee when engaging with them. Interpreters should avoid strong or excessive physical movements during the interview. They should work with empathy, sensitively, and professionally. The interpreter's gender, age, ethnic or religious identity, or cultural affiliations should be taken into consideration; however, these factors should not obstruct communication with the individuals with whom the documenter needs to engage.

- 3 Harm Reduction:** Interpreters should be trained in advance on key concepts of human rights documentation. This includes *Harm Reduction, informed consent, and confidentiality*. Interpreters should be trained in the concept of *informed consent* to correctly translate it for the documenter. Interpreters should also understand that they are subject to the same strict *confidentiality* requirements as other members of the team, and the consequences that breaching confidentiality may have for the safety of an individual.

Documenters should check that interpreters properly understand these concepts by asking the interpreter to explain them back. They should assess the interpreter's views on serious human rights violations in general, and for each specific situation. This is particularly important for violations involving sexual and gender-based violence and gender equality. Interpreters must be impartial and trustworthy.

### Key principles of interpretation

- Aside from introductions, the interpreter should not insert themselves in the discussion, even for explanations. The interview should remain a dialogue between two parties: the interviewee and the interviewer.
- The interpreter should relay exactly what the interviewer says, word for word, to the maximum extent possible. This includes translating exact sentences and speaking in the first person.
- The interpreter should use only the words of the interviewee and the interviewer, without inserting comment.
- If a question is unclear, or if the interviewee does not understand something, the interpreter should inform the interviewer. The interviewer should rephrase the questions. The interpreter should not provide explanations themselves.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- The interviewer should speak in short sentences that are easy to understand and translate.
- The interpreter should translate questions or statements one at a time, to make sure that the interviewee understands them.
- The interviewer and interpreter should repeat questions and statements as many times as necessary for the interviewee to understand.
- The interpreter should behave respectfully towards the interviewee, and not stare or make insistent eye contact. The interviewer should look at and speak directly to the interviewee, rather than the interpreter.
- If an interpreter displays inappropriate or uncomfortable behavior, the documenter should intervene to discuss the issues with the interpreter. The interpreter should be changed if issues do not resolve.
- The interpreter should be made aware to respect the confidentiality of the content shared during the interview. When necessary, a non-disclosure agreement could be signed to ensure information is not shared without consent.

### 3.3 Collecting Data and Information

The purpose of documentation is its outcome: recording, reporting, monitoring, advocacy, investigation, or litigation. The way information is collected can strongly impact the possible accountability avenues available to documenters. As discussed above, domestic, and international advocacy and judicial bodies have specific standards and requirements for the way evidence should be collected for them to be able to consider it and take it under review (See above, "[Principles of Evidence](#)").

It is not always possible to collect information and know in advance which procedure it will be submitted to, if at all. The following chapter offers a methodology to collect information for international judicial standards, as these represent some of the most demanding standards. Documenters should review the evidentiary principles of accuracy, credibility, reliability, and authenticity before proceeding.

Collecting information in a way that meets these standards will satisfy many other bodies' standards. This keeps many options available for documenters and activists to decide the process they wish to submit information to and the nature of the advocacy they wish to conduct.

#### **Methods to Collect Information**

The type of violation and the circumstances will determine what methods a documenter can use to collect data.

Possible methods include:

- **Direct observation:** Documenters can directly observe an incident and record their perception of it, what happens, in what order, and who is involved. When possible, and consent is given, documenters should record as much as possible through photos or videos. From this initial recording, documenters can:
  - Follow up with other persons involved in the incident, as victims, witnesses, or responsible persons, to collect their statements.
  - Identify physical objects or documents that were involved in the incident and could be collected (for example, weapons or projectiles, proof that the incident occurred or that someone was present, proof of the way events unfolded, proof of the violation, such as a pamphlet, and proof of someone's intent).
- **On-site visits:** Documenters can travel to the location where an incident took place. This travel can be short or longer, depending on security, the nature and scale of the incident, and whether it is ongoing. From these visits, documenters can:
  - Document the scene.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Collect and preserve physical objects or documents involved in the incident.
- Follow up with persons involved in the incident to collect their statements (ensure full names and contact details are taken).
- **Individual interviews:** In many cases, interviews will be the primary source of information for a documenter. Interviews can be long or short, depending on the interviewee's wishes, and nature of the information that is discussed. Documenters should carefully prepare interviews, particularly with individuals who have suffered trauma or are otherwise vulnerable. During the interview, the specific process should be followed (*See below, [Testimonial Information](#)*).
- **Focus Groups:** Focus groups are small groups of people (maximum eight to ten) that were involved in an incident or represent a group of stakeholders relevant to an incident or pattern of incidents. In a group, people may be more encouraged to speak or voice concerns. Focus groups can be disaggregated by characteristics (age, gender, religion, social group or other). **Focus groups must not be used to document incidents or gather testimonies:** this would amount to a group interview, which risks tainting survivors' stories by contaminating their accounts with the other accounts. A group interview also presents multiple safety risks to all participants. Rather, focus groups can be useful to gather information about the *impact* of an incident on members of the group, or to survey knowledge and perspectives about violations. It is important to be careful to obtain the individual narratives from persons who make up the focus group: in some cases, the voice of the group may discourage participants to disagree or provide nuance.
- **Surveys:** a survey is a general inquiry into the opinions of a group. They can be useful to gather information from a large number of sources. Surveys are particularly useful to collect quantitative information: how frequently incidents occur, how many people have been victims of an incident, the impact of an incident experienced by households, or other factors. This can be used to reflect the experience of larger groups, where individual interviews are possible or not (for example, because there are too many people, it would take too much time, or the risk would be too high).

Many other methods exist, such as research (online or other), or receiving information through email or a website. Documenters should identify the type of information obtained, collect, and preserve it accordingly.

Three types of information can be collected through these methods: physical, documentary, and testimonial information (*See "[Information versus Evidence](#)"*). There are specific steps to collect and preserve physical, documentary, and testimonial information. Once information has been collected, it needs to be verified and analyzed to determine whether it is credible, reliable, and factually correct. This is particularly relevant for testimonial evidence. Each type of information has specific means of verification and analysis.

### 3.3.1 PHYSICAL INFORMATION

Physical information or evidence refers to any **object or trace** that has a relation to the incident that occurred. It helps prove or explain the specific incident that is being documented. Common examples are weapons, computers, equipment, clothing, religious objects, photographs and videos, footprints, bones. These objects can be found on the location of the incident, but not necessarily. For example: a weapon used by the perpetrator to commit a violation has a relation to the incident. An identical weapon is useful to show the type of weapon used but has no relation to the incident.

Physical information also includes materials detected through scientific means, such as DNA or fingerprints. **Medico-legal information** is the physical information that a qualified medical professional documents on a person's body or clothing for legal purposes. This includes marks or injuries present on a person's body, as well as bodily fluids, hair, or fibers, debris, and soil. The physical marks, fluids, or particles are physical information, but the report from the medical expert is documentary information, and testimony from such expert is testimonial evidence.

Documenters will come in contact physical information relating to incidents by visiting locations (of the violation and others), collecting it themselves and receiving it from others.



**In all cases, documenters should never collect, handle, or store information or items that they are not qualified to receive or store.** Physical information that generally should not be collected unless specific competencies are in place includes but is not limited to explosives (even if already detonated), human remains, and hazardous materials such as chemicals or other potentially harmful elements. In some cases, handling physical information can be very dangerous—this is the case for explosive objects. In other cases, the physical information is highly sensitive and must be handled with expertise so as not to damage or contaminate it. This is the case for human remains, and digital devices and information. Digital information should only be opened in the right conditions, with proper expertise, as opening the file alters the metadata it contains, including information about the day, time, and location where the file was created (See below, [Digital Information](#)).

Documenters should therefore assess their ability to collect and store information before handling it. If the information would be heavily damaged or completely lost if it is not collected, and it is safe for documenters to collect it personally, documenters should research in detail how to proceed. This can be the case for human remains, such as bones.

### 1 Collecting Physical Information—Documenting the Location of a Violation

**Preliminary considerations:** Before documenting the scene of an incident, documenters should assess whether it is possible to do so without contaminating the information present at the scene. This is particularly relevant when a crime or a grave human rights violation was committed. Documenting the scene of a serious violation or a crime is a technical process that usually requires the expertise of trained law enforcement. The scene can be easily contaminated in ways that untrained professionals may not realize in advance.

The ways in which an incident scene can be contaminated include:

- Touching objects without gloves in a way that deteriorates evidence or leaves or removes traces of DNA, fingerprints, or bodily fluids;
- Moving evidence from its original place when the location of the object is key to understanding the violation; and/or
- Leaving footprints that get confused with other footprints. When it is possible, documenters should liaise with professionals who have the expertise to document crime scenes. This may be domestic or international law enforcement, investigative professionals, judicial or advocacy bodies, or local or international NGOs who conduct this type of forensic investigative work.

**Documenting the scene:** If documenters are placed in the position to document the scene of a violation, the first step is to ensure that the site is safe. Documenters should not enter a site until it is safe to do so. Dangers may be obvious or hidden, such as unexploded devices, collapsing buildings, hostile observers, and others. Removing dangers could require seeking military or civilian authorities to secure the site. If this is not an option, documenters should document the scene from a safe position.

If documentation is conducted by two or more documenters, it can be helpful for someone to be in charge and delegate tasks.

Firstly, documenters should very thoroughly document the scene in its original state, in writing. To do so, they should delimitate the site where the violation occurred. If possible, this should be done with rope or tape to mark the site for others and documenters themselves. Anyone who is not directly involved in documenting the scene should not enter the delimitation. If the site is unsafe, documenters should delimit the scene and document it from a safe position outside the delimitation.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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Documenters should record the following elements at the scene:

- **Objective details:**
  - The date and time of the visit
  - The location of the site, with GPS coordinates if possible
  - The size of the site.
- **What they observe at the scene (in as much detail as possible):**
  - The condition of the scene—what it looks like, whether it looks disturbed, whether something appears to have been moved or removed
  - Key objects and evidence located within the scene
  - Personal observations of persons present at the scene.
- **Documenters activities at the scene:**
  - What documenters do in relation to the scene—how they enter the site, where they walk. If they remain outside the delimitation, the position and viewpoint from which they are documenting the scene
  - The objects that they pick up, handle, and collect.

This information should be recorded in the notebook or file recording Documentation Steps ([See “Preparing the Documentation” above](#)).

To support their descriptions, documenters can make a sketch of the scene. Sketches should have the sketcher’s name, signature, and date it was made. The sketch should be made from a bird’s eye view, with an approximate scale, and indicating the direction of North.

Documenters can also take photographs and videos of the scene. Videos can be difficult to include in court proceedings, but photographs can be valuable evidence. When photographing a scene, objects should be taken close up, and the whole scene should be taken from a distance to assist with scale. The time of day and season should be noted. Documenters should enable geolocation if the device used to photograph has this function. To record the size of objects, documenters should place a ruler or a pen next to the object and photograph both.

Photographs and videos should be considered original information, not copies. Originals should be stored securely, and copies included in the Documentation Folder.

In the Physical Information Log, documenters should record:

- For photographs: the time and date of the photograph, who took the photograph, where it was taken at the site, and what it is intended to represent.
- For videos: the date and time the video was filmed, the location, the content of the video, and who took the footage.



Collecting items: Items or objects exceptionally collected from a scene or received from someone should be handled with great care. They should not be touched, except with plastic gloves. They should immediately be placed in a storage bag or envelope that can be sealed. Once the documenter has observed the item closely and recorded a full description of it in writing in the **Documentation Folder** (See [“Recording”](#) below), the storage bag or envelope should be sealed and not re-opened until or unless the items are needed for an official process.

### 2 Preserving Physical Information

There are **three steps** to preserving physical information, whether this information is collected by the documenter or whether the documenter receives this information from someone else.

These steps are:

- 1 **Recording:** accurately recording the information or item.
- 2 **Chain of custody:** Implementing a chain of custody for the item, including noting everyone who handled the item before it reached the documenter, and who handles it afterwards.
- 3 **Preservation:** Preserving the information or item.

**Recording:** Any form of information collected in relation to an incident should be recorded in the **Documentation Folder** under various sections as described below:

*Physical information and items* should be recorded in the “Physical Information File Log”, including the following details about the physical information and items:

- If the item was collected by the documenter:
  - The full date when the item was collected;
  - The name and organization of the person who collected it; and
  - The time and location of the collection
- If the item was received: who provided the item, their address, contact telephone number and email address.
- The name, description, and nature of the item, including appearance, quantity, size, weight, special features that can identify it (damages, color).
- Information on the actions taken in relation to the item, including where it was moved from and to, where it is stored, etc.
- Comments should include notes about the context in which it was received, or whether the person who provided the item has concerns about their confidentiality and anonymity.

**Chain of custody:** Documenters should create a *chain of custody* for every piece of physical information they receive. The form should be filled in and attached to the information. A copy of the form should be included in the Documentation Folder.

**Preserving information:** Physical information should be collected and kept in sealable bags or envelopes, preferably plastic. Once the necessary paperwork and descriptions are complete, physical information should be preserved in a safe and secure place. It should be free from environmental factors and unwanted interference. This can be a separate room, a closet, a safe, or a drawer and all should have a lock and restricted access. Documenters can use a logbook to record who is accessing the storage space or are, and for what reason.

#### When documenters receive physical information or items, they should:

- Record and comprehensively describe the information or item in the **‘Physical Information File Log’** that logs all physical information in the Documentation Folder.
- Record the date, the way the item was received, and from whom in the **‘Factual Notebook’** that records documentation steps.
- Record any personal observations during the reception of the item in the **‘Personal Observations Notebook.’**

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Place the item in a storage bag or envelope that can be sealed to preserve its physical condition.
- Place a tag on the bag or envelope that describes the item and how it arrived in the documenter's possession for the *chain of custody*.
- Store the item in a secure location with limited or confidential access.
- Create a **Chain of Custody Form** for the item, starting from the item's original position and recording its movements regarding everyone who has encounter it since it was removed from its original position. This form will have to be updated every time the item is removed from storage and transferred to someone outside the documentation team, even if the item is returned to the documentation team.

### 3.3.2 DOCUMENTARY INFORMATION

Documentary information includes anything in which information of any description is recorded. This could be official documents, emails, databases, maps, photographs, radio broadcasts, newspapers (paper and online).

Documentary information, from either private or public sources, can be important evidence to submit to judicial or advocacy bodies. When documents are authentic, the information they convey is difficult to dispute. Contrary to statements or testimonies, the information they present is more likely to be free of bias.

Documentary information does not need to directly demonstrate a crime or a violation, or an individual's involvement in committing a crime or violation. They can be particularly useful in providing information on the background or circumstances of an incident. They can also provide important information on context, on military or political structures, and their author's state of mind. If a document is relevant to the incident, it will be valuable to submit to a judicial or advocacy process.

#### 1 Collecting and Preserving Documentary Information

This type of information can be digital or on a physical support. When documentary information is on a physical support, it should be collected and preserved following guidelines for physical information. It is also frequently a combination of physical and testimonial evidence: a physical item (a document) containing someone's statement, for example, a document with a military official's written order. In this case, it should be collected and preserved as physical information, and subject to verification analysis as physical, documentary, and testimonial information.

When handling documentary information, documenters should:

- When the information is on a physical support (e.g. paper), follow the same standards for collecting, receiving, handling, and preserving *physical information* ([see above](#)).
- When the information is digital, implement the *digital security measures* before any online activity or consulting the information, and follow the guidelines to securely preserve the information ([See below Digital Information](#))
- Record the origin and verify the *authenticity* of the information.

#### 2 Collecting and Preserving Digital Information

Documenters should collect and preserve digital information *in its original form*, or as close to its original format as possible. In addition, digital data has information about it embedded in its content. This is called '**metadata**,' which can be explained as 'data about data' or 'information about the digital information.' Original metadata can provide highly valuable and probative information about when, how, where, and who created the digital content. However, metadata is easily modified, and the original metadata from when the content was created can be changed automatically when it is uploaded to a website, downloaded, or even converted to a different format (e.g. a photograph saved as a pdf document). Documenters should therefore strive to collect the original metadata of digital content as soon as they collect it. Any alterations, transformation, or conversions must be documented, even if accidental.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

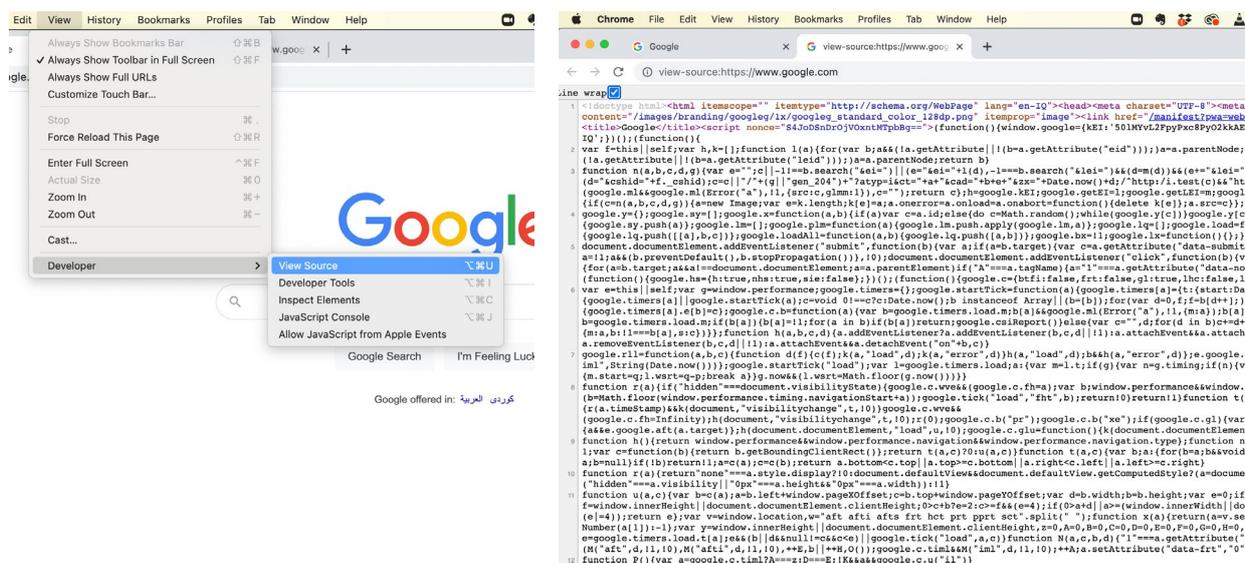
- When collecting a media file (audio, photo, or video) from the internet, documenters should also collect information about the webpage they retrieved the file from.
- When seeking to present a webpage and its content, documenters should collect the media content of the webpage as well (audio, photo, or video).

Collecting metadata about a webpage: To present online content in court about a webpage, minimum standards require collecting the following:<sup>188</sup>

- **The web address of the content collected**, also known as the Uniform Resource Locator (URL). This is the link to the webpage that was consulted and from which content was collected, starting by 'www.' For example, for the Google search engine, the URL would: [www.google.com](http://www.google.com)
- **The HTML source code of the web page.** This contains a lot of valuable information beyond the visible part of the webpage that will contribute to authenticating the information collected.
- **A screen shot of the full web page**, with the date and time indicated. This will provide the best possible representation of the webpage at the time material was collected from it.

Every major Internet browser allows users to view the HTML source code of any webpage they visit. However, collecting HTML source code will depend on the web browser used.

- **To collect HTML using Google Chrome and Mozilla Firefox:** the user should select View>Developer>View Source from the menu bar or right-click on the webpage they are consulting, and select the "View Page Source" option. The HTML source code will appear in a separate tab.

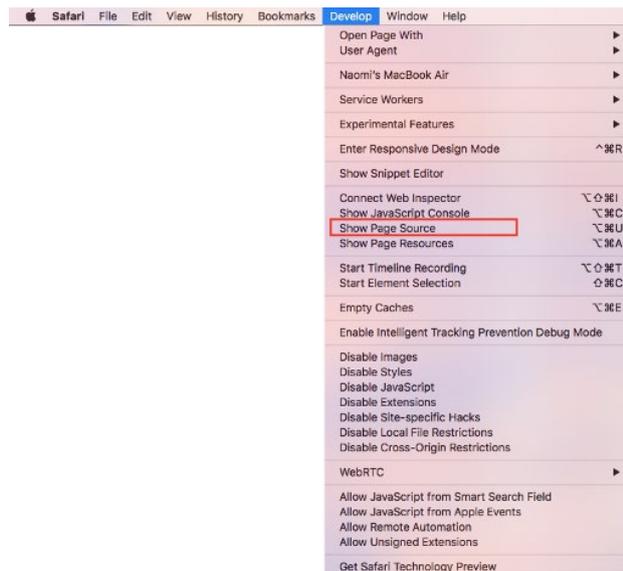


<sup>188</sup> United Nations Office of the High Commissioner for Human Rights & UC Berkeley Human Rights Center, *Berkeley Protocol on Digital Open Source Investigations* (2021), pages 59-60.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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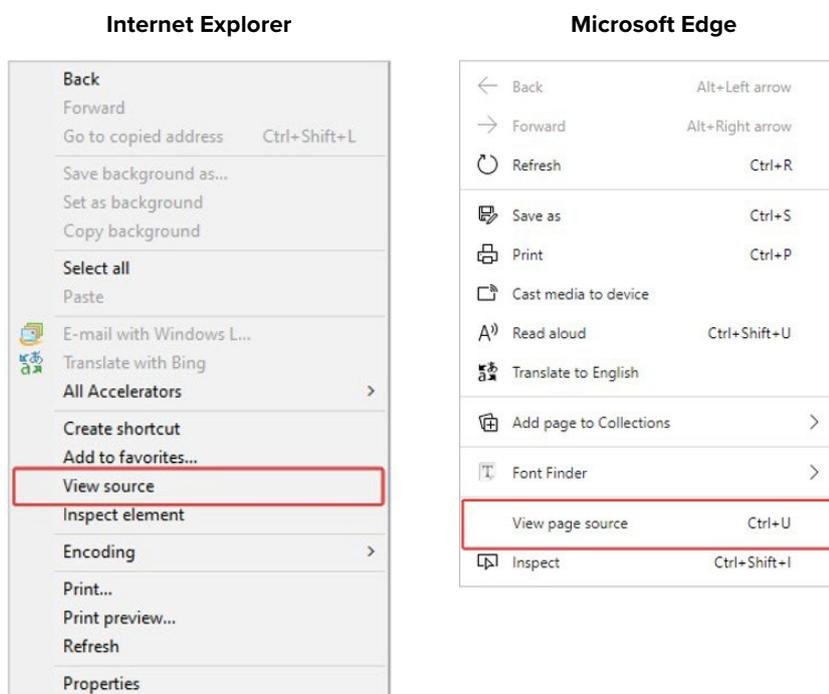
- **To collect HTML source code using Safari:** in 'Settings,' under the 'Advanced' Tab, select the option 'Show Develop Menu in Menu Bar.' Once connected to Safari, under the 'Develop' drop-down menu, select the 'Show Page Source' option.



## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **To collect HTML using Internet Explorer or Microsoft Edge:** right-click a blank part of the webpage, and select 'View Source' or 'View Page Source' from the drop-down menu that appear.



If a website risks being taken down, documenters can, if possible, resort to a service that will preserve it despite it being removed. WebPreserves, Rhizome's Web Recorder, or Internet Archive Wayback Machine with Chrome extension are examples of such services.

Collecting metadata about a media file: When collecting a media file, such as an image, a video, or an audio, important information to collect is:<sup>189</sup>

- **Other media files on the webpage:** if the website consulted contains other media files, the documenter should download and save these files individually as well.
- **Metadata of the media files collected:** media files collected from websites have metadata separate from the webpage's metadata. Each individual file's metadata should be collected, if it is available. This metadata includes: the identifier of the uploader or user; the identifier of the post, picture, or video; the upload date and time; the geographical location; the hashtag(s); comments; and annotations.
  - **For photographs:** Documenters should take a screen shot with the photograph and download the image.
  - **For videos:** Documenters should also take a screen shot of the video and download it if possible. To preserve and archive a video before it gets taken down, use the Google Chrome extension program KEEP by the Human Rights and Technology Research Lab. The program is available at: <https://www.rightslab.org/keep/>.
- **Contextual information:** this is information about the context that is necessary or relevant to understand the webpage or media file content. It includes: comments on a post, picture, or video; upload information; uploader and/or user information such as username, real name, or biography.
- **Collection information:** this is all the relevant information about the way the digital data was collected. It includes: the name of the person who collected the digital data, the IP address of the device used to collect the

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<sup>189</sup> Ibid.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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information, the virtual identity used (if any), and the date and time of the collection, given automatically by the device. The collector should ensure that time-related metadata is accurate by synchronizing their device with international time.

Preservation of digital information is as important as the preservation of physical information, and requires as much care. Documenters should follow the guidelines contained in [Section 3.2.2 Implementing a Recording System](#) to ensure proper long-term preservation.

Key elements of preservation include:

- **Storing information on external devices:** digital information collected should be stored on an external device and not on the computer, to mitigate risk of loss and theft.
- **Recording metadata and chain of custody** in a separate document, create a copy, and store securely.
- **Creating back-up copies:** All digital files should be copied to a second external device, and stored in a safe location. This storage device should not be used in day-to-day work, but rather kept untouched as a back-up in case original information is lost or altered.

### 3 Authenticating Documentary Information

To be considered in any official process, *documentary information* needs to be **authentic**: it must be of undisputed origin, in its original form, and genuine. Originals have greater value than copies or images of documents because their authenticity is easier to verify. In order to rely upon documentary information, documenters must therefore establish the provenance of the document and make efforts to authenticate it.

To establish the source of a document, documenters should identify:

- The author;
- The author's organization; and
- If the document (for example, a report or a media article) relies on information from another source, identify the primary source of the information that the author relies upon in the document. This primary source of information will also need to be authenticated.

To authenticate a document, documenters should determine in detail:

- **What** was produced;
- **When** the document was produced;
- **Where** it was produced;
- **How**;
- **By whom**; and
- **Why**, for what purpose.

To guarantee the integrity of a document and ensure its original form, documenters should restrict access and transfers of the information, store it in a safe location, and keep a log to detail who had access to it, when, and for what purpose. *Documentary information* should be preserved like physical information (See "[Preserving Physical Information](#)" above). The document in its original form is what has most evidentiary value and should be stored safely. Copies of documentary information can be useful for documenters records and added to the **Documentation Folder** if they do not present any confidentiality risks.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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The International Criminal Court (ICC) provides guidance on how to authenticate common types of documentary information to best meet the requirements of the Court. These standards are similar to other judicial and advocacy bodies.

### 1 Open Source Information is information that is publicly available, from a public source.

This typically refers to anything available on the Internet: for instance, scientific articles, newspaper articles, reports, or social media. For purposes of authentication, documenters should record information about **where** the document was obtained, and the date it was obtained. For internet information, documenters should record:

- The name of the website;
- The url link to the website, as well as downloaded copy or a screenshot of the content;
- The date and time the information was accessed; and
- The source of the open-source information. If the open-source information is presenting facts or information obtained from another source, what is the ultimate source of the information? For example, a ministry of health website that refers to a scientific article, the ultimate source is the article. The references of the article should therefore be included.

If the open source information is no longer publicly available, documenters should indicate this next to the date it was accessed.

### 2 Reports from NGOs, IGOs, or foreign governments

Reports from non-governmental or intergovernmental organizations, or government entities will be considered reliable if they demonstrate impartiality and non-partisanship.

For purposes of *authentication*, documenters should provide information on:

- The sources the report relied on; and
- The methodology used in gathering information to support its claims.

If the sources are unknown, or the methodology to gather information did not corroborate or substantiate it, the report may not be considered reliable.

### 3 Official documents with an identified author

If an identified official has signed the document, and the authenticity of the signature is not questioned, then the official document will be presumed authentic. The author should be a representative or agent of an official entity (the judiciary, the executive, parliament, or public administration), identifiable by name or by function.

Documents that are not publicly available from official sources should be certified by the authorities they originate from as authentic, if this is possible. Documenters who obtain such documents should therefore carefully note **how** they obtained the information and its source.

For purposes of authentication, documenters should record in detail:

- The source of the document: the authority from which it comes (a Ministry, Department, Agency); and
- How they obtained it.

### 4 Official documents with no identified author

For official documents with no identified author, but for which the origin is clear from the document itself (letterhead,

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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logo) may be considered by judicial or advocacy bodies, unless their authenticity is later challenged.

For purposes of authentication, documenters should note:

- The source of the document;
- The originating organization;
- How the official document was obtained; and
- The person from whom the document was received (if applicable).

**5 Private documents** such as private letters or messages, that can be authenticated **by their author** (orally or in writing) will be considered authentic.

If authentication requires a third person or organization, then the document should be authenticated by independent evidence that must prove who the author of the document is and that it is in its original form. If the date of the document is not clear from the document itself, documenters should seek external evidence of the date.

For purposes of *authentication*, documenters should note:

- The claimed source of the document; and
- How the documenter obtained the information.

**6 Digital evidence** includes photographs, audio recordings, video recordings, text messages, and films. To be considered reliable, digital evidence needs to be in its original, undamaged and unaltered form. It also needs to be real, not doctored, or improperly labeled.

For purposes of *authentication*, documenters should provide:

- The date and location of the photograph or recording;
- The claimed source of the document; and
- How the documenter obtained the information.

Documenters may come to receive digital information about an incident through social media, email, or websites. Digital information can be misleading, by accident or on purpose.

When information is obtained this way, the first step is to confirm the following details:

Is this the original piece?

- Who uploaded or sent the information?
- When was the content captured?
- Where was the content captured?
- What does the content portray?
- Why did the person share the content?

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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If the original source is unknown, documenters should try to establish contact with the original source, taking security concerns into consideration. Documenters should ask the source:

- how they obtained the material; and
- if the documenter obtained it, where the source was when recording the content, what they saw, and questions to understand the event and content.

If the source cannot be reached, documenters can assess their *reliability* by looking at social media profiles and other information online about the source. If the source is anonymous, documenters should proceed very carefully to verify the identity of the source. Any information about documentation work should not be shared until it is certain the source is not hostile to the documenter's activities.

To ensure the integrity of the data, the content, name, or format of files should not be changed.

**7 Media articles and reports:** even if they relate facts, media articles are considered to express the opinion of their author. Often, they do not provide information about their sources. Opinions are not valuable evidence. However, if documenters can gather information on who wrote the opinion, how, and on what basis they reached their conclusions, the media article may be given weight. This can include: the background of the journalist, their sources, and the materials they relied upon.

### **8 Letters, declarations, political statements, and other communications**

Like media articles, such documents are likely to express only the opinion or state of mind of the author. If it mentions factual events, it will need to be supported by other information to prove such events.

To the extent that they describe or show their author's state of mind, these documents can be used independently to help prove the state of mind or the author's intentions. This can be key when documenters need to prove the perpetrator's intent to commit the violation. For example, demonstrating an intentional State policy that amounts to a grave human rights violation shows the State's violation of their obligation to respect human rights.

More importantly, when documenting international or domestic crimes, documenters must demonstrate information on both the criminal act *and the intent* to commit the crime. Letters, declarations, and statements can all contribute to demonstrating criminal intent, whether the author of the document committed the crime themselves or ordered others to commit the crime.

### **3.3.3 TESTIMONIAL INFORMATION: INTERVIEWING PARTICIPANTS**

Interviews may be a documenter's primary source of information. When other sources of information or evidence are not accessible, interviews can sometimes be the only record of a person's experience and knowledge of an event. Many factors come into consideration in deciding whether to interview an individual, and how to do so.

The principles and considerations for conducting an interview include the following stages, which are explained in detail below this list:

#### **1. Preparing the interview**

- Who the documenter is interviewing
- The procedure to which the information will be submitted
- The information needed from the person interviewed

#### **2. Arranging the interview**

- Determining the ideal timing for the interview

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Interview logistics
- Security issues

### 3. Conducting the interview

- Engaging with the interviewee
- Obtaining the account
- Clarifying the account
- Closing the interview

### 4. Evaluating the interview after it took place

- The substance of the information
- Interviewee well-being
- New or detailed risks

## **I** Preparing the Interview

Interviews should be carefully prepared based on:

- Who the documenter is interviewing;
- The advocacy avenue for which this information will be used; and
- The information useful or needed from the person interviewed.

For all of the above, the primary consideration when interviewing is the principle of **Harm Reduction**. The documenter's primary obligation to the interviewee is to do them no harm, namely, not to leave them in a worse position than the person was before from having been interviewed (See above, "[Key Principles of Documentation](#)").

Before interviewing, documenters should refer to "[Planning and Preparing Documentation](#)" in this protocol manual (see above) and conduct a risk assessment for the interview. This should focus on the impact of the interview on the person's psychological well-being, physical safety and security, the interviewee's hopes and expectations, the possibility of confidentiality, and the possibility of referral to psychosocial services if necessary. These elements should be carefully assessed by the documenter for each interviewee. If the interview may do harm to the interviewee, documenters should refrain from interviewing them.

As described previously, victims, witnesses, and third parties will themselves have knowledge about the risks and considerations about being interviewed (See "[Safety and Security](#)" section in this protocol manual). Prior to engaging in a substantive interview, the documenter should discuss these considerations with the interviewee and internally plan her or his own responses to potential concerns.

**Who is being interviewed?** Documenters may come to engage with victims, witnesses, or third parties with knowledge about an incident. Each interviewee is different: Interviewees/witnesses have different trauma, needs, expectations, security, and confidentiality concerns, and expectations concerning the outcome of the interview.

*Documenters should anticipate how to respond to potential issues that may arise during the interview.* For victims and witnesses, the documenter should reflect on the potential trauma the interviewee has experienced, and the interviewee's ability to go through the interview. For interviewees who have suffered trauma, documenters should only conduct the interview with the participation of a psycho-social expert and have a list of accessible medical and psycho-social services to refer the interviewee to if needed (See "[Interviewing Vulnerable Individuals](#)" below). Documenters should be very sensitive and careful with *informed consent* and give the interviewee the freedom to refuse the interview or some types of questions.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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**What avenue will this information be submitted to?** Before interviewing, it is particularly important to have an understanding of which judicial or advocacy process the information gathered could be submitted to.

The key question documenters should ask themselves prior to interviewing someone is: **could official authorities or mandated organizations need to interview the individual themselves upon receiving information of the incident?** These authorities or organizations can include domestic police, domestic investigative authorities, the judiciary, international law enforcement, international investigative mechanisms, international organizations who are mandated to collect evidence, commissions of inquiry, and others.

Official or mandated authorities have the obligation to collect testimonies and statements: they must interview individuals directly. This is because only the statements taken by the professionals will be taken into consideration for a subsequent judicial or other official process. This is particularly true for criminal investigations—international or domestic.

If documenters foresee a subsequent process that will require taking the interviewee’s statement, they should refrain from interviewing *in depth*. Firstly, from the perspective of Harm Reduction, in-depth interviewing of individuals who have suffered trauma and may again suffer subsequent re-traumatization when they communicate their story again to an authority may cause harm to the interviewee.

Secondly, human memory is imperfect, and this will influence accountability processes that follow documentation. A person may give very different statements about the same event, depending on what they remember on the day of the interview, including the way they put their thoughts into words. While this is entirely normal, it is prejudicial to/will have a negative impact on an investigative or judicial process as it will appear that the interviewee’s statements are inconsistent and variable. For investigative processes that seek the truth of an incident, and criminal investigations especially, multiple inconsistent statements will severely damage the credibility of the individual providing the statement. In the context of a criminal investigation, the standard of proof to determine an accused guilty of a crime can be very high. At the International Criminal Court (ICC), the ICC Prosecutor must prove that the accused is guilty “beyond a reasonable doubt.” This means that any doubt as to the accused’s guilt will prevent from holding her or him accountable, even if there is strong evidence of guilt. Lawyers representing the accused can exploit inconsistencies in testimonies and statements to show that there is doubt about what happened.

Many actors’ mandate includes collecting evidence of human rights violations. It is therefore important for documenters consider in advance which authorities or actors may come to be involved in investigating an incident, and who might need to interview the same individuals with whom the documenter engages.

Determining the potential processes or advocacy avenues for a specific incident in turn determines the information that documenters will seek from an individual they decide to interview. If the testimony or statement of an individual seems valuable for a subsequent investigative, judicial, or other process, documenters should seek to liaise with professionals who will decide to take a full statement themselves.

If there is no likelihood of subsequent State criminal investigative officials or prosecutors taking a statement themselves, documenters can consider conducting an in-depth, substantive interview taking all the care in mind for the instructions below on interviewing individuals about serious human rights violations.

### Summary

- **For criminal or investigative processes, including commissions of inquiry:** Most often, official authorities or organizations mandated to conduct an investigation will need to interview victims, witnesses, and third parties themselves. This can be a criminal investigation, an inquiry, a truth commission, or another process. In this case, documenters should limit their interviewing to what the individual knows, and why they would be important to interview (See below “[What information is needed?](#)”).
- **For advocacy bodies such as UN Special Rapporteur, UN treaty bodies, international or local non-governmental organizations, Ombudsmen, or broader audiences:** These bodies receive information about human rights violations and can follow up by communicating and liaising with persons who submit information to them. However, they do not have the power to investigate themselves, on the ground or remotely. When documenters decide to appeal to one of these actors for advocacy or foresee that one of these actors could be involved as an outcome of documentation, the information they collect should be more in depth for advocacy bodies to act upon it.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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**What information is needed?** The amount of substantive information needed depends on the procedure to which the information will be submitted.

**If the information will be used for a judicial process**, professional or mandated actors (such as investigators or prosecutors) will need to take the first formal statement of all parties involved themselves. In this case, documenters are recommended to record the broad ‘**four corners**’ of a potential testimony, staying away from minute detail. A broad recording leaves space for a mandated actor to re-interview the individual without creating the risk of variance between the documenter’s recording and the mandated actor’s recording of the testimony.

The ‘four corners’ should include, in the documenter’s words:

- A general understanding of what the person *may* know about the events;
- Their motivation for sharing information, as they present it and understood by the documenter, if this differs, and
- Other individuals and information relevant for a future investigation, that the interviewee suggests or that the documenter thinks of in relation to the interview.

If there are objective risks that the interviewee’s information may be lost or unobtainable in time for an official process (for example, if the interviewee may die), an in-depth interview can be conducted.

**For reporting procedures**, such as the U.N. or other advocacy actors, mandated actors will unlikely be able to engage with stakeholders directly. In this case, documenters should conduct a more in-depth interview recording the interviewee’s substantive information.

**When the outcome of documentation is unknown:** Documenters may not yet know which venue the information collected would be submitted to, if any, or may be documenting for another purpose, such as drafting a human rights report. In such cases, documenters should collect the information strictly necessary for their advocacy, with extra care given protecting the statement of the interviewee and taking notes in the third person if the documentation includes in-depth interviews. This is paramount should a special venue be created to document the event(s), because mandated actors will then be required to re-take survivors, witnesses, and other relevant stakeholders’ statements. In all cases, the identity of participants to the documentation must be protected.

To avoid bias, documenters should attempt to have interviews with individuals from all sides of the incident. It is key to anticipate potential issues that may arise during interviews with a broad range of actors, and how to respond. Interviews with perpetrators could carry heightened risk, whereas interviewees with insider information require additional safeguards protecting them from potential self-incrimination. Documenters who cannot address the risks inherent to interviewing perpetrators should avoid proceeding with the interview. Documenters who cannot provide safeguards against self-incrimination should only proceed with the full informed consent of the interviewee.



**Security – Taking Notes of Interview:** to protect the credibility of the interviewee, documenters should take notes in the third person, as their own observations on what was discussed, as opposed to a literal account of what the interviewee said (For example, the documenter should write: “The interviewee says they did this” rather than “I did this”). This protects the interviewee’s credibility in case the documenter’s notes are examined in a subsequently official process: the responsibility for inconsistencies or inaccuracies in statements can be placed with the documenter who took notes, rather than pointing to a lack of knowledge or memory with the interviewee themselves.

*Supporting materials:* for some interviews, it may be useful to prepare supporting documents, such as maps, photos, or videos. These materials should never be introduced to interviewees unless they have knowledge of them **beforehand**. For example, if introducing a map, the documenter has to confirm that the interviewee agrees that the map is accurate and depicts an area they know in real life. Introducing material that depicts something new to the interviewee risks the interviewee mistakenly recognizing or adopting information that is not connected to their experience.

### 2 Arranging the Interview

Determining a place of safety and confidentiality to conduct the interview is the first logistical step. Providing a safe location minimizes the risk that the interviewee's identity may be revealed, if it is important to keep confidential, and contributes to building trust between the documenter and the interviewee by showing them their safety is taken seriously.

The location must be determined in consideration of security issues that affect the specific interviewee, it should also allow the interviewee to feel comfortable speaking openly without the fear of being overheard. Documenters should ask: **where is it safe to interview this person? What are the risks associated with a particular location?** To answer these questions, documenters should review the risk assessment conducted at the outset for the specific considerations that affect the individuals they engage with in documentation, prepare, and mitigate those risks. It can be useful to consult the interviewee on whether they feel safe being interviewed in the documenter's determined location.

In contexts where authorities are not trusted, or may be implicated in the incident, the location of the interview should not be associated with authorities or be conducted under their observation. In such contexts, police stations, local administrative or government offices, or the interviewee's home and place of employment should be avoided, unless the location can be arranged to allow for near-complete privacy.



**For all interviews, all security incidents should be fully recorded.**

Additional to safety, the location of the interview should be a comfortable environment. A place of comfort may differ for interviewees. Some interviewees may not feel comfortable being interviewed outside of their home or may not be able to. In this case, privacy from family members or third parties should be ensured by seeking a room that can be closed to conduct the interview. By contrast, other interviewees will wish to avoid being interviewed in a personal location. For security reasons, even if the interviewee wishes to remain at home, this can often not be a suitable location. Alternative locations, such as the documenter's workplace or usual interview space, must then be discussed with interviewee.

If the interview is taking place where the documenter has control over the space, it is important to create a safe and supportive environment in which interviewees feel comfortable to share their experiences about the violations that have occurred. This includes water, snacks, tissues, comfortable seating for interviews that last a long time, light, and air, and that a bathroom is available. A location with a break area that provides equal privacy and security is ideal.

If the interview is taking place where the documenter cannot affect the space, for example in an interviewee's home or in a workplace, or a café, the documenter should bring refreshments to offer everyone present as well as snacks if possible. Documenters should ensure that a bathroom is also available.

#### Interview Logistics

##### Ensuring 'Harm Reduction':

- Conduct a risk assessment;
- Determine a safe and confidential system to record, transport, and store information; and
- Identify appropriate care providers to whom to refer interviewees.

##### Arranging the interview:

- Prepare an interview plan and questions;
- Familiarize yourself with the context and local customs;
- Carefully select reliable interpreters and intermediaries, as necessary;

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Bring pens and paper for note-taking;
- Prepare documents, diagrams, photographs, and maps to show to the interviewee if these may be useful.
- Bring a camera to photograph objects the interviewee may present.

### Selecting the interview environment:

- Choose a safe, private, culturally appropriate, and comfortable location; and
- Bring drinking water for everyone as well as snacks if possible and ensure that a bathroom is available.

### 3 Conducting the Interview

There are four methodological steps to conduct an interview: 1) handling first interactions, 2) obtaining the account, 3) closing the interview, and (4) evaluating the interview.

#### 1 Handling First Interactions

The first interactions are important to establish trust with the interviewee(s). Below are the steps to follow chronologically when first engaging with an interviewee for a face-to-face, sit-down interview:

Introduction: The documenter conducting the interview should introduce her- or himself, her or his affiliation, and her or his professional experience. She or he should then introduce everyone else present, their affiliation, and the reason for being present at the interview.

Explanations: Documenters should explain:

- **The reason (purpose) for the interview.**
- **That the interview is completely voluntary:** The interviewee is free to answer or not to answer questions, to terminate the interview at any time, and to change her or his mind about sharing the information given.
- **That there will be no compensation for the interview.** That said, compensation for travel and similar logistics can be included based on mutual agreement.
- **Safety and security measures:** Documenters should explain that the interview is confidential, the confidentiality measures taken to safeguard the interviewee's identity, and how the information will be stored with limited access. Documenters should also discuss potential limitations to confidentiality if there are any reasons confidentiality cannot or might not be guaranteed.
- **What the information given by the interviewee may be used for if this is already known:** Advocacy, criminal litigation, international or other procedures/processes. If this is unknown or changes, the documenter should assure the interviewee that consent will be sought prior to using the information for any undiscussed purpose.
- **Whether and how the interview will be recorded:** Making a record of the interview is important to ensure an accurate account of the interviewee's statement. The interviewee's permission to record is *necessary (informed consent)* and consent should be recorded. The recording can be in writing, or via audio, or video recordings. It is crucial that the interviewee understands the risks to anonymity from audio and video recording. For all recording methods, the documenter should explain the precautions in place to ensure the interviewee's confidentiality (for example, coded names, storing recording in secure locations with limited access).
- **Length of interview:** documenters should then discuss how long they anticipate the interview to be, and that the interviewee can request breaks at any time.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **Questions or concerns:** documenters should ask if the interviewee has any concerns and address them.
- **Interviewee discretion:** The documenter should ensure that the interviewee understands that the documenter has the power to agree or disagree, answer questions or not, ask questions, or ask for information or questions to be repeated.

Informed Consent and Voluntary Participation: In light of the above explanations, documenters should then obtain *informed consent* from the interviewee to conduct the interview (see “**Key Principles of Documentation—Informed Consent**” above). *Informed consent* to conduct the interview should be recorded in writing, audio, or video even if the rest of the interview is not recorded.

Beginning the Interview: For the first stage of the interview, documenters should obtain basic information. They should seek to understand and the general scope of the interviewee’s knowledge of relevant events, if this is not known. This moment will allow the documenter to assess the interviewee’s state of mind, and whether the timing of the interview is appropriate. If not, a more in-depth interview can be scheduled later.

- **Obtain biographical details:** To the extent that the interviewee is willing to provide these details, the documenter should seek: the individual’s full name, aliases, date of birth or approximate age, religion, ethnicity, marital status and immediate family members including children, languages spoken and written, education level, current and former occupations, current residence, and contact information.



For security reasons, biographical information must not be stored together with the individual’s account of the incident/events.

- **Briefly confirm the interviewee’s knowledge of the events,** if this is not obvious or has not already been asked, to ensure that they are relevant to interview for this documentation project.
- **Determine whether the interviewee has given an interview to other persons or organizations about the same incident, and for what purpose.** This is important to determine whether the documenter is unnecessarily duplicating work. The purpose of the past interview is important: for example, an interview to assess the need for trauma services does not have the same purpose as a legal interview, and questions will be different even if the interview is about the same incident. If an interviewee has given a similar interview such that the documenter would not need to reproduce it, the documenter should seek the contact information of the person or organization this interview was given to, and avoid requiring the interviewee to again go through the process.
- **Assess the interviewee’s mental state:** If the interviewee has been a victim or witness to trauma and seems too traumatized to give an account without being seriously affected, the documenter should terminate the interview. If the interview can proceed, the documenter should begin by discussing neutral topics to build a comfortable atmosphere, in which the interviewee will feel comfortable sharing the information later on during the interview.

### Trauma can affect an interviewee’s ability to participate in an interview, affect their behavior during it, and their memory of events.

At the outset and throughout the interview, documenters should pay attention to signs of trauma, such as:<sup>190</sup>

- Depression
- Memory loss or difficulty providing a linear account
- Difficulty concentrating
- Multiple versions of a story

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<sup>190</sup> *Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles & Best Practices*, Public International Law & Policy Group, 2016, p. 33-34, available at : <https://www.publicinternationallawandpolicygroup.org/toolkits-and-handbooks>.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Acute stress, with symptoms including: hyperventilation, being nervous or on edge, feeling shocked or numb, experiencing recurring nightmares or flashbacks, sleeping problems, or deliberately avoiding thoughts or activities that remind of the events that occurred.

### 2 **Obtaining the Interviewee's Account**

At this stage of the interview, the documenter is seeking substantive information about the incident that occurred: what happened; where it happened; when it happened; who was there; what happened to cause the event, and/or how alleged perpetrators behaved the way they did; and how the interviewee felt during and after the incident/ events. It is important to establish the basis of knowledge of each element of the interviewee's account by also asking how the interviewee knows the information (e.g. they saw or heard it themselves, they learned it from another person later, it was commonly known etc.) so that the documenter can later analyze the quality of the information.

**Uninterrupted narrative:** The documenter should first encourage the interviewee to give an uninterrupted narrative account of the incident in their own words. The documenter should let the account flow freely from the interviewee, and when they have reached the end can clarify issues and assist the recall by asking open-ended questions. These are questions that cannot be answered with a 'yes' or 'no' response, but rather require a longer development.

Documenters should:

- Speak calmly and slowly, be aware of their demeanor and their interpreter's demeanor. Remain polite, respectful, patient, and attentive.
- Never assume what the interviewee may be feeling, thinking, preferring, or the impact of trauma.
- Give a clear marker of where/at what stage of the event the interviewee may begin their account and initiate the interviewee's free recall with an invitation to proceed at their own pace.
- If the interviewee struggles to develop their account, assist them with questions about the event. Begin with general topics, ease slowly into painful or sensitive topics and the interviewee's account, and return to general topics.
- Not interrupt the free recall, or ask suggestive questions. Suggestive questions imply that a certain answer should be given in response, or presuppose a fact that has not been demonstrated, for example "Were they armed?" Do not assume facts or elements that may seem obvious.
- Avoid going back and forth between past events and the present moment, or general and sensitive topics. Doing this can trigger *re-traumatization*. Take notes of what may need further clarification to the extent that this is necessary.

#### Examples of open-ended questions:

- What is your full name, other names you go by, date or year of birth, religion, ethnicity, marital status and immediate family members and children, languages spoken and written, education level, current and former occupations, current residence, contact information?
- Tell me/ describe to me exactly what happened.
- What happened afterwards?
- Where did this happen?
- When/ How long ago did the events you witnessed/experienced happen? If the interviewee cannot recall, what other events were happening at the time?
- Did the events you just described occur more than once? Describe to me the other instances.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- What did these people do (to you, to others)?
- What did the person/vehicle/premises look like? Please describe them for me.
- What were they wearing?
- Did they use weapons or other objects? If so, please describe these weapons/objects.
- Do you remember whether these people said anything? Could you repeat what they said? What language did they speak in?
- What happened after the event?
- Were you taken anywhere? If so, do you remember where you were taken and for how long?
- Please describe how the events made you feel at the time. How did you feel physically? How did you feel emotionally?
- Did anyone (else) witness or could have witnessed the events you described?
- How do you know this information? (E.g. the interviewee saw/heard/felt/other source of knowledge) If you are not sure, is there a reason that you do not know, and what is it?

Clarifying the account: While the interviewee narrates their account, the documenter may encounter inconsistencies in the narrative, or be unclear about what the interviewee is saying. In that case, the documenter can ask for an explanation of the part of the account which seems inconsistent or unclear. Common needs for clarification include confirming the chronology of events in the account, or focusing on a specific thematic aspect. Within the chronology of the interview, documenters should raise their clarifying questions about an aspect of the account while the interviewee is discussing that aspect, and before moving on in the narrative. This avoids having to return to and re-discuss potentially traumatic events.

Documenters may not need to clarify every unclear aspect of the account. Rather, they can choose to clarify select sections based on the importance of the issue or the focus of their documentation, time constraints, and the state of memory of the person interviewed. If the interviewee visibly does not remember, documenters should avoid insisting as this could give the interviewee the impression that they are not being believed.

When obtaining the account, the documenter should remember to which avenue information from the interview will be submitted. If official investigators are likely to need an official statement from the interviewee, investigators will require a substantially detailed account. This risks requiring the interviewee to recount traumatizing details again. It will also likely lead to differences between the interviewee's first and second account, as they may not be able to subsequently recall events similarly, or every small detail. Contradictory statements will cause harm to the interviewee's credibility in an official process, so documenters should ask no more detail than necessary to identify the interviewee as relevant for mandated actors to interview in the future.

Questions to avoid: some types of questions should be avoided in interviews. This can be because they are too difficult to understand, they influence the answer, or limit the responses to very specific answer. Examples of questions to avoid include:

- **Closed questions:** as described above, these questions limit the response to 'yes' or 'no' and can be leading. They can exceptionally be used if the documenter requires a definite answer or needs express clarification, and after the interviewee has freely given all other relevant information. For example: "Did they speak to you?"
- **Leading or influencing questions:** these questions imply or assume facts, or suggest a specific answer. For example: "Did they take you to the village?"; "Was it the same person that you saw earlier?"; "Did they hurt you?"
- **Multiple questions:** these questions include several questions in one sentence, and can be difficult to understand and answer. For example: "What did they look like and what did they say?"

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- **Forced-choice questions:** these questions limit the answer to a choice made by the interviewer. For example: “Were the uniforms red or green?”

**Interviewee well-being:** During the recounting of the incident/events, the interviewee’s well-being is the primary consideration. The documenter should pay attention to signs of distress or fatigue in the interviewee. Signs can both be verbal and non-verbal. They include: crying, sighing, silence, a higher tone of voice, facial expressions, nervous hand movements, slouching posture, delay or reluctance to answer, being distracted, and signs of tiredness or unwillingness to continue.

If the documenter observes such signs, the documenter should acknowledge the distress, ask the person if they need anything and if they agree to continue. If the interviewee displays signs of acute stress or physical or emotional distress that prevents them from moving forward in the account, they should be offered a short break, to postpone, or to end the interview. At this point, the documenter should ask the interviewee whether they would like the assistance of psycho-social support, which the documenter should have organized in preparation of the interview.

If ending the interview is necessary due to signs of stress or tiredness, the documenter should **not** end the interview abruptly. Rather, the documenter should:

- Bring the interviewee back to the present moment, emphasizing safety;
- Help the interviewee regain a sense of control; and
- Move to easier topics and close the interview gently.

Being equipped to identify these signs is one of the reasons why sensitive interviews should be conducted by trained professionals so they may be handled appropriately.

### 3 **Closing the Interview**

The objective of this stage is to ensure the documenter has a clear and correct understanding of the interviewee’s account and end the interview in a way that feels safe for the interviewee. The documenter should:

- Summarize the main points of the interview in the interviewee’s own words to check their understanding of the account
- Confirm with the interviewee that all topics have been discussed, and provide the interviewee with the opportunity to add any facts or considerations
- Offer the interviewee the opportunity to ask any questions
- Confirm the interviewee’s *informed consent* and offer her or him an opportunity to change her or his mind or withdraw consent if he or she wishes to do so
- If applicable, provide the interviewee with advice about further assistance that is accessible/available, such as care providers or psycho-social support services
- End the interview in the present moment, away from the incident that took place and emphasize the safety of the present moment if possible. End on positive, neutral topics, leaving the interviewee in a neutral or positive state of mind
- Provide the interviewee with contact information should he or she wish to contact the documenter for follow up
- Thank the interviewee for her or his time.



**Security:** To safeguard the security of the interviewee, documenters should not ask the interviewee to sign her or his account as recorded by the documenter.

### 3 Evaluating the Interview

Upon closing the interview, the documenter should review the information that the interviewee has shared and note any observations that the documenter had about the interview, the substance of the information, and about the interviewee. The purpose of evaluating the interviewee is to prepare for next steps in the documentation, to identify risks to safety or well-being, and to begin the verification process.

Documenters should consider the following factors in evaluating the interview:

- **Substance of the information:** Has the interview achieved the objectives in terms of information? Are there possible further lines of inquiry, or individuals who might be relevant to interview? Did the interviewee recommend other lines of inquiry? Did the interviewee appear reliable and credible? Does the information shared appear reliable and credible?
- **Interviewee's well-being:** What was the mental state of the interviewee? Does the interviewee require further assistance?
- **Risks to the interviewee or others:** Has the interview revealed any new or changed risks to the interviewee, or any other person?

Ideally, documenters should go through the verification process for testimonial information as soon as possible after conducting the interview to record valuable impressions and observations that will fast be forgotten if done later.

### 4 Interviewing Vulnerable Individuals

Often, the individuals interviewed will be particularly vulnerable, because of their status or their experiences. Vulnerable interviewees include children, survivors of trauma, refugees and internally displaced persons, persons with disabilities, persons deprived of liberty, and survivors of sexual and gender-based violence (women and men).

**Generally, when engaging with vulnerable interviewees:** Engaging with vulnerable individuals requires extensive and sensitive training. Documenters should proceed very carefully when conducting interviews with vulnerable individuals. On the other hand, individuals may be vulnerable but want to and may find strength in speaking about the incident/events. Documenters should very carefully discuss her or his interest in an interview. *Informed consent* is of particular importance. 'Harm Reduction' measures also should be very carefully explained to the interviewee for her or his comfort (for instance, that the interviewee is free to choose to answer questions he or she wishes to answer and can stop the interview at any time).

**Specifically, for interviewees who have suffered trauma:** Any interview that requires details of the traumatizing events experienced should be conducted **only** by a professional with proper training, and with the right social-psychological support and available resources. Unassisted documenters should refrain from going in depth, and only glean information about the event (date, time, location, persons involved—the so-called “four corners”), *if the interviewee consents*. **Documenters should record that all steps possible have been taken to provide counseling and psycho-social support during and after the interview.**

**Specifically, for interviewing victims of sexual and gender-based violence:** Additional guidelines are necessary when documenting events related to sexual or gender-based violence. As a rule, documenters should refrain from interviewing victims of such violence. As an exception, if the individual expresses a desire to speak about the incident/events and the information may otherwise be lost, documenters should review specific additional resources, such as the Second edition of the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law*. Victims should always be given the choice of gender of the interviewer, where possible, and other preferences such as the location of the interview, or the presence of a support person.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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**Specifically, for children:** Interviewing children is not advised without specialist training and referral resources. This Protocol does not cover the special advice that applies to documenting violations against or affecting children. Due to their age, children often suffer multiple violations and complex consequences. This should not be documented by untrained individuals in any circumstance, even with short or seemingly simple questions, and even if parents or guardians request or encourage the documenter to speak to a child.

### 3.4 Verifying the Information Collected

Once physical, documentary, or testimonial information has been collected, it must be verified. Verification is part of assessing whether the information gathered about a particular incident is credible and reliable (see “[Principles of Evidence](#)”). This stage is of utmost importance. If the information is not credible or reliable, it will not be considered or given as much importance as it may have first appeared to have.

Verification can be extremely complex. It can require assessing whether a witness is reliable, and information probative, credible, and accurate. This often requires the specific expertise of authorities with a mandate to investigate or document such incidents. It may also require techniques and technologies that documenters do not have at their disposal. In light of this, documenters should always first consider whether relevant and professional organizations that have this expertise are accessible to them. If so, they should pass on the information collected to mandated experts, providing the interviewee or other sources have given consent to do so.

If this is not possible, documenters should themselves attempt to verify information, but only to the extent that is compatible with principles of ‘Harm Reduction’, security, and confidentiality.



#### **Verifying information is necessary before sharing it, but is not always possible.**

Circumstances may not allow verification, and corroborating every detail may not be possible, for example if the information to corroborate is not accessible (medical or police reports, other witnesses or locations).

Based on their verification, documenters should assess:

- Whether there are gaps where documenters need further information,
- Whether there are further sources of information that remain unexplored.

Based on the above, the documentation can cease or should be completed.

#### 3.4.1 GENERAL PRINCIPLES: CREDIBILITY, RELIABILITY, AND COHERENCE

To verify information, documenters should consider the requirements for evidence and high-quality information as described at the beginning of this section. To summarize these principles, **there are three important considerations when assessing information:**

- Whether the information is *credible*;
- Whether the source is reliable; and
- Whether the information is *coherent* with the broader context.

#### **1 Information Credibility**

Credibility refers to whether the information is trustworthy.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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This analysis has two stages:

- Determining whether the source of the information is reliable
- Determining whether the information itself is credible.

It is important to analyze both aspects: a reliable source could provide questionable information, whereas an unreliable source could provide credible information.

### 2 Source Reliability

For all types of information they receive, documenters should assess the reliability of the source providing that information, whether that is an individual, a communication, or public knowledge.

#### Is the source reliable?

- Direct knowledge: How does the source know the information: did they have direct access or experience (e.g. a witness or survivor), or did they access this knowledge through someone else?
- Motives: What are the motives for the source to communicate this information? Could they have hidden motives to provide inaccurate or false information? Honest sources can be mistaken, but others have an interest in providing an incorrect version of events.
- Bias: are there elements about the source, their background, or affiliation that could suggest their perspective is biased? In contrast to motives, bias is unintentional, and all human perspective is prone to bias. A source's potential bias does not mean it should not be considered, but will impact the quality of the information provided. Documenters should pay attention to three types of bias:
  - Confirmation bias: a person's pre-existing beliefs or assumptions will affect the way they seek, weigh, and interpret information.
  - Contextual bias: information about the context of an event can influence reasoning, but can be irrelevant to the interpretation of events.
  - Stereotype bias: perceptions of a social group, such as religion, gender, race, or other may influence perspectives and behavior.
- Consistency with other information: is the source's information consistent and coherent with the broader context, prior statements, and other information?

When the source is an interviewee:

- **Does the interviewee appear to be speaking the truth as they believe it to be?**

Indicators of credibility include honesty, answering questions asked yet being willing to admit that they do not know the answer to a question, and presenting no obvious bias.

- **How does the person behave and react when communicating?**

Some interviewees may present as very confident and bolster their accounts, others may refuse to discuss their experience. Survivors and witnesses may feel distressed or afraid, and reluctant to speak. Documenters should be careful not to interpret this behavior as confirming or infirming a specific narrative or answer to a question.

- **Does the interviewee's narrative flow naturally, or does it seem recited or controlled?**

A natural narrative does not need to be chronological, logical, orderly: it should be human, and reflect the

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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imperfections of a spontaneous account. Accounts that have been learned by heart and are recited may be clear, but they are not natural. This can be difficult to recognize, but learned accounts usually present a version of events that are convenient or exonerating of perpetrators, go against the logic of the event, or contrast with other known information. However, documenters should use their judgment in assessing this: some natural accounts are detailed and clear. Some witnesses have experience being interviewed, or have already been interviewed multiple times and developed a consistent account of their experience.

**Is the information provided by the source credible?** To assess this, documenters can confirm their information with information that other independent sources have, or is available publicly (e.g. public reports). This does not mean documenters should provide their information to the other source, especially confidential information.

- Is the content of the documenter's information consistent with information that other groups with knowledge and expertise on the matter have?
- Are sources only referring to one another, or to the same source?
- An independent source might confirm the documenter's information, but this could be only because they have the same original source (the same person, the same website, the same informant). If they can preserve the source's confidentiality, documenters should check the identity of other organizations' sources and their own.
- Do other witnesses, victims, stakeholders have similar accounts? Do they describe the same facts?
- Documenters can seek to corroborate the information provided by a source with friends, family, neighbors, or other sources.



**Safety: documenters should never share the name of a source, the information they received from them, or that the source shared information with them.**

### 3 Information Coherence

To assess if the information is coherent, it should be checked against what is known about the factual context and the other the information that is collected.

- If the information is considered *credible*, does the story *as a whole appear* accurate when all the pieces are put together? For example, does a particular allegation correspond to a wider pattern of human rights violations?

#### 3.4.2 SPECIFIC VERIFICATION FOR INFORMATION TYPES

All information should be assessed with the above questions and considerations. There are also specific aspects to verification for different types of information.

##### For physical information:

- **On-site visits:** Inspecting a site can assist with verifying information. In some cases, visiting a site can help to assess the origin of physical objects and information or their role in the incident. On-site visits should only be carried out if they respect the 'Harm Reduction' principle, and do not present a risk to documenters and local residents' security. Documenters should never visit a site alone and the support of an organization or relevant network is strongly recommended.
- **Scientific expertise:** The information from physical information often requires technological expertise. For example, the analysis of computers, bones, samples of DNA from clothing, weapons, as well as the age of documents and papers all require scientific expertise. This highlights the importance of determining if and

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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which mandated authorities could receive the information that documenters collect.

### For documentary information:

- **Verifying the physical support of the document:** the added value of documentary information comes from its content—the substance of the information written—and the object on which the content is contained—the paper, the computer, email, the stamp. For this reason, documentary information can require the same scientific expertise that physical information does, to analyze the document’s characteristics and extract information from it, for example the computer, the age of the paper, the ink used.
- **Authenticity:** to determine if documenters can rely on what a document says (its content), the document needs to be authentic. This is important to analyze when documentary information is collected or received (*See above, “Documentary Information, Authenticity”*). This is because determining authenticity is largely influenced by the source/ the origin of the documentary information, and documenters should record information about the provenance of information as they receive or collect it. Determining the source of different types of documents can require expertise. Documenters should focus on identifying the source and preserving the information as well as possible so that scientific experts can later extract more information from the document. This requires preserving the chain of custody of the document, in order to trace its provenance and infer its authenticity at a later stage.

**For digital information:** within documentary information, **digital information** has specific verification steps. Documenters should seek to verify digital content themselves in addition to information about the source.

To verify digital content, documenters should:

- **Conduct a reverse image search:** This search determines whether the image has appeared earlier online. If the search does not produce results, documenters should record this.
  - For images, tools exist, where documenters can upload the image or search for a URL link. Two such tools are:
    - Google Image Search, and
    - TinEye
  - For videos, it is not possible to search for a full video as it is for an image. Documenters should take a screenshot of the video, preferable from the beginning or of key moments. Then, it is possible to conduct a reverse image search. Two such tools that create video thumbnails include:
    - Amnesty International, YouTube Data Viewer, and
    - Invid Chrome Extension
- **Determine upload time:** This search determines when a video was uploaded to the Internet. Different websites mark upload times differently. YouTube and Instagram record the time zone of Pacific Standard Time (PST). Facebook records the time of the device (computer, mobile phone) consulting the video. Twitter displays PST if the user is not logged in, or the time zone of the person consulting Twitter if they are logged in to a Twitter account. This can be different if you are using a Virtual Private Network (VPN), which changes your device’s location.
- **Geo-locate:** This helps identify where a photo or video was recorded. Documenters can compare visual clues with online maps and images, positioning themselves from where the camera would have been located. Visual clues include recognizable features, distinct structures, vegetation, and topography. Tools include Google Earth, Google maps, and Wikimapia.
- **Check details:** Examining details in the content can help assess veracity. Documenters should check the people portrayed, the clothing they are wearing, signs in the area, car registration plates, the location of shadow to indicate time of day, and compare with the weather in a specific place on a specific day.
- **Extract meta-data:** Meta-data tied to digital content provides information on the GPS location, the date and time

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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the image or video was taken, the recording device used, and the author of the image or video. This is very precious information. **Social media networks strip information from their meta-data:** Documenters should note where they are getting meta-data from and if it is from a social media website. Tools to extract meta-data from content that was not on social media include:

- Jeffrey's Exif Viewer
- YouTube Data Viewer
- Phil Harvey's Exiftool

**For testimonial information:** Verifying information from a person consists of assessing whether they are *reliable* as a source of information, and whether the information they provide is *credible*, *consistent*, and *accurate*. Testimonial information should be verified by corroboration from other testimonial evidence or supported by documentary or physical information.

Documenters should review the above guiding questions for *Source Reliability*, and *Information Consistency*, *Coherence*, and *Context*, as well as cross-check the following information:

- **Multiple consistent narratives:** Consistent narratives by multiple people of the same event, **all being interviewed separately, without specific knowledge of what other persons interviewed have said in an unprompted manner**, supports the likelihood that narratives are factually accurate (and therefore *credible* and *reliable*). This requires as many corroborating narratives as the type of incident allows. For instance, when checking information about a protest, many witnesses may be available. However, in an act of sexual violence, there may be no direct witnesses with the exception of the victim. Again, documenters should only seek multiple narratives with respect for 'Harm Reduction,' specifically with respect to *security* and *confidentiality* considerations.
- **Level of detail:** A high level of detail suggests that information is *accurate*, because *detail is hard to invent*. When someone is giving inaccurate information, details will be missing. **This does not apply to vulnerable individuals and victims of trauma, who may be unable to remember details.** For example, individuals asked to describe a location they were in can be asked to draw it, explain the rooms, the walls, and details on the walls. When identifying specific individuals as abusers, the name of the person, specific details about clothing, uniforms, badges, and any other granular detail suggests an accurate description of a person.

For vulnerable individuals sharing information, particularly in interviews, documenters should always consider the state of mind of the interviewee when evaluating the information provided. (See also "[Evaluating the Interview](#).")

### 3.5 Analyzing the Information Collected

*Analyzing the information* collected is the final step to documentation before reporting it or submitting it to a procedure. The objective is to connect the information collected to a legal framework, and specific elements of this legal framework. This will allow documenters to determine to which procedure information can be submitted. For example, information that suggests a violation of international human rights law (IHRL) can be submitted to international advocacy bodies that monitor international human rights, such as the UN Special Procedures.

To analyze their data, documenters should compare and contrast the data and information collected to the applicable legal framework(s). The following questions with the elements of the international legal framework(s) can guide the analysis.

If feasible, this analysis should be written and added to the information that documenters submit to a procedure. Some procedures require the reasoning based on which they are petitioned by stakeholders. This involves how the incident is relevant to their work, and how it is the correct procedure to apply to the information:

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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### International Human Rights Law

Which element(s) of the freedom of religion or belief could the information be connected or in which element(s) is a violation demonstrated?<sup>191</sup>

- **The right to have, adopt, change, or leave a religion or belief:** This aspect of the freedom of religion or belief is absolute—it cannot be limited.
  - Are there State or legal limitations to this right?
  - Are any groups banned?
  - Is the right to convert or adopt atheistic beliefs limited?
  - Are there any limitations by and from social groups to this right?
  - Is inter-religious marriage permitted, or is one spouse required to convert? Is divorce permitted for all groups (unequal divorce rights can make conversion the only means to escape marriage)?
  - Is there discrimination or violence connected to having, changing, or leaving a particular religion or belief? This includes honor-based and extremist violence.
  - Are people required to reveal or register their religion, for instance, by possessing religious identity cards?
- **The right to be free from coercion:** This aspect of the freedom of religion or belief is absolute—it cannot be limited. Questions to consider this aspect include:
  - Are religious or belief activities targeted by mob or terrorist violence?
  - Are crimes related to religion common? Are individuals who leave a religion the target of violence? Does the State take adequate measures to prevent this, and provide protection and justice?
  - Do any State laws on religion violate human rights? For example, does the law compel individuals to observe religious norms that violate human rights?
  - Do individuals, particularly women, face coercion from society to practice or refrain from practicing religion, or to follow specific codes of conduct? Does the state take measures against this?
- **The right to practice and manifest a religion or belief:** This aspect of freedom of religion or belief is qualified—it can be limited by law if necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others. Questions to be considered regarding this right include:
  - Does activity related to religion or belief need to be registered? Is it illegal otherwise?
  - If religious communities need to be registered, are the registration requirements reasonable? Are all groups that wish to register able to do so?
  - Are there equal and sufficient rights to build or rent and maintain places of worship? Are minority groups able to get permission in practice? Has the state confiscated, closed, or demolished places of worship or belief activity?
  - Is blasphemy prohibited? Are people free to speak about religion or beliefs to others, including the right to try and convince others of the truth of the religious or atheistic beliefs, and the right to criticize Religion or Beliefs?

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<sup>191</sup> Bielefeldt, Heiner, et al. *Freedom of Religion or Belief: An International Law Commentary*. Oxford University Press, 2017.

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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- Is religious or belief literature censored?
- Are any religious practices obligatory or banned? For example, wearing religious clothing, participating in religious rites?
- Are there limitations from the State or private actors on women's rights to study religion and participate in or lead religious communities?
- Does the State interfere in religious communities' choice of religious leaders?
- **The right to non-discrimination on the basis of religion or belief:** This aspect of the freedom of religion or belief is absolute and cannot be limited.
  - Does the State show favoritism towards a particular religion or belief in a way that disadvantages other groups as a result?
  - Are there any limitations on the social, economic, civil, or political rights of members of any groups?
  - Is social and economic discrimination on the basis of religion or belief widespread in society? Does the State take measures against this?
- **The right to bring up one's children in accord with one's religion or belief:** parents and legal guardians have the right to provide moral and religious education to their children according to their beliefs, including having, changing, and leaving a religion or belief. This aspect of the freedom of religion or belief is absolute. The right to manifest religious or belief-based upbringing is qualified and can be limited.
  - Are children banned from or restricted in participating in religious or belief activities?
  - Is teaching religious or belief-based? Are exemptions to religious or belief-based education available, in principle and practice, to all children and parents who do not wish to participate in it?
  - If one party to a marriage converts, are children automatically converted by the State without the permission of the other spouse? Can children refuse automatic conversion?
- **The right to conscientious objection to military service:**
  - If military service is compulsory, are there reasonable exemptions for conscientious objectors? Are any objectors imprisoned or punished?
- **Which other human rights are involved?**
  - The right to life
  - The right to be free from torture or cruel, inhuman, or degrading treatment
  - Women's right to equality
  - The right to freedom of expression and association
- **For which at-risk group(s) is information being gathered?**
  - Women
  - Children

## **PART 2. Monitoring and Documenting Violations of Religious Freedom**

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- Minority groups
- Refugees or Internally Displaced Persons (IDPs)
- Persons deprived of their liberty
- Migrant workers

*Based on the information collected, does the incident amount to a violation of International Human Rights Law?*

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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### International Criminal Law (ICL)

Are the elements of one of the three crimes of international criminal law present?

Crime of Genocide: Was one of the following acts committed against a national, ethnic, racial, or religious group, with intent to destroy the group in whole or in part?

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Forcibly transferring children of the group to another group.

Crimes Against Humanity: were any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of population;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other sexual violence of comparable gravity;
- Enforced disappearance;
- Apartheid;
- Other similar inhumane acts that cause great suffering or serious injury to body, or mental or physical health;

When at least one of these acts was committed against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds impermissible under international law?

War Crimes: in the context of conflict (and International Humanitarian Law, IHL), were the laws and customs of armed conflict seriously violated, including:

- *Intentionally* directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, *provided they are not military objectives?*
- Other violations of IHL? All violations of IHL are considered 'war crimes' under IHL (See more under "[International Humanitarian Law](#)" below.)

*Based on the information collected, does the incident amount to a violation of International Criminal Law (ICL)?*

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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### International Humanitarian Law (IHL)

Does the incident violate the protections of convictions and religious practices found in customary international humanitarian law (CIHL)? (See considerations below):

Respect for Convictions and Religious Practices (Rule 104, CIHL): The convictions and religious practices of civilians and persons *hors de combat* must be respected by parties to an armed conflict. Parties must respect the religious convictions and practices of persons in occupied territory.

- Are all religions and beliefs respected, including those of minority or unrecognized groups?
- Are civilians and non-fighters able to manifest their personal convictions, or practice their religion (for example, burial rites, treatment of the dead)? Do they have access to places of worship and religious personnel? Do they have access to books and articles required for religious needs?
- Are individuals being targeted on the ground of their religion?
- Are civilians and non-fighters forced to convert to another faith?
- Are orphaned children, or children separated from their parents able to be educated in the religion or beliefs of their parents?

Respect for Convictions and Religious Practices of Persons Deprived of Their Liberty (Rule 127, CIHL): The personal convictions and religious practices of persons deprived of their liberty ('prisoners of war') must be respected, in all types of armed conflict (international and non-international).

- Are detained persons allowed access to clerics of their religion, in principle and in practice?
- Are detained persons allowed to practice their religious beliefs (for example, prayer times)?
- Are detained persons forced to act against religious beliefs (for example, cutting their hair, eating certain meats or foods, or smoking cigarettes)?
- Are detained persons allowed to engage in correspondence on matters concerning their religious duties?
- If detainees' practice of religious and personal beliefs is limited, are these limitations reasonable (for example, compliance with a disciplinary routine)?

Religious Personnel (Rule 27 CIHL): Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts that are harmful to the enemy. 'Religious personnel' refers to personnel (military or civilian) who are exclusively engaged in the work of their ministry and are attached to a party to the conflict, to its medical units, or transports, or to a civil defense organization.

- Are religious personnel entitled to use distinctive emblems to identify themselves as protected persons that cannot be targeted?
- Are conspicuous religious personnel intentionally targeted in attacks? Did religious personnel engage in acts of combat that would remove their protected status?
- Are religious personnel allowed access to persons of their faith?
- Are both civilian and military personnel protected by parties to the conflict in all circumstances?
- Are religious personnel allowed to be equipped with light, individual weapons to use exclusively in their own defense or in defense of the wounded or sick?
- Are other persons performing religious functions allowed to enjoy the protected status of civilians?

## PART 2. Monitoring and Documenting Violations of Religious Freedom

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Attacks against Cultural Property (Rule 38, CIHL): Each Party to the conflict must completely respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education, or charitable purposes, and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperative or as required by military necessity.

- Is protected civilian cultural property targeted or attacked? Was the property being used for military purposes, such that it would lose its protected civilian status?
- Is cultural property understood to include buildings dedicated to religion and historic monuments?
- Is cultural property understood to include property from religious or social minorities and unrecognized groups?

Use of Cultural Property for Military Purposes (Rule 39 CIHL): The use of property of great importance to the cultural heritage of every people for purposes that are likely to expose it to destruction or damage is prohibited, unless imperatively required by *military necessity*.

- To establish *military necessity*, has the cultural property been made into a *military objective*, and is there no feasible alternative to obtain a similar military advantage than attacking the cultural property?

International Human Rights Law (IHRL) applies at all times, in peacetime or armed conflict. In times of armed conflict, the right to respect for religious and other personal convictions is protected under International Humanitarian Law (IHL). Like in times of peace, the fundamental elements of freedom of religion or belief cannot be limited; but the right to manifest them can be limited.

*Based on the information collected, does the incident amount to a violation of International Humanitarian Law?*

PART 3

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# Using the Information Documented – Avenues for Advocacy

# Contents

<b>1. Advocacy</b>	<b>116</b>
1.1 Advocacy's Purpose	116
1.2 Methods of Advocacy	117
<b>2. Reporting (Drafting a Report)</b>	<b>118</b>
2.1 Purposes of Reporting	118
2.2 Different Types Of Human Rights Reports	119
2.3 General Principles Of Effective Reporting	119
<b>3. Advocacy Avenues</b>	<b>121</b>
3.1 International Avenues	121
3.1.1 The United Nations Special Rapporteurs	121
3.1.2 United Nations Thematic Working Groups	122
3.1.3 The Human Rights Council Complaints Procedure	123
3.1.4 United Nations Treaty Bodies Complaint Procedures	123
3.1.5 The Universal Periodic Review	124
3.2 Regional Avenues	125
3.2.1 The Inter-American Commission on Human Rights	125
3.2.2 The African Commission	126
3.2.3 The European System	127
3.2.4 The Arab Human Rights Committee	129
3.2.5 The ASEAN Inter-Governmental Commission on Human Rights	130
<b>4. Judicial Avenues</b>	<b>130</b>
4.1 Domestic Courts	130
4.2 The International Criminal Court	130
4.3 Regional Courts	132
4.3.1 The Inter-American Court of Human Rights	132
4.3.2 The African Court of Human and Peoples' Rights	132
4.3.3 The European Court of Human Rights	133
4.3.4 The Arab Court of Human Rights	133

## PART 3. Using the Information Documented – Avenues for Advocacy

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Once information has been collected, advocates should consider the most effective ways to seek change with that information. Different advocacy avenues are available at the local, regional, and international levels.

Avenues for advocacy should be determined on a case-by-case basis considering the following factors:

- The nature of information collected and the most impactful ways to use it;
- The cultural and political sensitivities; and
- The will and consent of those affected by the violations.

Following the above assessment, two main routes can be pursued separately or jointly: **advocacy and/or judicial avenues**.



*Advocacy* seeks to influence a change in policy or practice for the purpose of improving life qualities for a group of people who are disadvantaged because of a particular policy or practice.<sup>192</sup> While there is not a commonly adopted definition for advocacy, different people in different contexts use it in different ways.

### 1.1 Advocacy's Purpose

The main purpose of advocacy in the context of religious freedom is to utilize different methods of engaging and influencing decision-makers to respond to violations of religious freedom against individuals and communities and to address legal and societal frameworks that are causing these violations or allowing for them to happen.

- **When an individual is harmed, arrested, or discriminated against**, advocacy can deal with the immediate harm caused. For example, international advocacy supporting Asia Bibi, a Christian woman accused of blasphemy and sentenced to death for having drunk water from a well used by the majority religion in Pakistan, succeeded in securing her release after she served ten years in prison.
- **When a religious community is targeted or discriminated against**, advocacy can work to address the discrimination or deal with the harm that has been caused to its members. For example, international advocacy shed light on the violations faced by the Uyghur community in China and helped compel global corporations to scrutinize their supply chains and prevent production using forced labor. International advocacy has also revealed violations committed against the Rohingya community in Myanmar, resulting in the establishment of an Independent International Fact-Finding Mission to document the crimes committed and provide justice and accountability.
- **When necessary legislation is lacking**, advocacy can aid in calling for the passing of a new law. For instance, in Iraq, following international advocacy recommendations, the Parliament passed the Yazidi Women Survivors Law, providing for compensation and rehabilitation for Yazidi female survivors of crimes committed by the Islamic State.
- **When an existing law is discriminatory against the freedom of religion or belief of certain people or groups**, advocacy can work toward amending or abolishing that law. For example, in South Korea, after *advocacy* before UN bodies, the Supreme Court de-criminalized conscientious objection, holding that moral and religious beliefs

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<sup>192</sup> BOND Guidance Note, *The How and Why of Advocacy*, 2005, p.1, available at: [http://www.pointk.org/resources/files/The\\_how\\_and\\_why\\_of\\_advocacy.pdf](http://www.pointk.org/resources/files/The_how_and_why_of_advocacy.pdf).

### PART 3. Using the Information Documented – Avenues for Advocacy

are valid reasons to object military service.

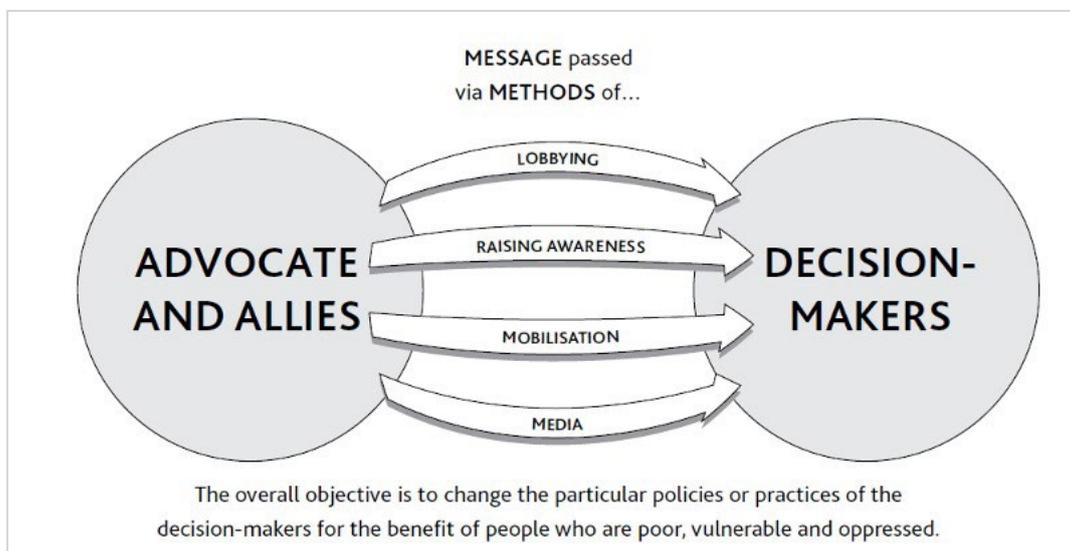
- **When a law or article in place to protect freedom of religion or belief is not being implemented,** advocacy can call for thorough application of that law. For example, in the United States, international advocacy called on respecting the U.S. the constitutional right to freedom of religion for travelers entering the United States being subjected to intensive screening based on their Muslim faith.

## 1.2 Methods of Advocacy

There are several ways in which advocacy can convene its message to influence decisionmakers to act for religious freedom.

- **Lobbying:** Influencing decisionmakers or those in positions of power to act on behalf of and protect religious freedom victims and to deal with the consequences of their suffering. Lobbying can take different forms and be public or private depending on the issue and the type of relationship between the advocate and decisionmaker.
- **Raising awareness:** This entails making religious freedom violations known to the public and those in power through holding conferences, publishing reports, launching social media campaigns, etc.
- **Mobilization, public campaigns:** Mobilizing the public to support your case could be a very effective way of influencing decision makers to act, for example through petitions, peaceful marches, letter writing campaigns, etc.
- **Working with the media:** Including the media can also be a powerful tool to raise the profile of your advocacy work and to influence decisionmakers to act, for example, through press releases, media interviews, or social media.

The chart from the Tearfund Advocacy toolkit<sup>193</sup> below shows key tactics for advocacy:



Advocacy can be conducted locally, regionally, and internationally, separately or at the same time for maximum effect.

When getting started with an advocacy strategy, the first two questions that should be considered is why they want to conduct *advocacy* and how they can best advocate. When designing an advocacy strategy, it is important for advocates to first and foremost identify the change that they want to influence. This should follow a thorough assessment of the issues at stake, a good analysis of the root causes, and the scope of influence they have at their disposal.

<sup>193</sup> Tearfund, *Advocacy Toolkit, second edition, 2015, p. 7.*

## PART 3. Using the Information Documented – Avenues for Advocacy

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This is the first step of the advocacy cycle, which includes the following five major steps:

- 1 Identify issues and change
- 2 Assess root causes, context assessment, capacity, influence, and risks
- 3 Design your strategy: build the ‘theory of change,’ decide which activities will be included, see the budget, etc.
- 4 Implement, monitor, and learn
- 5 Evaluate

Many sources describe the advocacy cycle and its stages. For more detail, see the [Appendix](#) for recommended advocacy toolkits.



## 2. Reporting (Drafting a Report)

Reports on religious freedom violations are essential resources to present synthesized findings obtained through documentation, shedding light on violations that could otherwise go unnoticed, and propose recommendations to address the root causes of violations or seek redress for harm.<sup>194</sup> Documenting religious freedom violations is an essential step in obtaining justice and changing the root causes of religious freedom violations. Presenting the findings of documentation in a report is a highly effective way to bring together data, trends, and evidence to motivate change.

### 2.1 Purposes of Reporting

Reporting is the means through which raw information is collected through documenting and explained for an identified audience, often for the purpose of acquiring local, national, and international attention that spurs action to prevent further religious freedom violations and bring justice to those affected by the violations. Before drafting a report on the information that advocates have gathered through documentation, it is important to consider both the desired objective and the audience or influencers who might be able to bring about that objective. This will help determine whether taking the time to draft a report is the best way of accomplishing advocates’ objective.

Advocacy on any religious freedom-related issue often begins with preparing a report of the information gathered on any particular issue. Well-presented reports, based on credible evidence of violations of religious freedom, can help build momentum to bring about change on a particular issue. This includes whether you are trying to build momentum for change at a grassroots level, through media-based advocacy, in coalition building, with influential businesses, or with policymakers. Similarly, international monitoring bodies, for example a United Nations Human Rights Council and its various Special Rapporteurs, often solicit participation through reports with first-hand collected evidence. These advocacy avenues are discussed in further detail below.

In contrast, if the influencer who holds the power and authority to bring about the change you seek is not a policymaker but a local faith or civic leader, cultural practices should be considered, in which case a formal report may do more harm than good in achieving the desired change. In these instances, the sharing of raw data and information is often the best practice.

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<sup>194</sup> United Nations Human Rights Office of the High Commissioner (UNHCR), *Manual on Human Rights Monitoring—Chapter 13—Human Rights Reporting*, p. 4, available at: <https://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>.

### 2.2 Different Types Of Human Rights Reports

The objective of the report (what is the change you want to see?) and its intended audience(s) are critical to determining the format and style of the report. Of the two factors, identifying the audience(s) will most often impact the format of the report:

- **Report for a monitoring body:** International monitoring bodies often accept reports from outside organizations or individuals but set specific rules as to the length and format to manage the content. Advocates should check the rules for each monitoring body. These reports, in addition to providing the information for patterns or trends of religious freedom violations, should set the local context (for example political groups and their respective standing, tension along ethnic, social or religious lines, the existence of an armed conflict and the parties involved, the structure of power, including the relevant legal framework).
- **Internal organizational reports:** The United Nations Manual on Human Rights Monitoring contains an in-depth section on writing internal reports such as interview reports, incident and investigation reports, emergency reports, and periodic reports. Though the guidelines are specific to UN Human Rights Officers assigned to field offices, they may be instructional for keeping good internal records or if the intended audience is the United Nations or a field office of an inter-governmental organization or similar agency with reporting requirements to its headquarters.<sup>195</sup>
- **Periodic reports for public dissemination** provide a regular update, often cumulative from past periodic reports, on the overview of the situation of religious freedom in a locality. These reports often assess “the degree to which the authorities and/or relevant non-State actors respect their human rights obligations.”<sup>196</sup>
- **Thematic reports for public dissemination** focus into a particular area of freedom of religion or belief that can but need not be bound by a particular geographic region (for example the right to choose your religion, the right of assembly, the right to express your religion in public or private, the intersection of religious freedom and other relevant human rights).
- **Policy Brief:** Intended for policymakers, policy briefs are not a true report, but a short synthesis of a report laying out the root causes identified by evidence and information gathered and concrete policy recommendations to address such root causes. Policy briefs should aim to be fewer than four pages in length.<sup>197</sup>

Many judicial and advocacy bodies that receive individual or group complaints will have predetermined criteria for the type of information that needs to be submitted to them for them to be able to consider the complaint and potentially act upon it. Advocates should always follow the guidelines provided by the body to correctly submit their information. Other organizations often publish materials to assist with submissions to specific bodies.

### 2.3 General Principles Of Effective Reporting

Reporting translates raw data and information into clear facts and problems (trends or patterns) and proposes solutions in the form of recommendations. A quality report refines raw data and information and communicates the findings in a logical and organized manner. A well-drafted report enhances the credibility of the documentation process and lays the foundation for action.<sup>198</sup> Though reporting can follow different approaches and standards, to achieve a high standard and be regarded as reliable, reporting should respect some key principles:

- **Targeted audience:** Identifying the audience is a critical step to meeting the objective and the desired impact. Having a specific audience in mind is essential to shape the structure, content, language, style, and level of detail of a report. Communicating to the sensitivities, motivations, and needs of the audience is necessary to

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<sup>195</sup> United Nations Human Rights Office of the High Commissioner (UNHRC), *Manual on Human Rights Monitoring – Chapter 13—Human Rights Reporting*, p. 2, available at: <https://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>.

<sup>196</sup> United Nations Human Rights Office of the High Commissioner (UNHRC), *Manual on Human Rights Monitoring – Chapter 13—Human Rights Reporting*, pp. 12-17, available at: <https://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>.

<sup>197</sup> See <http://eurohealthnet-magazine.eu/speaking-the-language-of-policy-makers-in-research-project-dissemination/>.

<sup>198</sup> United Nations Human Rights Office of the High Commissioner (UNHRC), *Manual on Human Rights Monitoring – Chapter 13—Human Rights Reporting*, p. 4, available at: <https://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>.

### PART 3. Using the Information Documented – Avenues for Advocacy

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meeting the objective and desired impact.

- **Language and style:** to ensure that the message of the report is conveyed properly to its audience, the report will need to adopt a specific style and language tailored to such an audience. For instance, the terminology for referring to a specific issue or people's group should be carefully selected according to the way they are referred to by the target audience. The language should be neutral and not use informal vocabulary that the target audience would not understand.
- **Synthesize:** Policymakers, advocacy, and judicial bodies need to gather information quickly and effectively. Synthesizing is key to pulling out the key messaging you want your audience to remember. “[B]eing able to communicate complex ideas in an understandable and usable way is central to maximizing influence.”<sup>199</sup> For policymakers, studies find that policymakers may pass over good information if another publication has a better narrative or synthesis.<sup>200</sup>
- **Succinct writing:** A report should aim to be present findings and recommendations in a relatively short, well-structured document that will catch the attention of the intended audience. For most audiences, short and succinct (yet thorough) is better than long and cumbersome. Policymakers often require the shortest presentations, some are limited to 10-15 pages.<sup>201</sup> No matter the audience, writing a succinct, comprehensive piece of research is not easy but is important to ensure that it will be given due attention.
- **Evidence-based, not anecdotal:** Many who report on religious freedom violations fall into an anecdotal tone, telling the stories of victims of religious-based persecution. Stories are a powerful tool and have a place in report writing as examples of patterns or trends, but the weight of any report should lay out the analysis of the information and document incidents to build an evidence-base of patterns and trends.
- **Objective and neutral:** A report on religious freedom violations should present the facts and information with clarity and without expressing any personal view or bias. This includes being authentic about the weakness of any evidence presented, room for any bias in the collection process, or identifying necessary assumptions made in the analysis. The evidence-basis of a report may be discounted if it contains absolute or sweeping statements. This is in part because absolute and sweeping statements often reveal a subjective conclusion and are very difficult to prove even with the best evidence. Importantly, the root causes of certain religious freedom violations are complex and absolutes and sweeping statements often minimize these complexities. The reliability of a report depends on whether it is objective and neutral.
- **Accuracy:** A report should be accurate and precise and based on reliable information selected according to agreed standards. The report should be thorough and should not assume any prior knowledge of its audience. The target audience should be capable of understanding the problems and violations presented without having to consult other sources of information.
- **Visually appealing:** The visual appeal of a report can make a difference to how it is received. A professional, yet visually appealing presentation can determine whether the audience picks up the material among the great many documents presented or sent to them each month. Some policymakers recommend that publications should be designed so that they can be visually digested in three minutes. *Visually* appealing also means that the report has clean lines with plenty of white space and, where appropriate, compelling visual graphics and charts.
- **Action-oriented:** The report is just the start of advocacy, to achieving an objective. Thus, an advocacy report must inspire a response and deliver the audience a pathway to change. The report should be action-oriented and present a set of recommendations that targets relevant stakeholders who have influence and authority to address the violations outlined in the report. Recommendations must be worded with clarity and care and should be specific, targeted, feasible, politically attainable, culturally sensitive, concise, and, where possible, time-bound.

Further resources on strategy and effective reporting can be found in the [Appendices](#).

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<sup>199</sup> See <https://blogs.lse.ac.uk/impactofsocialsciences/2011/05/16/fig-improving-your-capacity-to-influence-policy/>.

<sup>200</sup> United Nations Human Rights Office of the High Commissioner (UNHRC), *Manual on Human Rights Monitoring – Chapter 13 – Human Rights Reporting*, pp. 4. Available at: <https://www.ohchr.org/Documents/Publications/Chapter13-MHRM.pdf>

<sup>201</sup> Avey, Paul C. and Michael C. Desch. “What Do Policymakers Want from Us? Results of a Survey of Current and Former Senior National Security Decision Makers,” 2014, available at: [https://camrank.nd.edu/assets/294806/isq\\_final.pdf](https://camrank.nd.edu/assets/294806/isq_final.pdf)



## 3. Advocacy Avenues

Advocacy avenues are responsible for the enforcement of international or regional human rights, contained in treaties signed by States. States are therefore the actors that have the duty to respect and enforce these rights. Advocacy avenues provide the means to investigate violations allegedly committed by States or their actors, or violations committed by private individuals that the State had a duty to prevent.

### 3.1 International Avenues

#### 3.1.1 THE UNITED NATIONS SPECIAL RAPPORTEURS

As part of the United Nations Human Rights Council, independent human rights experts called Special Rapporteurs have the task of reporting and advising on specific human rights, topics, or countries. There is a specific Special Rapporteur for the Freedom of Religion or Belief.

Other Rapporteurs cover topics that may be relevant to violations of the Freedom of Religion or Belief, including the Special Rapporteurs on:

- The Promotion and Protection of the Freedom of Expression and Opinion;
- The Rights to Freedom of Peaceful Assembly and of Association;
- The Rights of Internally Displaced Persons;
- The Human Rights of Migrants;
- The Rights of Indigenous Peoples;
- Minority Issues;
- Contemporary Forms of Racism, racial discrimination, xenophobia, and related intolerance;
- The Promotion and Protection of Human Rights and Fundamental Freedom While Countering Terrorism;
- Violence Against Women;
- The Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence;
- Arbitrary, Summary, and Extrajudicial Executions;
- The Right to Education;
- Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment; and
- The Field of Cultural Rights.

**Submitting Information and Complaints to Special Rapporteurs:** individuals and groups from all over the world can submit information on a human rights violation to any Special Rapporteur whose mandate may cover that kind of violation. Depending on the facts of a violation and other human rights involved, information on violations of the freedom of religion or belief could be submitted to other Special Rapporteurs.

## PART 3. Using the Information Documented – Avenues for Advocacy

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Special Rapporteurs can intervene for a violation that has already occurred, is ongoing, or has a high risk of occurring. It can be for individual cases, general patterns, and trends of violations, for cases affecting specific groups or communities, or about the content of a law (draft or existing), a policy, or a practice that may not fully comply with international human rights standards.

Upon receiving information of an alleged human rights violation, Special Rapporteurs decide whether they can intervene based on specific criteria, including how reliable and credible the information submitted is, the details included, and the scope of the mandate. The concerned State does not need to have ratified the relevant human rights instruments. Alleged victims do not need to have used domestic remedies.

The identity of individuals and organizations that *send* information to the Special Rapporteur (the sources) are always kept **confidential**. However, communications that the Rapporteur sends to the State usually include the name of the victim, to allow the authorities to investigate the alleged violation or take action to prevent it. If privacy or protection requires keeping the identity of the victim confidential, the name will be removed from communications. This is why information submitted to Special Rapporteurs must include the consent of victims, their families, or their representatives to disclose the victim's identity. If a victim is under 18 years old, their name will always be kept confidential.

*For guidance and requirements to submit information to UN Special Rapporteurs, please see the resources in the [Appendices](#).*

**The U.N. Response: Allegation Letters, Urgent Appeal Letters, and Communication Reports:** If they decide to intervene, Special Rapporteurs intervene directly with Governments about the allegation(s). The Special Rapporteur sends a letter to the State concerned (called an *Allegation Letter*), containing the facts of the allegation, the applicable international human rights laws and standards, the Special Rapporteur's questions and concerns, and a request for the State to follow up on the allegation(s).

*Urgent Appeals* can be submitted to Special Rapporteurs, when alleged violations are time-sensitive because they could result in "the loss of life, life-threatening situations, or imminent or ongoing damages of a very grave nature to victims that cannot be addressed in a timely manner" by following the ordinary procedure. *Urgent Appeals* should include the same information submitted for *Allegation Letters* and can be made online to: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org).

Every reporting period (approximately every year) Special Rapporteurs submit *Communication Reports* to the Human Rights Council that summarize all the communications sent as well as the replies received during that period.

### 3.1.2 UNITED NATIONS THEMATIC WORKING GROUPS

Similar to the Special Rapporteurs, the **Human Rights Council Working Groups** consist of a group of independent human rights experts with the mandate to report and advise on specific human rights issues. Each Working Group is composed of five members, each one from a different regional group.

Working Groups that could be relevant to freedom of religion or belief include:

- The Working Group on Arbitrary Detention
- The Working Group on Enforced and Involuntary Disappearances
- The Working Group on People of African Descent
- The Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination

The Working Groups address information and complaints in the same way as the Special Rapporteurs. Each Working Group has a specific complaint form or questionnaire that can be submitted online. All of them require the same key information to be included in the complaint as Allegation Letters to Special Rapporteurs (*See above*). Like Special Rapporteurs, the Working Group considers the complaint submitted to it and intervenes directly with Governments if it concludes to act upon the information received.

*For more information on the UN Working Groups, please consult the references in the [Appendices](#).*

**3.1.3 THE HUMAN RIGHTS COUNCIL COMPLAINTS PROCEDURE**

In contrast to the U.N. Special Rapporteurs who focus on specific human rights and their violations, the United Nations Human Rights Council may hear complaints on “consistent patterns of gross and reliably attested violations of *all* human rights and *all* fundamental freedoms occurring in *any* part of the world and under any circumstances.” Under the ‘Council Complaints Procedure,’ individuals, groups, or non-governmental organizations may submit communications if they are victims of human rights violations, or if they have direct and reliable knowledge of violations. This procedure is confidential. The Complaints can be submitted online on the Human Rights Council’s *Complaint Procedure Form* (See link in the [Appendices](#)).

A communication submitted to the Council is examined in two stages. First, the **Working Group on Communications** assesses whether the communication is admissible and if (alone or with others) it demonstrates a pattern of gross and reliably attested violations of human rights or fundamental freedoms. For a communication to be admissible, it must meet specific requirements, including alleging the violation of rights contained in human rights treaties and being submitted by a victim or group with direct knowledge of the violation. The situation cannot have already been addressed by another human rights mechanism within the United Nations or regional bodies.

If the communication is considered admissible under the above criteria by the **Working Group on Communications**, it will be transmitted to the **Working Group on Situations**. This second Working Group will review the information and recommendations provided by the **Working Group on Communications** and present a report to the Human Rights Council on the attested human rights violations with recommended actions for the Council to take.

*For more information on the Human Rights Council Complaint Procedure, the complaint requirements, and the Online Complaint Form, please refer to the link in the [Appendices](#).*

**3.1.4 UNITED NATIONS TREATY BODIES COMPLAINT PROCEDURES**

**1 Individual Communications to Treaty Bodies (Complaints)**

The nine fundamental international human rights treaties each have a committee of experts that monitors the implementation of the treaty by the States that are party to it. These treaties and their corresponding monitoring committees are:

The International Covenant on Civil and Political Rights (ICCPR)	<i>The Human Rights Committee</i>
The Convention Against Torture (CAT)	<i>The Committee Against Torture</i>
The Convention on the Elimination of Racial Discrimination (CERD)	<i>The Committee on the Elimination of Racial Discrimination</i>
The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	<i>The Committee on the Elimination of Discrimination Against Women</i>
The Convention on the Rights of Persons with Disabilities (CRPD)	<i>The Committee on the Rights of Persons with Disabilities</i>
The International Convention for the Protection of All Persons from Enforced Disappearance (CED)	<i>The Committee on Enforced Disappearances</i>
The International Covenant on Economic, Social, and Cultural Rights (ICESCR)	<i>The Committee on Economic, Social, and Cultural Rights</i>
The Convention on the Rights of the Child (CRC)	<i>The Committee on the Rights of the Child</i>

Committees can consider individual complaints or communications against a State that is party to the treaty that the committee monitors, alleging a violation of a right (or rights) that the treaty protects.

## PART 3. Using the Information Documented – Avenues for Advocacy

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There are two conditions to submit a complaint with a committee against a State:

- The State against which the complaint is lodged must be a party to the treaty that protects the rights allegedly violated; and
- The State must also have accepted that the specific committee examine individual complaints against that State by adhering to the treaty's optional protocol (ICCPR, CEDAW, CRPD, ICESCR, CRC) or making a declaration that it accepts the committee's review (CERD, CAT, CED).

If both of the above conditions are met, anyone can bring a complaint against the State for an alleged violation of their rights. Third parties can bring complaints on behalf of individuals if they have the individual's written consent. If the person is not able to give consent (for example, if he or she is in prison or has disappeared), the reasons why they are not able to give consent must be included in the complaint.

The complaint should include information about the victim, the facts, which right(s) are alleged to have been violated, the domestic and international remedies the complainant has already sought relief from, and the remedies requested from the specific committee.

*Please see the [Appendices](#) for more information on the requirements to submit an individual complaint and the procedures that the corresponding committees follows when considering a complaint.*

### 2 State-to-State Complaints

In some cases, States can complain to a treaty body (the Committee) about an alleged treaty violation committed by another State. Both States must be party to the treaty that is alleged to have been violated and both must have accepted that the Committee receives State complaints against them. The treaties that include a mechanism for State complaints are the CAT (Article 21), the CED (Article 32), the Optional Protocol of the ICESCR (Article 10), the Optional Protocol of the CRC (Article 12), the CERD (Articles 11-13), and the ICCPR (Articles 41-43).

If an alleged violation is committed under the above treaties, and both States have accepted complaint procedures, victims can advocate for a State to submit a complaint against another State.

### 3 Inquiries

Some Treaties provide for a mechanism of inquiries into violations committed by States by the treaty bodies. These treaties include the CAT, the CEDAW, the CRPD, the CED, the ICESCR, and the CRC. Except for the CED, States must have expressly accepted the use of inquiry procedures when they signed the relevant treaty.

Under the inquiry procedure, if a committee received reliable information that a State party may be committing serious, grave, or systematic violations of the treaty it monitors, it may initiate an inquiry into the allegation of its own initiative. The committee will submit observations to the State about the alleged violation, and designate members to conduct the inquiry and report back to the full committee. The inquiry may include a visit to the State concerned and if the State consents to it. The inquiry's findings are examined by the Committee and transmitted to the State with comments and recommendations. The State must respond within 6 months, with information on the measures it has taken in response to the inquiry's findings. The entire procedure is confidential and seeks to collaborate with the State concerned at every stage.

*For more information on State-to-State complaints and Inquiries, please see the references in the [Appendices](#).*

#### 3.1.5 THE UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review is a comprehensive review and assessment of a State's human rights record before the Human Rights Council. All UN Member States participate in this review every four years. The objective of the review is to improve the human rights situation in every country. During the review, States must present the actions they have taken to improve the human rights situation and to overcome challenges to the implementation of human rights in their country (cite: OHCHR website), based on the obligations the State has under the UN Charter, the Universal Declaration, and the human rights treaties to which the State is party.

## PART 3. Using the Information Documented – Avenues for Advocacy

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The review of the State's human rights record is based on information submitted by the State itself; information from the reports of the UN Special Procedures (the UN Special Rapporteurs, treaty bodies, and working groups); and information from other stakeholders, such as NGOs and national human rights institutions. Following the review, the University Periodic Review (UPR) Working Group releases a report summarizing the questions, comments, and recommendations made by other UN member States to the State under review and that State's responses. The State has four years before its next review to implement the recommendations in the report.

Civil society, including individuals, organizations, and national institutions, can participate in the review and provide written submissions to the UPR. These may be submitted electronically, in UN official languages **only**, and of a maximum of up to ten pages.

*Further resources and detailed Guidelines for stakeholder participation and submissions to the UPR can be found in the [Appendices](#).*

### 3.2 Regional Avenues

The American, African, and European continents each have their own human rights treaties, that contain comprehensive protections applicable to the region. Arab and South-Asian States have made human rights declarations with standards the regions should respect and fulfill.

Regional systems provide relief that is more accessible to victims in their region. Each treaty also reflects elements that are specific to the regional cultures. For example, the African Charter on Human and Peoples' Rights (ACHPR) protects the rights of peoples, as well as individuals. This includes communities—ethnic, national, and religious belief, as well as social groups. In addition, stakeholders obtain accountability from States, not individuals, in regional systems. This holds the State as a whole responsible and serves as an example to other States.

#### 3.2.1 THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The American Convention on Human Rights applies to the American continent, North, Central, and South America. The bodies responsible for overseeing the compliance with the Convention are the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights. Thematic Rapporteurs also monitor compliance and issue reports periodically.

**Filing an Individual Petition (Individuals, Groups, NGOs, and States):** the Inter-American Commission offers a mechanism for victims of human rights violations (individuals and groups) to file petitions before the Commission for help. Petitions can also be submitted by stakeholders, such as organizations, to assist single or multiple victims. Upon receiving a petition, the Commission investigates the situation and may then make recommendations to the State involved to itself investigate the alleged facts, make reparations, and prevent the recurrence of similar incidents.

Petitions addressed to the Commission need to contain specific information about the person or entity making a denunciation against the State—an account of the situation that is denounced, the State that is responsible and the steps taken by the complainant to use domestic or international remedies. The name of the victim may be kept confidential if necessary.

Petitions can be submitted by post or electronically on the Commission's website.

*For more detail on the procedure and guidance to submit information to the Commission, please see the resources in the [Appendices](#).*

**The Inter-American Thematic Rapporteurs** (established by the Commission): the Inter-American Commission includes thematic units, headed by a Rapporteur, to devote attention to specific groups and communities that face a particular risk of human rights violations, due to the discrimination they face or their particular vulnerability.

Rapporteurs can be contacted electronically at the email address provided on their official webpage. As part of their work, Rapporteurs may advise the Inter-American Commission on individual petitions that relate to their thematic mandate; promote cases before the Commission to bring them before the Inter-American Court of Human Rights;

## PART 3. Using the Information Documented – Avenues for Advocacy

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conduct thematic studies; carry out country visits; and consult with experts. Some Rapporteurs solicit outside input from civil society organizations and other interested parties when they prepare for country visits and drafting a report on the human rights situation in a specific country.

Incidents relating to the religious freedom of individuals, groups, or communities, that intersect with a Rapporteur's thematic mandate can be brought to the attention of the Rapporteurship. For example, incidents involving the religious freedom of women, children, indigenous peoples or persons deprived of liberty are relevant to the Rapporteurships on the rights of these specific groups.

### 3.2.2 THE AFRICAN COMMISSION

The African Charter on Human and Peoples' Rights applies to the entire African continent, including North Africa. The bodies responsible for overseeing compliance with the Charter are the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, and the African Thematic Rapporteurs and Working Groups.

**Submitting a Communication (Individuals, Organizations, and States):** the African Commission on Human and Peoples' Rights provides an avenue to denounce violations of the rights contained in the African Charter on Human and Peoples' Rights. The Charter protects both individual and peoples' rights. Peoples' rights protect the rights of ethnic, national, and religious or belief communities to determine how they should be governed and how their culture should develop.

Individuals, groups, non-governmental organizations, and States parties to the African Charter can denounce violations, as victims themselves or as representatives of the victims if the victim is unable to submit a communication themselves (for example, if they are detained). For States, communication can only be submitted by States that have ratified the Charter, against a State that has also ratified the Charter.

The communication **must** be in writing and contain information on:<sup>202</sup> the identity of the victim and the author of the communication, even if they want to remain anonymous; the alleged violation of a right protected by the African Charter, and its impact on the victim(s); the State Entity Responsible; the exhaustion of Domestic Remedies and timely submission; and that the alleged violation was not settled by another United Nations or African Union body. When the Commission finds that violations have occurred, it makes recommendations to the State(s) concerned to make sure that the incident is investigated, that the victim(s) is compensated (if necessary), and that measures are taken to prevent the recurrence of the violations.

Communications can be submitted by email, postal mail, or fax. Upon submitting a communication, complainants should follow up with the Secretariat to ensure the communication has been received. They should also keep the Commission informed of significant developments in the case after the communication was submitted.

*For more information on the process and guidance on how to draft a strong communication, please consult the resources in the [Appendices](#).*

**The African Rapporteurs and Working Groups:** the African Commission has established working groups, special rapporteurships, and committees to assist the Commission in its functioning and analyze specific thematic areas of work. These special mechanisms are responsible for gathering and disseminating information on the respect of human rights of specific groups at risk. Each mechanism is overseen by one of the Commission's commissioners.

Their functions include:

- Conducting country visits to Member States to investigate the protection and fulfillment of human rights;
- Making recommendations to Member States to guide them in fulfilling their obligations;
- Providing input to the Commission when it considers communications that concern the special mechanism's mandate;

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<sup>202</sup> 342 African Charter, Art. 56; ACommHPR Rules of Procedure, Rule 93(2); ACommHPR, Information Sheet No. 2. REDRESS et al., *Filing a Communication*, supra note 327, at 3-7.

### **PART 3. Using the Information Documented – Avenues for Advocacy**

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- Asking the Commission to send urgent appeals to Member States to respond to the risk of imminent human rights violations;
- Submitting annual reports to the Commission detailing its activities;
- Sending letters to State officials requesting information regarding human rights violations;
- Analyzing States' domestic laws and their compliance with international standards;
- Collaborating with civil society organizations, non-governmental organizations, and international human rights bodies; and
- Engaging in development activities, including seminars, workshops, and expert meetings.

The following special mechanisms are relevant to Freedom of Religion or Belief:

- Committee for the Prevention of Torture in Africa
- Special Rapporteur on Freedom of Expression and Access to Information
- Special Rapporteur on Human Rights Defenders
- Special Rapporteur on Prisons and Conditions of Detention
- Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
- Special Rapporteur on Rights of Women
- Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa
- Working Group on Economic, Social and Cultural Rights
- Working Group on Extractive Industries, Environment and Human Rights Violations
- Working Group on Indigenous Populations/Communities in Africa

Stakeholders, activists, organizations, and civil society generally can submit information to the special mechanisms on an issue related to the mechanism's mandate. They are expressly mandated to consult and work with civil society and non-governmental organizations as they engage in activities of protection and promotion of human rights. Some mechanisms can also receive information of allegations of specific human rights abuses.

The special mechanisms that can receive and examine information on alleged human rights abuses include:

- The Special Rapporteur on Human Rights Defenders
- The Special Rapporteur on Refugees, Asylum Seekers, Migrants, and Internally Displaced Persons

These actors can receive information regarding a human rights violation and can conduct public advocacy with the State allegedly responsible to assist victims. This can be a powerful tool to raise awareness of a particular situation and engage directly with the government allegedly responsible or able to act upon and remedy the alleged violation.

#### **3.2.3 THE EUROPEAN SYSTEM**

The European Convention on Human Rights applies to all the 47 countries members of the Council of Europe. This is larger than the European Union, and includes countries like Turkey, Montenegro, Ukraine, Russia, Azerbaijan, and Georgia. The Convention established the European Court of Human Rights, which monitors the compliance of the 47 States with the Convention.

### PART 3. Using the Information Documented – Avenues for Advocacy

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There are two relevant mechanisms within the European institutional framework that are available to residents of the European Union to bring attention to situations occurring within E.U. that jeopardize their religious freedom. Each mechanism is a part of the political European framework but remains independent and impartial in reviewing the claims it receives. The persons filing a claim do not need to be citizens of the European Union to access the European system; it is available to all residents of E.U. countries.

#### 1 The European Parliament's Committee on Petitions<sup>203</sup>

A fundamental right of European citizens and residents is the right to petition the European Parliament on any subject relating to the European Union's activity.<sup>204</sup> This process ensures that stakeholders can communicate with the Parliament's Petitions Committee, allowing the Committee to conduct an ongoing check on the way European legislation is implemented, and how responsive European institutions are to stakeholders' concerns.<sup>205</sup>

The Petitions Committee can provide a response and, when applicable, a non-judicial remedy to legitimate concerns raised about the E.U.'s fields of activity.<sup>206</sup> However, it cannot investigate complaints about maladministration within EU institutions or bodies themselves. These complaints should be addressed to the European Ombudsman.<sup>207</sup> Additionally, neither the European Parliament nor the European Ombudsman can investigate complaints against administrations in Member States (national, regional, or local), even when the complaint is about EU matters. These complaints should be addressed to the national or regional Ombudsmen or Parliaments.

Citizens and residents of a European Member State, and legal persons with a registered office in a Member State can submit a petition.<sup>208</sup> Petitions can be submitted individually or as a group.

The subject of the petition needs to relate to a matter within the European Union's field of activity.<sup>209</sup> This includes rights as a European citizen or resident; environmental matters; free movement of persons, goods and services; employment issues and social policy; recognition of professional qualifications; other problems related to the implementation of EU law; or a combination of these topics.

The petition itself can be an individual request, a complaint, an observation concerning the application of EU law, or an appeal to the European Parliament to adopt a position on a specific matter.<sup>210</sup> It can be about issues of public or private interest. This gives the European Parliament the opportunity to call attention to any infringement of a European citizen's rights by a Member State or local authorities or other institution.

Petitions can only be submitted in paper form through the post or through the specific online portal available on the Petitions Committee's website.<sup>211</sup> There is no form to be filled in or standard format to be followed for petitions submitted in paper form, however, all petitions must include the name, nationality and permanent address of the petitioner and be signed.<sup>212</sup>

The petitions process is open and transparent.<sup>213</sup> A summary of petitions is available on the Petitions Committee website, and petitioners may bring their support to open petitions that have been declared admissible. Once declared admissible, many petitions are debated in committee meetings with petitioners' active participation when possible. In all cases, petitioners are informed at each stage of the petition process and receive a letter from the chairman informing them of the outcome.

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<sup>203</sup> <https://www.europarl.europa.eu/at-your-service/en/be-heard/petitions>.

<sup>204</sup> Article 227 of the Treaty on the Functioning of the European Union: Any citizen, acting individually or jointly with others, may at any time exercise his right of petition to the European Parliament.

<sup>205</sup> <https://www.europarl.europa.eu/petitions/en/home>.

<sup>206</sup> <https://www.europarl.europa.eu/petitions/en/home>.

<sup>207</sup> Article 228 of the Treaty on the Functioning of the European Union. [http://data.europa.eu/eli/treaty/tfeu\\_2016/art\\_228/oj](http://data.europa.eu/eli/treaty/tfeu_2016/art_228/oj).

<sup>208</sup> <https://www.europarl.europa.eu/petitions/en/faq/det?questionor=16&sectionor=2>.

<sup>209</sup> <https://www.europarl.europa.eu/petitions/en/faq/det?questionor=16&sectionor=2>.

<sup>210</sup> <https://www.europarl.europa.eu/at-your-service/en/be-heard/petitions>.

<sup>211</sup> <https://petiport.secure.europarl.europa.eu/petitions/en/home>.

<sup>212</sup> <https://www.europarl.europa.eu/petitions/en/faq/det?questionor=16&sectionor=2>.

<sup>213</sup> <https://www.europarl.europa.eu/petitions/en/home>.

## PART 3. Using the Information Documented – Avenues for Advocacy

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For more information on the process of submitting a successful petition, please consult the references in the [Appendices](#).

### 2 The European Commission

The second available mechanism accessible in case of breach of European law is the European Commission. The European Commission can receive complaints about any measure (a law, regulation, or administrative action) taken by the authorities of an E.U. country that breaches European law. Complaints must be against the public authorities of a Member State; the Commission cannot follow matters that only involve private individuals or bodies.

After examining a complaint, the Commission will decide whether action should be taken. It may decide that the case would be better dealt with by other E.U. or national mechanisms, for example when the incorrect application of European law does not raise issues of wider practice. In other cases, the Commission may decide to take a country before the European Court of Justice. This process may take several years. The European Court of Justice can only deliver a judgment stating whether European law has been breached or not. To annul a national measure, obtain a response from the national administration to respond, or obtain damages, complainants will need to bring their case to a national court.

Complaints to the Commission must be submitted via the standard complaint form, which can be completed in any language of the European Union. The standard complaint form is available on the Commission's website.<sup>214</sup> Complaints should describe exactly which European Union law (EU) or EU Member State's national law has been infringed and how the national authorities have breached it, and any steps that complainants have taken to obtain redress.<sup>215</sup> Complainants may submit their complaint by email or by post.

For further resources on how to make a complaint before the European Commission, please consult the [Appendices](#).

#### 3.2.4 THE ARAB HUMAN RIGHTS COMMITTEE

The Arab Human Rights Committee is the treaty body responsible for overseeing the implementation of the **Arab Charter on Human Rights**.

The States bound by this Charter include: Algeria, Bahrain, Comoros, Djibouti, Egypt (signed, not ratified), Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco (signed, not ratified), Palestine, Qatar, Saudi Arabia, Somalia, Sudan (signed, not ratified), Syria, Tunisia (signed, not ratified), United Arab Emirates, and Yemen.

As part of its functions, the Committee reviews periodic State reports on the status of implementation of the Charter nationally. The Committee then discusses this report in public sessions with representatives of the State, after which it issues its conclusions and recommendations to further implement the human rights contained in the Charter.

Civil society plays an important role in the work of the Committee. Civil society organizations (CSOs) are invited to review reports submitted by States and to submit parallel reports that comment on inaccuracies or omissions that organizations wish to bring to the Committee's attention. Organizations can also include short reports or documents on specific issues as an appendix to their parallel reports, to provide further information to the Committee on a specific topic.

Organizations can then be invited to attend the Committee's sessions of dialogue with the State, which are open. One session is dedicated to dialogue between the Committee and civil society organizations that have submitted parallel reports. This is a "closed session" that does not permit the presence of State representatives.

For further resources with guidance on how to participate in the Committee's review process and submit information, please consult the [Appendices](#).

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<sup>214</sup> European Commission, "How To Make a Complaint at EU level," available at: [https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level\\_en](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en).

<sup>215</sup> European Commission, "How To Make a Complaint at EU level," available at: [https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level\\_en](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en).

### **3.2.5 THE ASEAN INTER-GOVERNMENTAL COMMISSION ON HUMAN RIGHTS**

The ASEAN Inter-Governmental Commission on Human Rights (AICHR) is a regional human rights mechanism that is affiliated with the Association of Southeast Asian Nations (ASEAN). AICHR seeks to promote the implementation of the rights protected in the **ASEAN Human Rights Declaration**, and other human rights treaties for State members of the ASEAN.

The ASEAN Member States are Brunei Darussalam, Cambodia, Indonesia, Lao, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

The AICHR's primary mandate is to promote human rights in the ASEAN region through public awareness, capacity building, and public dialogue. AICHR obtains information from ASEAN Member States on their promotion and protection of human rights to develop common positions on human rights issues in the region.

AICHR does not have a complaints mechanism to which individual stakeholders could bring complaints regarding specific incidents for alleged violations of their freedom of religion or belief, or other rights. However, the AICHR consults with civil society organizations (CSOs) from the region who are actively advancing, promoting, and protecting human rights and fundamental freedoms. The activities that the AICHR conducts with CSOs include consultations, seminars, workshops, regular reporting, and implementing specific studies or AICHR projects. To participate in these activities, CSOs should apply to have a consultative relationship with the AICHR.

*For guidelines on how civil society organizations can engage with the Commission, please consult the [Appendices](#).*



## **4. Judicial Avenues**

In some circumstances and in some regions, advocates may have access to judicial institutions to bring a claim when their rights and freedoms may have been breached. The International Criminal Court (ICC) is competent to hear claims of crimes of the most serious nature under international law. Regional courts are mandated to oversee the implementation of their specific regional treaty. In all cases, a requirement to access international judicial avenues is to have exhausted domestic remedies. This requires that advocates seek justice from national courts or other relevant bodies before they can file a claim before a court in the international system.

### **4.1 Domestic Courts**

In some country contexts, domestic courts will be the first avenue to which stakeholders can turn when seeking accountability for a violation of their religious freedom. In many instances, the possibility to access the courts and the independence of the courts may prevent them from being a viable avenue to accountability. However, many international and regional systems require that stakeholders exhaust all domestic avenues before bringing a claim at the international level. When this is not fully or not at all possible, or could be dangerous, stakeholders should provide a detailed explanation of the reasons why they could not exhaust domestic remedies for their claims.

### **4.2 The International Criminal Court**

The International Criminal Court (ICC) is a permanent court founded in 1998 by the Rome Statute to prosecute the perpetrators of four of the most serious crimes committed around the world.

### PART 3. Using the Information Documented – Avenues for Advocacy

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The Rome Statute, the Court's founding treaty, grants the ICC jurisdiction over four types of crimes: 1) the crime of genocide, 2) crimes against humanity, 3) war crimes, and the 4) crime of aggression. The definition of these crimes is outlined on [page 14](#). The Court is not able to hear a case about an incident that does not appear to consist of one of these crimes.

The ICC can exercise **jurisdiction** over an incident in three instances:

- Where the crime was committed in the territory of a State that is a party to the Rome Statute
- If the alleged perpetrator of the crime is a national of a State that is a party to the Rome Statute
- If a State that is not a party to the Rome Statute nonetheless accepts the jurisdiction of the ICC, usually for a specific incident

The United Nations Security Council can also refer a situation to the Office of the Prosecutor of the ICC. In that case, there is no requirement that the States concerned agree to the jurisdiction of the ICC. NGOs can send information to a government that is party to the Rome Statute or to the UN Security Council and ask them to refer a case to the Court.

Additionally, the ICC can only act if the State concerned does not, cannot, or does not want to act itself.<sup>216</sup> This may be the case when proceedings are excessively delayed, do not guarantee a fair process, or try to protect individuals from criminal responsibility.

There are three main ways that non-governmental organizations (NGOs) can contribute to the work of the International Criminal Court (ICC):<sup>217</sup> by 1) informing the public about the Court, 2) providing information to the Court, and 3) serving as a link between victims, witnesses, and the Court if an investigation is opened.

#### **NGOs can provide information to the Court about:**

- Individual crimes or patterns with as much detail as possible.
- The historical and political context of the crimes committed—to provide the Prosecutor with a better understanding of the situation.
- Whether a State is willing or capable of investigating or prosecuting crimes. This will assist the Prosecutor in determining whether a case falls under the jurisdiction of the ICC or of domestic courts.
- The location of the incident and whether and how feasible it is to conduct an investigation in the country.

This information could help the Prosecutor decide whether to open an investigation or assist in an ongoing one. If NGOs have information on incidents that they have documented and are serious enough to merit an investigation by the Court, they can provide *their most solid reports* or information to the Office of the Prosecutor. NGOs should provide only the most important information, otherwise, the Prosecutor will not be able to look through everything and may not be able to act on the information.

Advocates should refer to [Part 2](#) when collecting information from victims and witnesses that they wish to communicate to the ICC.

When sending information to the Court, NGOs should always keep a copy of all communications, in a secure location. The Office of the Prosecutor may not always have the capacity to respond to the submission. Often, it will receive the information and use it as is useful, and only contact the NGO if it has a specific question regarding the information.

The Office may also decide not to proceed further with the information. It is therefore important for NGOs not to raise victims' and witnesses' expectations of any action from the Court.

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<sup>216</sup> International Criminal Court (ICC), *Understanding the International Criminal Court*, available at: <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> (accessed December 14, 2020).

<sup>217</sup> Human Rights Watch, *The International Criminal Court—How National Nongovernmental Organizations Can Work with the Court*, available at: <https://www.hrw.org/legacy/background/africa/icc0904/3.htm> (accessed December 8, 2020).

## PART 3. Using the Information Documented – Avenues for Advocacy

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Because of the seriousness of the crimes, NGOs must inform victims and witnesses of the security risks in contributing information to the ICC. The ICC has limited options for the safety of victims and witnesses. The Prosecutor is prohibited from releasing the names of their sources to the general public. However, accused persons have the right to know who is testifying against them and the Prosecutor must therefore give the Defense the names of the witnesses who will be called to testify.

If there are security concerns, the Court may decide not to disclose the name or location of a person testifying at trial. The person may be given a pseudonym, and her or his testimony may be presented with technologies that modify her or his voice and image to keep the identity of the person confidential. However, there is no guarantee that these protections will be applied upon participants' request for them. The ICC does have a special unit for the protection of victims and witnesses. The funds for this unit are very limited, and protection cannot be guaranteed.

When requesting the consent of victims and witnesses to share their information with the ICC, NGOs must explain confidentiality and the protection measures that the Court can and cannot put in place.

*For further guidance on how to provide information to the International Criminal Court, please consult the [Appendices](#).*

### 4.3 Regional Courts

Regional courts can be a useful avenue to seek accountability for human rights abuses. As regional mechanisms, they reflect the culture of their continent and are sometimes more easily accessible than international mechanisms. Regional courts, like regional commissions, interpret all the human rights that are protected in regional charters.

#### 4.3.1 THE INTER-AMERICAN COURT OF HUMAN RIGHTS<sup>218</sup>

Like the Inter-American Commission, the **Inter-American Court of Human Rights** also interprets and applies the *American Convention on Human Rights*, and other inter-American human rights treaties. The Court issues judgments on cases as well as consultative opinions.

Unlike the Commission, however, the Court is not accessible to individuals or organizations for directly filing a claim. Only the Commission or State governments that are party to the American Convention and have accepted the Court's jurisdiction can submit a case. Individuals and organizations must first submit their petition to the Commission and go through the full process. At the end of the procedure before the Commission, the Commission will decide whether or not to submit the case to the Court.

The Commission may only refer to the Court cases that concern States that have accepted the jurisdiction of the Court, unless a State accepts jurisdiction for a specific case. The States that have accepted the jurisdiction of the Inter-American Court include: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay.<sup>219</sup>

#### 4.3.2 THE AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS

The African Court rules on complaints concerning violations of human rights committed by African States that have ratified the Protocol to the African Charter that establishes the Court (hereafter, the Protocol). The Court can address violations of rights protected under the **African Charter on Human and Peoples' Rights**, and under other regional and international human rights treaties ratified by States that are party to the Protocol. The Court therefore rules on cases brought against African States, and the entity held responsible will be the State, not individuals.

The Court accepts complaints from the African Commission, African inter-governmental organizations, a State party to a complaint before the Commission, and States party to the Protocol whose citizens allege a human rights violation.

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<sup>218</sup> Organization of American States (OAS), *Inter-American Commission on Human Rights—Petition and Case System Information Brochure*, w2010, p. 6, available at: <https://www.oas.org/en/iachr/docs/pdf/howto.pdf> (accessed December 14, 2020).

<sup>219</sup> *ABC of the Inter-American Court of Human Rights 2019*, p. 4, available at: [https://www.corteidh.or.cr/sitios/libros/todos/docs/ABCCorteIDH\\_2019\\_eng.pdf](https://www.corteidh.or.cr/sitios/libros/todos/docs/ABCCorteIDH_2019_eng.pdf) (accessed December 14, 2020).

### PART 3. Using the Information Documented – Avenues for Advocacy

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The States that have ratified the Protocol are Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Comoros, Congo, Democratic Republic of Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda.

Some States have also accepted that the Court receive complaints against them from individuals and non-governmental organizations. These States are Burkina Faso, The Gambia, Ghana, Mali, Malawi, and Tunisia.

For the Court to accept applications from individuals or NGOs, several requirements must be fulfilled. These are called 'admissibility requirements' and have to be satisfied before the Court can consider the substance of the case. These requirements include the complaint being filed by the appropriate entity (Commission, State, or inter-governmental organization), and on a subject-matter that the Court is competent on. Complainants are also required to exhaust all domestic remedies before submitting their application to the Court.

*For a full explanation on admissibility requirements, and resources on how to submit an application to the African Court on Human and Peoples' Rights, please consult the [Appendices](#).*

#### 4.3.3 THE EUROPEAN COURT OF HUMAN RIGHTS

The **European Court of Human Rights** is the regional court that adjudicates complaints against the 47 States of the Council of Europe who are party to the *European Convention on Human Rights*. Individuals, groups, and legal entities (such as companies or non-governmental organizations) can make a claim to the Court if they believe their rights have been violated. Claims must be against a State party to the Convention; they cannot be against private persons or entities. State parties can also make a claim against other State parties. The Court's judgments are binding on Member States, who have a duty to comply with them.

A claim made to the Court will be examined in two stages: First, to determine whether the claim is admissible to the Court and that the Court is competent to adjudicate it; if the claim is admissible, the Court will examine the substance of the claim to provide a decision on the merits.

There are a number of requirements for a petition to the Court to be admissible, including being submitted by a victim against a State party to the European Convention on Human Rights, alleging a violation of the Convention, and demonstrating that all domestic remedies have been exhausted. Applications cannot be substantially the same as an application that has already been examined if it does not introduce new facts.

Claims can only be made by post and must use the standard Application Form provided on the Court's website in French and in English.<sup>220</sup> The Court receives approximately 50,000 applications a year; applicants will therefore only be contacted should their claim be admissible to the Court. This process can take up to several years.

For substantive guidance on how to make a valid application and how to submit an application,<sup>221</sup> please consult the [Appendices](#) and the Court's website.

#### 4.3.4 THE ARAB COURT OF HUMAN RIGHTS

In 2013, the Arab League approved the creation of an **Arab Court of Human Rights**, which would oversee the implementation of the Arab Charter on Human Rights and other human rights treaties approved by the Arab League. However, the Court has yet to come into existence as of June 2021. Additionally, human rights experts have raised concerns about the Statute creating the court, specifically on the lack of independence of the Court, and difficulties for complainants and civil society organizations to be able to access the Court.<sup>222</sup>

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<sup>220</sup> European Court of Human Rights (ECHR), *Apply to the Court*, available at: <https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>.

<sup>221</sup> European Court of Human Rights (ECHR), *Apply to the Court*, available at: <https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>.

<sup>222</sup> See notably, "Open Society Foundation Arab Regional Office (Mervat Rishmawi)," in *The League of Arab States Human Rights Standards and Mechanisms, Towards Further Civil Society Engagement: A Manual for Practitioners*, 2015, p. 57.

PART 4

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## Part 1: Defining Religious Freedom

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PART 5

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# Appendices

# Contents

<b>1. Documentation plan – Elements to consider</b>	<b>143</b>
<b>STAKEHOLDERS: who are the stakeholders in the incident?</b>	<b>143</b>
<b>STEPS: what steps could lead to information about the incident?</b>	<b>143</b>
<b>LOCATIONS: where can information be found?</b>	<b>143</b>
What type of information could be found?	143
Is it possible to visit locations safely? If so, how?	143
<b>PERSONS: from whom can information be collected?</b>	<b>144</b>
<b>PARTNERSHIPS: with whom can information be collected?</b>	<b>144</b>
<b>2. Risk Assessment</b>	<b>145</b>
<b>Risk Identification – Participants</b>	<b>145</b>
<b>Risk Identification – Documenters</b>	<b>146</b>
<b>Risk Identification – Information</b>	<b>147</b>
Physical Information – to assess risk to physical information:	147
Digital Information	147
<b>Risk Identification – General Context</b>	<b>149</b>
<b>Risk mitigation</b>	<b>150</b>
Traveling to Document an Incident	150
Preserving Information Collected	151
<b>3. Documentation folder templates/samples</b>	<b>152</b>
<b>Participant Code Sheet</b>	<b>152</b>
<b>Communications Log</b>	<b>153</b>
<b>Physical Communication Log</b>	<b>154</b>
<b>Participant Interview Log</b>	<b>155</b>
<b>Chain of Custody Information</b>	<b>156</b>
Documentation Reference: HRW/SJ/HD/001	156
<b>Tag for Evidence Envelope (Physical Information, Including Documents)</b>	<b>157</b>
<b>Notes of Activities or Activity Log</b>	<b>158</b>
<b>4. Legal Analysis</b>	<b>159</b>
<b>Before Documentation</b>	<b>159</b>
Step 1. Which Legal Framework Applies?	159
Step 2. What Does Each Legal Framework Require From Documentation?	159
Step 3. Can The Perpetrator Be Held Responsible?	161
<b>After Documentation</b>	<b>162</b>
Analysis Steps	162
<b>International Protocol on Documenting Violations of Religious Freedom</b>	<b>141</b>

**PART 5: Appendices**

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International Human Rights	162
International Criminal Law	164
International Humanitarian Law	165

## **1. Documentation plan – Elements to consider**

***Not all elements apply at all times***

### **STAKEHOLDERS: who are the stakeholders in the incident?**

- Who is involved in the incident?
- Who are the actors? (Public, institutional, private, individual, other actors).
- Who is responsible? How are they responsible (directly, indirectly, by acting, by not acting, by helping etc.)?
  - Consider the larger actors who may not be directly responsible, but have an indirect responsibility in the incident, in creating or fostering the conditions that allowed the incident to happen. (for example, specific State authorities, corporate actors, religious authorities).
- Who is directly or indirectly affected? How?
- Verify objectivity: how do documenters know who the victim/perpetrator is?
  - Responsibility may not be obvious: victims can be perpetrators, and vice versa.

### **STEPS: what steps could lead to information about the incident?**

- Is visiting locations an option?
- Is contacting or speaking to individuals an option?
- Is conducting background or preliminary research an option?

### **LOCATIONS: where can information be found?**

- Where did the violation take place?
- Where were the victims/witnesses/perpetrators before and during the incident?
- Where are the victims/witnesses/perpetrators after the incident?
- Are there other locations where similar incidents occurred?
- How will the team prioritize locations if there is more than one to visit?

### **WHAT TYPE OF INFORMATION COULD BE FOUND?**

- What does the team expect to find in these locations? (Information)
- Is there physical or documentary information that could be found at the scene or collected from persons?
- If yes, what steps will the team put in place to collect and preserve it?

### **IS IT POSSIBLE TO VISIT LOCATIONS SAFELY? IF SO, HOW?**

- Are the above locations of interest safe to visit, for documenters and the individuals present?

## PART 5: Appendices

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- What does the team expect to find in these locations? (Risks)
- How does the team intend to approach the location without danger or damaging evidence?

### PERSONS: from whom can information be collected?

- Are there victims or witnesses who have information about the incident?
- Are there other individuals who could:
  - Have relevant or probative information about the incident?
  - Provide leads, or how to find, engage, or follow-up with others?
- Where are these individuals now?
  - Is it safe to visit them (with consent)?
  - Is it possible to contact them through telephone or other means?
- Is it safe to contact these individuals? (See [Risk Assessment](#)).

### PARTNERSHIPS: with whom can information be collected?

- Are there partner organization working in a similar area, or on a similar subject?
- Do these partner organizations have close relationships to the local community?
- Are there staff members from partner organizations that could assist with the documentation, with better access to locations or have better trust with participants?

## 2. Risk Assessment

### Risk Identification – Participants<sup>223</sup>

<b>Perpetrator retaliation:</b> is there a risk of retaliation, intimidation or threat against the participant by alleged perpetrators, their supporters, or their families?	YES/NO
<b>Social circle retaliation:</b> is there a risk of retaliation, intimidation, threat, or punishment by members of the participant’s social circle? (Community, family, caregivers)	YES/NO
<b>Forced reconciliation:</b> is there a risk that victims or witnesses will be pressured or forced to reconcile with the perpetrator(s)?	YES/NO
<b>Rejection or abandonment:</b> is there a risk that victims or witnesses will be rejected or abandoned by family members or the community?	YES/NO
<b>Loss of livelihood:</b> is there a risk that participants lose their livelihood because of their participation? (including their home, work, positions, access to educational opportunities and schools, access to work)	YES/NO
<b>Arrest or imprisonment:</b> is there a risk that the participant will be arrested or imprisoned for acts that are criminalised?	YES/NO
<b>Conflict or displacement:</b> in case of armed conflict or social tension, is there a risk that the participant will be targeted or displaced because of the armed conflict or social tension?	YES/NO
<b>Linking Participant and Information:</b> is there a risk that the information provided by a participant be traced back to them based on its content? Is there a risk to the participant if the information is linked to them?	YES/NO
<b>Linking Participant to Documenter:</b> is there a risk from documenters being seen with the participant? Is there a risk from participants being seen going to a particular location or crime scene?	YES/NO
<b>Re-traumatization:</b> is there a risk of victims or witnesses re-experiencing the trauma of an incident from having to tell or re-tell their story, from interview conditions, or the consequences of interviewing?	YES/NO
<b>Risks identified by participants:</b> are there other specific risks identified by participants?	YES/NO
<b>Risks identified by documenters:</b> are there other specific risks identified by documenters?	YES/NO

<sup>223</sup> Public International Law and Policy Group, *Field Guide for Civil Society Documentation of Serious Human Rights Violations* (2016), 12. RISK IDENTIFICATION.

**Risk Identification – Documenters<sup>224</sup>**

<p><b>Travel to an area: is there a risk to documenters from:</b></p> <ul style="list-style-type: none"> <li>• Traveling to and within an area?</li> <li>• Traveling multiple days, or staying overnight?</li> <li>• Traveling alone?</li> <li>• Armed groups in the area (terrorist, criminal, militias)?</li> <li>• Adverse government authorities or government-affiliated forces?</li> </ul>	<p>YES/NO</p>
<p><b>Safety of incident location:</b></p> <ul style="list-style-type: none"> <li>• Is the location of the incident safe to visit, or to access?</li> <li>• Is there ongoing fighting?</li> <li>• Is there a risk of landmines or unexploded ordnances?</li> <li>• Is there a risk of chemical or biological contamination (from bombing or other)?</li> <li>• Is there a risk of collapsing infrastructure or buildings?</li> <li>• Is there a risk from natural elements such as flooding, landslides, or extreme weather?</li> </ul>	<p>YES/NO</p>
<p><b>Documenter targeting:</b></p> <ul style="list-style-type: none"> <li>• Is there a risk of retaliation, intimidation, or threats against documenters:             <ul style="list-style-type: none"> <li>• By perpetrators, their families or supporters?</li> <li>• By government officials, police, or armed forces?</li> <li>• By victims themselves?</li> <li>• From other actors?</li> </ul> </li> </ul>	<p>YES/NO</p>
<p><b>Possessing the Information:</b></p> <ul style="list-style-type: none"> <li>• Is there a risk to documenters if they are found in the possession of information (interview notes, physical evidence, activities log)?</li> <li>• Is the information collected from persons who could present a risk, such as a party to a conflict, from the authorities, or from a connection to the perpetrator?</li> </ul>	<p>YES/NO</p>
<p><b>Risk to partner organisations:</b></p> <ul style="list-style-type: none"> <li>• Is there a risk to partner organizations assisting with the documentation?</li> <li>• Are there different or specific risks for each organization?</li> <li>• Is there a risk to specific members of staff because of their positions, group membership, communities, public profile, or mandate?</li> <li>• Could this specific risk have an impact on the rest of the team?</li> </ul>	<p>YES/NO</p>
<p><b>Risk to partner organisations:</b></p> <ul style="list-style-type: none"> <li>• Is there a risk that documenters will:             <ul style="list-style-type: none"> <li>• Be exposed to traumatic situations, and engage with traumatized individuals?</li> <li>• Work in insecure locations?</li> <li>• Visit physical locations of abuse?</li> <li>• Review photographic or video evidence, some graphic?</li> <li>• Be themselves be subject of threats and harm?</li> </ul> </li> <li>• Do some documenters have personal connections to the issue they are documenting, including being from same community, same region, same gender, or identify with the situation or the victims in another way?</li> <li>• Are some documenters both survivors and documenters?</li> </ul>	<p>YES/NO</p>

<sup>224</sup> Public International Law and Policy Group, *Field Guide for Civil Society Documentation of Serious Human Rights Violations* (2016), 12. RISK IDENTIFICATION.

## **Risk Identification – Information**

### **PHYSICAL INFORMATION – TO ASSESS RISK TO PHYSICAL INFORMATION:**

- Who has knowledge that the information was collected?
- Whose interest does the information or evidence harm?
- Who has an interest in destroying the information or evidence?
- Is there a risk that information or evidence will be damaged by the elements? How?
- Is there a risk that information or evidence will be discovered? How? By whom?
- Is there a risk that information or evidence will be stolen? How? By whom?
- Is there a risk that information or evidence will be interfered or tampered with? How? By whom?

### **DIGITAL INFORMATION<sup>225</sup>**

#### **To assess risk to the office environment:**

- If the computer protected by several layers of access: the computer itself, the room the computer is in, the building where the workspace is?
- Can intruders gain access to the office and working space? How easily? (Breaking windows; forcing doors)
- Is the office on the ground floor of a building? Are workspaces with computers located near windows that can be broken? Are there bars on the windows, or is the office on the higher floor of a building?
- In case of intrusion, is there an alarm system? Are the authorities responsive to the alarm? Can the responding authorities be trusted?
- Is there a waiting room or reception in the office where visitors can remain before entering areas where there is confidential or sensitive information?
- Is the computer itself securely attached to the workspace, or can it be easily removed (for example, a laptop)?
- Are work files kept on an external USB or hard drive, separately from the computer? Are external drives kept securely at all times (in a locked safe in the office, or with the documenter)?
- Do documenters carry around their computers and hard drives on their persons? Is there a risk of police or other control and search?

#### **To assess risk to the personal workspace:**

- Is the computer screen visible to others while working?
- Are passwords shared in the office? Are there shared passwords to drives, clouds, office software?
- Is access to the computer restricted when its user is away from their desk or office?

#### **To assess risk to a public environment:**

- Does the owner of the location know the documenter, their name, or other details?
- Does the café monitor customers' internet use?

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<sup>225</sup> See generally: FRONTLINE (Dmitri Vitaliev), *Digital Security And Privacy For Human Rights Defenders* (February 2007).

## **PART 5: Appendices**

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- Is internet browsing history recorded on the computer?
- Can other customers see the computer screen?
- Is the computer free of spyware?

### **To assess risk to files and data:**

- Does the computer have a password to enter every time it switches on or returns from standby?
- Does the computer have an anti-virus software and anti-spyware? Does it have the latest update?
- Do files have multiple levels of protection: password protection and encryption?
- Is there an external copy of all the data on the computer (USB, hard drive)?
- Do documenters know the precise location of their files and duplicates, to be able to identify whether they have been moved or interfered with?
- Is browsing history automatically saved? Are downloads automatically saved?

**Risk Identification – General Context<sup>226</sup>**

<b>Active armed conflict:</b> is the documenter/ the team / the organisation located in a situation of active or protracted armed conflict?	YES/NO Specify
<b>Frequent exposure to violence:</b> is the documenter/ the team / the organisation in a situation where they are frequently exposed to violence?	YES/NO Specify
<b>Severe political instability:</b> is the documenter/ the team / the organisation in a location where the political situation is very instable?	YES/NO Specify
<b>Breakdown of law enforcement:</b> is the documenter/ the team / the organisation in a situation with a breakdown of law enforcement?	YES/NO Specify
<b>Member of an ethnic, national, religious, cultural, political, gender, or other minority:</b> is the documenter/ the team / the organisation a member of any minority?	YES/NO Specify
<b>Operating alone:</b> is the documenter/ the team / the organisation operating alone in an area, on a subject-matter, or with a specific community?	YES/NO Specify
<b>Tense relationship with local community:</b> does the documenter/ the team / the organisation have a stable or a tense relationship with the local community? Does the documenter/ the team / the organisation represent a community with a tense relationship with other local communities?	YES/NO Specify
<b>Attention to documentation activities:</b> are the activities of the documenter/ the team / the organisation likely to attract attention? Can this attention create a threat?	YES/NO Specify
<b>Specific groups or individual threats:</b> are there specific groups or individuals that create a particular threat to the documenter/ the team / the organisation?	YES/NO Specify
<b>Emergency contacts:</b> does the documenter/ the team / the organisation have emergency contacts to respond to concerns or threats, including healthcare, law enforcement, and political sectors?	YES/NO Specify

<sup>226</sup> Public International Law and Policy Group, *Field Guide for Civil Society Documentation of Serious Human Rights Violations* (2016), 12. RISK IDENTIFICATION.

## **Risk mitigation**

### **TRAVELING TO DOCUMENT AN INCIDENT**

#### **Updated risk assessment**

- Evaluate and ensure the risk assessment is up to date.

#### **Trustworthy partners: determine trustworthy actors to collaborate with who:**

- Have access to a location
- Have access to victims or witnesses, who have the trust of and can support victims and witnesses
- Have good relations with forces present in the area (armed groups, government forces).

#### **Communication Plan**

- Determine how the traveling team will liaise with other members who can alert or organize assistance in case of incident. Ensure batteries are charged, and phone numbers memorized.
- Determine helpful contacts in law enforcement, local groups, or political officials in case of incident.

#### **Travel**

##### Before traveling

- Determine how to transport information gathered, interview notes, or physical evidence.
- Determine a main access to the location, means of transportation, and alternative routes.
- Identify nearby medical facilities, for documenters, and other individuals such as victims and witnesses.

##### During documentation

- Remain aware of the situation, increase attention to anything that could affect security of the documentation team and participants.
- Avoid attracting attention, including through clothes, voice, transportation.
- Avoid being alone unless context requires (for example, a victim interview).
- Remain aware of where transportation is located if an immediate departure is needed.

##### After traveling

- Transfer the information collected on phones, computers, or notebooks to secure computers or locations.
- Delete the information from devices carries around day to day.
- Store documents and other evidence in a safe and confidential location.

### PRESERVING INFORMATION COLLECTED

#### Safe and confidential storage

- Keep and store all information collected in a safe location kept confidential.
- Avoid carrying sensitive information on your person.
- Avoid storing information in an expected location, if possible.
- Store records and notes in a coded safe or on secure computers.
- Keep knowledge of storage location to a limited number of individuals who need access to the information.
- Determine information that creates a risk to the personal safety of documenters or participants, and should be destroyed if discovered. Determine how the information will be destroyed.

#### Preservation from the elements

- Store information in a location where it can remain for a long time without deteriorating.
- Preserve information from water, fire, heat, humidity, and sunlight, to avoid documents fading.
- If possible, make copies or take photos of all important information. Keep the copies securely and separately from the originals. Store the photos on a secure computer. Remove all photos from day to day devices.

#### Keeping information confidential

- Separate confidential information from non-sensitive information. Do not label confidential or sensitive information as 'confidential' to avoid attracting attention.
- Store sensitive information in a safe and confidential location, in a lockable cupboard or cabinet. Sensitive information includes all information that contains identifying information, such as interview notes, names, photos, and videos.
- Restrict the number of people who have access to confidential information to only those necessary.
- Create a method to keep the information gathered confidential. Encode the names of individuals who shared information by using a code instead of their names to identify them. Codes should not include the interviewee's initials. Create a list with the names of individuals and their corresponding codes. Keep the list in a separate and confidential separate location.

### 3. Documentation folder templates/ samples

#### Participant Code Sheet<sup>227</sup>

Documentation reference: ORGANIZATION/INCIDENT or LOCATION/NUMBER

Example: HRW/SJ/HD/001

Number	Name of documenter who engaged with first participant	Date participant information is entered into the documentation folder	Name of victim (V) witness (W) participant (P)	Code number	Comments
1	Ahmed Brown	20 January 2016	Ali Jones (W)	SJHD1	
2	Farida Smith	21 January 2016	Sara Roberts (P)	SJHD2	
3					

- 1 **Documentation reference:** each organization can determine a reference (code or number) for the incident being documented.
- 2 **Name of documenter who first engaged with participant:** Ideally, the documenter who first engages with the participant should remain the contact person for the participant throughout the documentation. This helps build trust between the organization and the participant, preserves the security of the information, and avoids the participant being confused as to each documenter's role by engaging with too many documenters.
- 3 **Date participant information is entered into the Documentation Folder:** This date records the first interaction with an outside participant in the documentation. The date should reflect when the participant's information (name) was first recorded in the Documentation Folder (for example, in the Communications Log).

All types of participants should have their names coded, including but not limited to: individuals interviewed, someone with whom a documenter had a discussion, someone who gave physical evidence to a documenter, someone who communicated information via documents.

For interviews and discussions, this is not the date of the interview or discussion because there may be more than one. The date should be when a documenter explained the documentation project to the participant, also explaining anonymity and coding to the participant. It can be in the first interview, but also in a preliminary discussion, or an introductory telephone call.

<sup>227</sup> Global Rights Compliance LLP, *Basic Investigative Standards For First Responders To International Crimes* (June 2016), ANNEX III: WITNESS CODE SHEET.

## **Communications Log<sup>228</sup>**

Documentation Reference: HRW/SJ/HD/001

<b>Number</b>	<b>Name of documenter</b>	<b>Date of communication</b>	<b>Communication from</b>	<b>Nature and Summary of communication</b>	<b>Actions proposed</b>
1	Ahmed Brown	20 January 2020	Sergeant Hussein	Sent a letter to Sergeant Hussein asking for meeting at our offices for an interview	SJHD1
2	Farida Smith	21 January 2020	SJHD2	Made a telephone call to participant HRWSJ2 asking to discuss new information	SJHD2
3	Sara Jones	30 January 2020	Unknown person	Received unknown letter concerning witness SJHD1	Call SJHD1 to follow- up
4	Balqees Roberts	02 February 2020 – 05 March 2020	Partner Organisation	Email conversation on potential sharing information partner organisation has	Organise meeting between organisations, verify consent to share information

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<sup>228</sup> Global Rights Compliance LLP, *Basic Investigative Standards For First Responders To International Crimes* (June 2016), ANNEX II: Examples of Log Files.

Physical Communication Log<sup>229</sup>

Number	Date of collection	Name of the collector/person who received the item	Time and location of the collection	Provider	Name, description and nature of the item	Actions taken	Comments
1	20 January 2016	Farida Smith	14h30 Office of HRW  MRF Towers 3, Apt 51 Vital Village Road Erbil, KRI	HRWSJ2	A white scarf covered with blood alleged to have been worn by the SJHD2	Sealed and stored at X Office (Room 2)	The scarf may also be covered with the blood of another victim.
2	21 January 2016	Ahmed Brown	12h00  Office of HRW MRF Towers 3, Apt 51 Vital Village Road Erbil, KRI	HRWSJ1	One knife. Brown Handle. 6" x 1" blade. Rusted. Heavy.	Stored at GRC's Office (Room 2) They key was moved to Room 1 on 23 February 2015.	Apparently originated from Muntaza Street in Ainkawa. Participant has confidentiality concerns. Participant does not want it known they are handing over information.

<sup>229</sup> Global Rights Compliance LLP, *Basic Investigative Standards For First Responders To International Crimes* (June 2016), ANNEX II: Examples of Log Files.

**Participant Interview Log<sup>230</sup>**

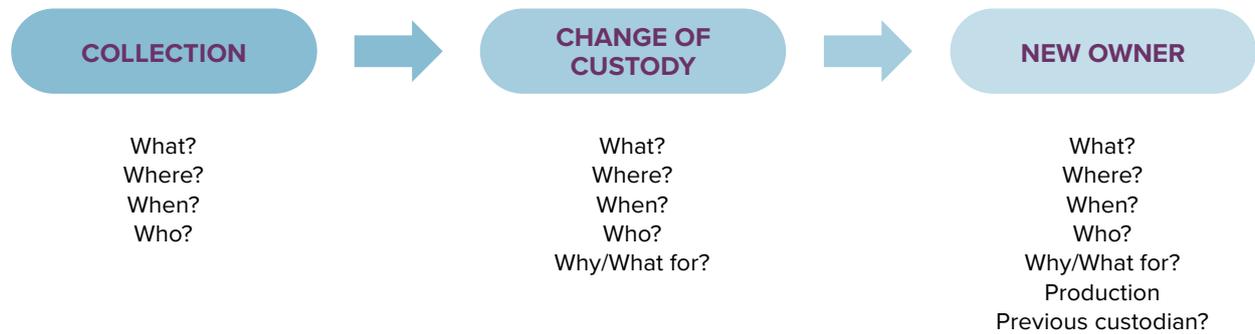
Documentation reference: HRW/SJ/HD/001

<b>Number</b>	<b>Date of Interview</b>	<b>Name of first responder</b>	<b>Name of witness or Code Number</b>	<b>Nature of the Interview</b>	<b>Actions proposed</b>
1	20 January 2020	Farida Smith	SJHD1	Preliminary interview at SJHD1's house	SJHD1 will come to HRW's office on 23 January 2016
2	21 January 2020	Ahmed Brown	SJHD2	5 min discussion	SJHD2 refused to schedule a longer interview
3	23 February 2020	Balquees Roberts	SJHD3	4h substantive interview	Social worker (name) to contact SJHD3 to offer information and contacts for PSS support

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<sup>230</sup> Global Rights Compliance LLP, *Basic Investigative Standards For First Responders To International Crimes* (June 2016), ANNEX II: Examples of Log Files.

**Chain of Custody Information<sup>231</sup>**



**DOCUMENTATION REFERENCE: HRW/SJ/HD/001**

**ITEM RECEIVED**

Submitting Organization/Individual: \_\_\_\_\_  
Date collected: \_\_\_\_\_  
Time collected: \_\_\_\_\_  
Collected by (name): \_\_\_\_\_  
Location where collected: \_\_\_\_\_  
Description of collected evidence: \_\_\_\_\_

**CHANGE IN CUSTODY 1**

Received from: \_\_\_\_\_  
Received by: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Purpose: \_\_\_\_\_  
*(for example: removed by documenter (name) to examine the item, item transferred to other entity (name) for analysis, (even if the item is returned!)*  
Damage or alterations: \_\_\_\_\_

**CHANGE IN CUSTODY 2**

Received from: \_\_\_\_\_  
Received by: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Purpose: \_\_\_\_\_  
Damage or alterations: \_\_\_\_\_

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<sup>231</sup> Public International Law and Policy Group, *Field Guide for Civil Society Documentation of Serious Human Rights Violations* (2016), 15. CHAIN OF CUSTODY.

**Tag for Evidence Envelope (Physical Information, Including Documents)<sup>232</sup>**

<b>DOCUMENTATION REFERENCE NUMBER</b>	<b>HRW/SJ/HD/001</b>
<b>Description of Evidence</b>	One necklace, gold, 30cm long, thin chain, no pendant, dirt collected.
<b>Alterations/Damage while handling</b>	None
<b>Date, time, and location item was received or collected</b>	12h00 Office of HRW MRF Towers 3, Apt 51 Vital Village Road Erbil, KRI
<b>Name of provider of information And/or Location where the item was received And/or How the item was received (package, mail)</b>	<i>Name or Code number</i> Amira Murad / SJHD03
<b>Name of collector (documenter)</b>	<i>Name of documenter and organisation</i> Ahmed Brown, Human Rights Watch
<b>NAME OF HANDLER 1</b>	
Date, time, and location of handling	
Reason	
Alterations/Damage while handling	
<b>NAME OF HANDLER 2</b>	
Date, time, and location of handling	
Reason	
Alterations/Damage while handling	
<b>NAME OF HANDLER 3</b>	
Date, time, and location of handling	
Reason	
Alterations/Damage while handling	

1. Fill in the tag with the relevant details.
2. Put the information in an envelope.
3. Close the envelope using adhesive tape to seal it.
4. Write your name and the date on the adhesive tape, and sign it.
5. Attach the tag to the envelope.
6. Store the evidence in a safe, secure location.
7. If anyone handles the envelope, it should be noted on the tag attached to the envelope.

<sup>232</sup> Global Rights Compliance LLP, *Basic Investigative Standards For First Responders To International Crimes* (June 2016), ANNEX I: Evidence Envelope Example.

**Notes of Activities or Activity Log<sup>233</sup>**

**Keep an active log of any activities undertaken, in as much detail as possible.**

Documentation Reference: HRW/SJ/HD/001

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Location: \_\_\_\_\_  
Note (what, why and how): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Location: \_\_\_\_\_  
Note (what, why and how): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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<sup>233</sup> Public International Law and Policy Group, *Field Guide for Civil Society Documentation of Serious Human Rights Violations* (2016), 25. Notes.

## 4. Legal Analysis

### Before Documentation

#### STEP 1. WHICH LEGAL FRAMEWORK APPLIES?

**International Human Rights Law:** applies at all times (peace and armed conflict).

**International Criminal Law:** applies in very specific contexts that need to be documented.

- War crimes: occur in armed conflict.
- Crimes against humanity: occur in the context of a widespread and systematic attack against a civilian population.
- Genocide: occurs against a national, ethnic, racial, or religious group with intent to destroy in whole or part.

**International Humanitarian Law:** applies in armed conflict only, between two States, or between a State and one/more organized armed group, or between organized armed groups.



**More than one legal framework can apply at the same time.**

In which context did the incident being documented occur? Which legal framework applies as a result?

#### STEP 2. WHAT DOES EACH LEGAL FRAMEWORK REQUIRE FROM DOCUMENTATION?

**International Human Rights Law:** provides standards for *States* to comply with. States have the obligation to respect, protect, fulfill human rights, and are therefore responsible for actions and omissions.

**Under IHRL, documentation should record how a State failed to respect, protect, or fulfill human rights, by acting or omitting to act.**

State responsibility for public actors: documentation must show that public actors who:

- Work for the State
- Are representatives of the State, or
- Given direction by the State

Acted or omitted to act in a way that amounts to a violation international human rights law.

Example: A State Committee for Religious Affairs does not allow religious communities to appoint their own leaders, but appoints and removes all religious leaders itself.

Permission is required from a State Committee to acquire a place for religious meetings, acquire religious literature, or invite foreign guests.

State responsibility for private actors (non-state actors, private citizen, corporations, organizations): States can be responsible for omitting to protect human rights, if they knew or should have known of an existing violation, or the risk of a future violation.

Example: the State knows of discrimination and violence committed by private citizens against citizens of a specific religious community, but does not intervene to punish the violence.

## PART 5: Appendices

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**International Criminal Law** holds *individuals* responsible for war crimes, crimes against humanity, and genocide.

**Under ICL, each crime is divided in 3 elements. To show the responsibility of an individual, documentation needs to gather information or collect evidence that demonstrates each element:**

- 1 That a crime was committed and intended (the specific element: the criminal act and the intent to commit it).
- 2 The context in which the crime occurred, that makes it an *international* crime (the contextual element):
  - War crimes: the crime must have occurred during armed conflict to be considered a war crime.
  - Crimes Against Humanity: the crime must have occurred during commission of a ‘widespread and systematic attack on a civilian population’
  - Genocide: the crime must have been committed against a national, ethnic, racial, or religious group, with *intent* to destroy in whole or part.
- 3 The way the perpetrator participated in the crime, or the role of an individual in the commission of the crime (the linkage element: linking the perpetrator to the crime) by:
  - Committing, co-perpetration, attempt, planning, indirectly perpetrating, ordering, superior or command responsibility, conspiracy, or inciting the crime (the definitions of each are found in the Rome Statute of the International Criminal Court).

**International Humanitarian Law** provides standards for parties to comply with, and holds these parties accountable for violating international humanitarian law. Parties to a conflict can be a State or a non-state actor (an organized armed group).

Under IHL, States and individuals can be held responsible for violations.

**Documentation should record how a party to the conflict, or an individual who is a member of a party of the conflict, violated IHL.**

Responsibility of individuals: individuals can only be held responsible if:

- They are a member of a party to the conflict, or
- Acting on behalf of a party to the conflict.

Individuals can violate IHL by:

- Committing the violation themselves personally, ordering it, or directing others to commit it.
- Failing in their responsibilities of leadership (command or superior responsibility).

**General standard of international law:** to hold a State or an individual responsible, the information collected must provide ‘reasonable grounds to believe’ that the State or individual committed the violation.

Most United Nations bodies can consider evidence of human rights violations that meet this standard.



**STEP 3. CAN THE PERPETRATOR BE HELD RESPONSIBLE?**

**International Human Rights Law:** the State where the violation occurred should be party to the ICCPR or other international human rights treaties.

**International Criminal Law:** either the State where the crime occurred, or the State where the perpetrator is from, must be a party to the Rome Statute.

**International Humanitarian Law:** for State responsibility: the State party to the conflict should be party to the Geneva Conventions.

For individual responsibility: the individual allegedly responsible should be a member of a party to the conflict (either State or armed group).



**It is important to document even though the treaties do not apply: change can come from political advocacy, and showing that the perpetrator did not respect international standards.**

**SUMMARY**

**Requirements For Documentation Under International Human Rights Law**

- 1 (Optional) Determining that a human rights treaty applies where the incident occurred;
- 2 Demonstrating that the treaty was violated, such as an element of the freedom of religion and belief;
- 3 Demonstrating State responsibility: attributing responsibility to the State;
  - Demonstrating that the violation was committed by public actors who work for, are representatives, or given direction by the State;
  - Demonstrating that the violation was committed by non-State actors, but the State knew or should have known of the violation, and failed to protect against it.

**Requirements For Documentation Under International Criminal Law**

- 1 (Optional) Determining that the Rome Statute applies to the situation at issue;
- 2 Demonstrating that the specific crime occurred;
- 3 Demonstrating that the crime occurred in the context required;
- 4 Linking the crime to an individual responsible.

**Requirements For Documentation Under International Humanitarian Law**

- 1 (Optional) Determining that the Geneva Conventions apply to the situation;
- 2 Demonstrating that the incident violates the Geneva Conventions;
- 3 Demonstrating that the violation was committed by a party to the conflict: either a State, a non-state armed group, or an individual member of, or acting on behalf of a party to the conflict.

## After Documentation<sup>234</sup>

### Comparing the information collected to the applicable legal framework

#### ANALYSIS STEPS

- 1 Determine which legal framework(s) applies (See [Part 1](#)).
- 2 Compare and contrast the information collected to the elements of Freedom of Religion and Belief that the legal framework protects.
- 3 Analyze whether a violation of a protected element(s) has occurred.
- 4 Analyze whether the information collected meets all the requirements of the legal framework.
- 5 Determine to which procedure the information can be submitted (See [Part 3](#)).
- 6 Add the written analysis to the information submitted to a specific process:
  - How the incident is relevant to their work,
  - How they are the correct procedure to receive and act upon the information.

Example: information that suggests a violation of international human rights law can be submitted to international advocacy bodies that monitor international human rights, such as U.N. Special Procedures.

#### INTERNATIONAL HUMAN RIGHTS LAW

Which element(s) of the freedom of religion or belief is the information connected to, or could demonstrate a violation of?<sup>235</sup>

**The right to have, adopt, change, or leave a religion or belief:** this aspect of the Freedom of Religion and Belief is absolute, it cannot be limited.

- Does the law limit this right? Is it practically limited in other ways?
- Are any groups banned?
- Is the right to convert or adopt atheistic beliefs limited?
- Are there any limitations by social groups to this right?
- Is inter-religious marriage permitted, or is one spouse required to convert? Is divorce permitted for all groups (unequal divorce rights can make conversion the only means to escape marriage)?
- Is there discrimination or violence connected to having, changing, or leaving a particular religion or belief? This includes honor-based and extremist violence.
- Are people required to reveal or register their religion, for example on identity cards?

**The right to be free from coercion:** this aspect of the Freedom of Religion and Belief is absolute, it cannot be limited.

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<sup>234</sup> International Protocol on Documenting FoRB Violations, pages 61-64 (edited for training)

<sup>235</sup> FORB Learning Platform, *Useful questions to consider when evaluating the state of freedom of religion or belief in a country*, available at: <https://ihs.smc.global/documents/32CD8722-7597-48F1-A185-61C57C44DA2E/Questions%20to%20help%20diplomats%20analyse%20FORB%20situation.pdf>.

- Are religious or belief activities targeted by group or terrorist violence?
  - Are crimes related to religion common? Are individuals who leave a religion the target of violence? Does the state take adequate measures to prevent this, and provide protection and justice?
  - Do any state laws on religion violate human rights? For example, does the law compel individuals to observe religious norms that violate human rights?
  - Do individuals, particularly women, face coercion from society to practice or refrain from practicing religion, or to follow specific codes of conduct? Does the state take measures against this?
- 

**The right to practice and manifest a religion or belief:** this aspect of the Freedom of Religion and Belief is qualified: it can be limited by law, if necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

- Does religious or belief activity need to be registered? Is it illegal otherwise?
  - If religious communities need to be registered, are the registration requirements reasonable? Are all groups that wish to register able to do so?
  - Are there equal and sufficient rights to build, or rent and maintain places of worship? Are minority groups able to get permission in practice? Has the state confiscated, closed, or demolished places of worship or belief activity?
  - Is blasphemy prohibited? Are people free to speak about religion or beliefs to others, including the right to try and convince others of the truth of the religious or atheistic beliefs, and the right to criticize religion and beliefs?
  - Is religious or belief literature censored?
  - Are any religious practices obligatory or banned? For example, wearing religious clothing, participating in religious rites?
  - Are there limitations from the state or private actors on women's rights to study religion and lead religious communities?
  - Does the state interfere in religious communities' choice of religious leaders?
- 

**The right to non-discrimination on the basis of religion or belief:** this aspect of the Freedom of Religion and Belief is absolute, it cannot be limited.

- Does the State show favoritism towards a particular religion or belief, in a way that other groups are disadvantaged?
  - Are there any limitations on the social, economic, civil, or political rights of members of any groups?
  - Is social and economic discrimination on the basis of religion or belief widespread in society? Does the State take measures against this?
- 

**The right to bring up one's children in accord with one's religion or belief:** this aspect of the Freedom of Religion and Belief is absolute for the right to have, change, leave a religion. It is qualified for the right to manifest.

- Are children banned from or restricted in participating in religious or belief activities?

## PART 5: Appendices

- Is teaching at school religious or belief-based? Are exemptions to religious or belief-based education available, in principle and practice, to all children and parents who do not wish to participate in it?
- If one party to a marriage converts, are children automatically converted by the State without the permission of the other spouse? Can children refuse automatic conversion?

### The right to conscientious objection to military service

- If military service is compulsory, are there reasonable exemptions for conscientious objectors? Are any objectors imprisoned or punished otherwise?

### Which other human rights are involved?

- The right to life
- The right to be free from torture or cruel, inhuman, or degrading treatment
- Women's right to equality
- The right to freedom of expression and association

Based on the information collected, does the incident amount to a violation of International Human Rights Law?

### INTERNATIONAL CRIMINAL LAW<sup>236</sup>

Are the elements of one of the three crimes of international criminal law present?

**Crime of Genocide:**<sup>237</sup> were one of the following acts committed against a national, ethnic, racial, or religious group, with intent to destroy the group in whole or in part?

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

**Crime Against Humanity:**<sup>238</sup> was a national, ethnic, cultural, or religious group intentionally and severely deprived of fundamental rights contrary to international law, because of the identity of the group and as part of a widespread and systematic attack, through any of the following acts:

- Murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other

<sup>236</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998.

<sup>237</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, Article 6.

<sup>238</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, Article 7.

severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other sexual violence of comparable gravity; enforced disappearance; apartheid; other similar inhumane acts that cause great suffering or serious injury to body, or mental or physical health.

**War Crimes:**<sup>239</sup> in the context of armed conflict, were the laws and customs of armed conflict seriously violated, including:

- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives?<sup>240</sup>
- Other violations of international humanitarian law? All violations of international humanitarian law are war crimes.

Based on the information collected, does the incident amount to a violation of International Criminal Law?

### INTERNATIONAL HUMANITARIAN LAW<sup>241</sup>

Does the incident violate the protections of convictions and religious practices found in customary international humanitarian law? In times of armed conflict, respect for religious and other personal convictions is a protected right under International Humanitarian Law. Like under International Human Rights Law, the fundamental elements of Freedom of Religion and Belief cannot be limited; but the right to manifest religion and belief can.

**Respect for Convictions and Religious Practices (Rule 104 Customary IHL):** the convictions and religious practices of civilians and persons *hors de combat* must be respected by parties to an armed conflict. Parties must respect the religious convictions and practices of persons in occupied territory.

- Are all religions and beliefs respected, including those of minority or unrecognized groups?
- Are civilians and non-fighters able to manifest their personal convictions, or practice their religion (for example, burial rites, treatment of the dead)? Do they have access to places of worship and religious personnel? Do they have access to books and articles required for religious needs?
- Are individuals being targeted on the grounds of their religion?
- Are civilians and non-fighters forced to convert to another faith?
- Are orphaned children, or children separated from their parents able to be educated in the religion or beliefs of their parents?

**Respect for Convictions and Religious Practices of Persons Deprived of Their Liberty (Rule 127 CIHL):** the personal convictions and religious practices of persons deprived of their liberty ('prisoners of war') must be respected, in all types of armed conflict (international and non-international).

- Are persons detained allowed access to clerics of their religion, in principle and in practice?

<sup>239</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, Article 8.

<sup>240</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, Articles 8 (b)(ix) and 8(e)(iv).

<sup>241</sup> International Committee of the Red Cross, Customary IHL Database, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1> (last accessed April 14, 2020).

## PART 5: Appendices

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- Are persons detained allowed to practice their religious beliefs (for example, prayer times)?
  - Are persons detained forced to act against religious beliefs (for example cutting their hair, eating certain meats, or smoking cigarettes)?
  - Are persons detained allowed to engage in correspondence on matters concerning their religious duties?
  - If detainees' practice of religious and personal beliefs is limited, are these limitations reasonable (for example, compliance with a disciplinary routine)?
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**Religious Personnel (Rule 27 CIHL):** religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. 'Religious personnel' refers to personnel (military or civilian) who are exclusively engaged in the work of their ministry, and attached to a party to the conflict, to its medical units, or transports, or to a civil defense organization.

- Are religious personnel entitled to use distinctive emblems, to identify them as protected persons that cannot be targeted?
  - Are conspicuous religious personnel intentionally targeted in attacks? Did religious personnel engage in acts of combat, that would remove their protected status?
  - Are religious personnel allowed access to persons of their faith?
  - Are both civilian and military personnel protected by parties to the conflict, in all circumstances?
  - Are religious personnel allowed to be equipped with light, individual weapons to use exclusively in their own defense, or in defense of the wounded or sick?
  - Are other persons performing religious functions allowed to enjoy the protected status of civilians?
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**Attacks against Cultural Property (Rule 38 CIHL):** each Party to the conflict must completely respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education, or charitable purposes, and historic monuments unless they are military objectives. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperative required by military necessity.

- Is protected civilian cultural property targeted or attacked? Was the property being used for military purposes, such that it would lose its protected civilian status?
  - Is cultural property understood to include buildings dedicated to religion and historic monuments?
  - Is cultural property understood to include property from religious or social minorities and unrecognized groups?
- 

**Use of Cultural Property for Military Purposes (Rule 39 CIHL):** the use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.

- To establish military necessity, has the cultural property been made into a military objective, and is there no feasible alternative to obtain a similar military advantage than attacking the cultural property?

Based on the information collected, does the incident amount to a violation of International Humanitarian Law?

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Mass amongst devastation and destruction  
at Al-Tahir Church, Qaraqosh, Iraq.