

# Implementing UN HRC Res 16/18

A framework for inclusivity,  
pluralism and diversity

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ARTICLE 19 Briefing

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# What is Resolution 16/18?

Human Rights Council (HRC) [Resolution 16/18](#) addresses “[combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief.](#)”<sup>1</sup> It was adopted by consensus in March 2011, and is widely regarded as a landmark achievement of the HRC’s first decade.

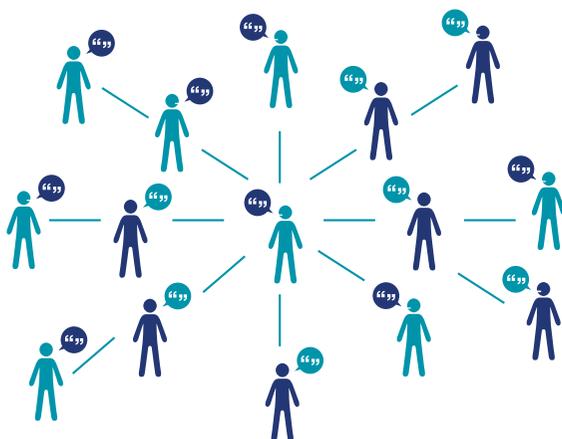
Resolution 16/18 commits States to address religious intolerance [through the promotion of the interrelated and mutually reinforcing rights to freedom of expression, freedom of religion or belief, and non-discrimination.](#)

To achieve this, the resolution sets out an eight-point action plan for States to:

1. Create collaborative networks to build mutual understanding, promote dialogue and inspire constructive action in various fields;
2. Create a mechanism within governments to identify and address potential areas of tension between members of different religious communities, and assist with conflict prevention and mediation;
3. Train government officials in effective outreach strategies;
4. Encourage efforts of leaders to discuss within their communities the causes of discrimination, and evolve strategies to counter them;
5. Speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
6. Adopt measures to criminalise incitement to imminent violence based on religion or belief;

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7. Combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, including through education and awareness-building;
  8. Recognise that the open, constructive and respectful debate of ideas plays a positive role in combating religious hatred, incitement and violence.

The HRC has adopted follow-up resolutions to Resolution 16/18 annually, and by consensus, including [Resolution 31/26](#) in 2016.<sup>2</sup> This included positive references to the OHCHR-led [Rabat Plan of Action](#), which provides practical legal and policy guidance to States on implementing Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR).<sup>3</sup> Article 20(2) obliges States Parties to the ICCPR to prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence”.



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# The problem: discrimination and violence

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has warned that "hate is being mainstreamed", a trend worsened by governments clamping down on the space for civil society and others to counter hatred.<sup>4</sup>

The UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, identifies that this intolerance is fuelled by electoral populism that scapegoats diversity and pluralism, and by violence and discrimination committed by certain groups in the name of religion.<sup>5</sup> The High Commissioner has warned that these dual phenomena are symbiotic – feeding off and depending on one another for their survival – and undermine societies' resilience to hatred.

Human rights violations in this context are wide ranging: people killed or seriously injured in terrorist attacks; bloggers murdered for debating ideas around religion and belief; artists and human rights defenders fined, imprisoned or sentenced to death for blasphemy; discrimination against minorities on the basis of religion or belief, including in particular refugees, non-citizens, and migrants; and discriminatory prohibitions on women's expression through clothing, to name just a few.

It is therefore imperative that States consolidate the consensus behind Resolution 16/18, and prioritise the implementation of its action plan.

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# The solution: opening space for dialogue and dissent

Resolution 16/18 rests on the rationale that more expression is the best antidote to intolerant expression, coupled with policies and laws to tackle the root causes of discrimination.

Seven of the eight action points in the resolution focus on positive and non-coercive measures to create a climate for open dialogue and dissent, including on sensitive issues. These policy measures, underpinned by strong protections for freedom of expression, freedom of religion or belief, and non-discrimination, must focus on “changing hearts and minds”, rather than on punitive measures. This promotes mutual understanding within and between groups, and empowers influential people to speak out against intolerance and discrimination. Multiple stakeholders must be mobilised in these efforts, and space given to civil society to innovate their own responses.

The Camden Principles on Freedom of Expression and Equality,<sup>6</sup> make clear that more is expected of politicians and other leadership figures in this regard, and that the media also have a clear moral and social responsibility to combat intolerance. The Rabat Plan of Action endorses these principles, also emphasising that national human rights institutions, civil society, and a free and open Internet are all crucial to promote inclusivity, pluralism and diversity.

The crux of Resolution 16/18 and the Rabat Plan of Action is that violence and discrimination, and advocacy of hatred constituting incitement to these acts, is best prevented through dissent and open dialogue, rather than through censorship.

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# Censorship: an exceptional measure of last resort

Restricting expression is foreseen in just one of the eight action points of Resolution 16/18: States are called on to criminalise “incitement to imminent violence on the basis of religion or belief” (para 5(f)), echoing States’ broader obligations under Article 20(2) ICCPR to prohibit “any advocacy of racial, national or religious hatred that constitutes incitement to hostility, discrimination or violence.”

The meaning and scope of these commitments and obligations remain a contentious issue at the HRC, though the Rabat Plan of Action provides clear guidance on this point. In particular, it emphasises that:

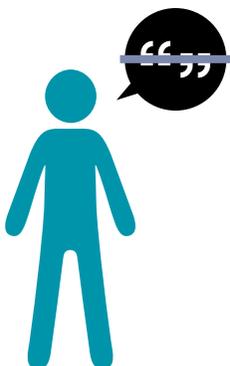
- Any limitations on expression under Article 20(2) ICCPR must also meet the requirements of legality, legitimate aim, and necessity and proportionality under Article 19(3) of the ICCPR;
- It is only necessary to prohibit the most severe forms of incitement. Six factors should be considered in order to identify when this threshold is met:
  - the social and political context;
  - the speaker, e.g. his or her status and influence over their audience;
  - the intent of the speaker;
  - the content and form of the expression;
  - the extent of the expression; and
  - the likelihood and imminence of violence, discrimination or hostility occurring as a direct consequence of the expression.

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- Criminal sanctions are only applied as a measure of last resort, in the most serious of cases.

By insisting on this high threshold, the Rabat Plan of Action urges States to safeguard against two kinds of human rights violations that often arise from the enforcement of incitement laws:

- Impunity for actual incitement to violence, hostility or discrimination, in particular where minorities are targeted;
- The use of over-broad “incitement” laws to silence or intimidate government critics and dissenters, in particular against persons with minority religions or beliefs, including religious minorities, converts, atheists, and agnostics.

In implementing Resolution 16/18, States must commit to ensure accountability for these human rights violations.



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# Understanding freedom of religion or belief

Resolution 16/18 reconciled diverging views on the best way to tackle intolerance and discrimination on the basis of religion or belief: it replaced divisive calls at the HRC (and at its predecessor, the United Nations Commission on Human Rights) for States to combat “defamation of religions”, a concept analogous to “blasphemy”, in favour of a more positive and consensus-based agenda.

Though States continue to differ in their interpretations of the right to freedom of religion or belief, international human rights law is clear: “defamation of religions” is not a legitimate basis for restricting the enjoyment of any human right, including the right to freedom of expression.

**The repeal of blasphemy laws** has been called for by the [UN Special Rapporteur on freedom of religion or belief](#),<sup>7</sup> the [UN and regional free expression mandates](#),<sup>8</sup> and is a recommendation of the Rabat Plan of Action and the Human Rights Committee’s [General Comment No. 34](#).<sup>9</sup> There are two reasons for this:

1. **Blasphemy laws violate human rights:** they are discriminatorily applied against minorities and dissenters to limit open debate. Rather than advancing mutual understanding, they fuel discrimination, incitement to violence, as well as acts of violence by State and non-State actors. They are therefore antithetical to the spirit and purpose of Resolution 16/18.
2. **People are rights-holders, abstract ideas or beliefs are not:** international law requires States to respect, protect and promote the rights of individuals to have, adopt and manifest a religion or belief of their choosing, and to protect individuals from discrimination on the basis of their religion or belief. It does not protect the ideas, religions or beliefs themselves as such, nor entitle individuals to have their ideas, religion, or beliefs protected from scrutiny, debate, insult or even ridicule. This does not constrain individuals from speaking out against expression that they find offensive, including by protesting blasphemy, as this too is their protected right.

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# Implementation is key: the Istanbul Process

The Istanbul Process is a series of meetings, initiated in 2011, to promote and guide implementation of Resolution 16/18. It was conceived of as a space for various stakeholders to exchange good practices and experiences of implementing the Resolution 16/18 action plan, outside of the sphere of multilateral politics.

ARTICLE 19 believes that the Istanbul Process has enormous potential to be a strong vehicle for the implementation of Resolution 16/18, to identify and replicate innovative and human rights compatible approaches to promoting inclusivity, pluralism and diversity. This requires continuity in the Istanbul Process, which should be more cross-regional, visible, inclusive, and participatory of key stakeholders. Participation should be drawn from domestic government ministries and agencies whose mandates encompass efforts to tackle discrimination, as well as relevant UN special procedures, religious leaders, civil society, national human rights institutions, the media, technology companies: these individuals can reflect on their own practical experience to make the exchange most valuable. Most importantly, States must show they are leading by example.

Resolution 16/18 also requires States to report their implementation efforts to OHCHR. States' engagement with the reporting mechanism has, however, been limited. Less frequent reporting obligations, and the opening up of this process for input from civil society, national human rights institutions and other stakeholders with relevant experience, could enrich the process significantly.

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# Next steps for implementation

Implementing Resolution 16/18 requires action from States in four areas:

## 1. Lead by example

- Adopt national implementation plans on Resolution 16/18 and the Rabat Plan of Action, with the full and effective participation of all stakeholders.
- Ensure an environment for open robust debate and dialogue, including through a free and open Internet, in line with the rights to freedom of religion or belief, freedom of opinion and expression, and non-discrimination.
- Ensure that incitement prohibitions comply with Articles 19(3) and 20(2) of the ICCPR, and are only applied as an exceptional and last resort measure in line with the guidance of the Rabat Plan of Action.
- Repeal blasphemy laws, in recognition of their incompatibility with international human rights law, and resist attempts to legitimise concepts supportive of these measures at the UN or in other fora.

## 2. Ensure continuity and promote visibility, transparency and inclusivity in the Istanbul Process

- Commit to a multi-year programme for the continuation of the Istanbul Process, with greater collaboration between previous and future hosts to more effectively build upon lessons learned, and to enhance opportunities for participation by all stakeholders.
- Establish dedicated resources, including online, for the exchange of information and resources on the Istanbul Process and implementation of Resolution 16/18, to enhance visibility to broader constituencies.

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- Build upon cross-regional participation, encouraging more States in underrepresented regions to host and attend Istanbul Process Sessions.
  - Engage practitioners, including: national government ministries and agencies; national human rights institutions; legislators; judiciary; national and regional civil society and community leaders; journalists; and social media and internet companies.
  - Engage UN special procedures and OHCHR to ensure an effective “feedback loop” of lessons learned to the UN.

### **3. Enhance introspection and replication in the Istanbul Process**

- Encourage self-evaluation and self-criticism in the Istanbul Process to exchange lessons-learned.
- Explore alternative, participatory and action-oriented formats in the Istanbul Process to enable the identification and replication of good practices.
- Convene national and regional gatherings on the implementation of Resolution 16/18 under the umbrella of the Istanbul Process, to feed into and enrich annual meetings.
- Dedicate resources to bilateral collaborations to replicate good practice.

### **4. Maintain consensus on Resolution 16/18 and enhance reporting on implementation**

- Make high-level commitments to maintaining the consensus on Resolution 16/18, recognising its potential as a universal and practical framework to promote inclusivity, pluralism and diversity.
- Respond to requests from OHCHR and the Secretary General for information on implementation of Resolution 16/18, with detailed evaluations of relevant national actions and policies.
- Open OHCHR reporting on the implementation of Resolution 16/18 to all interested stakeholders.

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- Biennialise key thematic resolutions to dedicate more resources to implementation.
  - Mainstream the Rabat Plan of Action within the Istanbul Process, to address misconceptions regarding legitimate restrictions on the right to freedom of expression.
  - Acknowledge progress made on implementation, and hold States to account for regressive practices through engagement in HRC debates and interactive dialogues with special procedures and the Universal Periodic Review (UPR).



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# More resources

- ARTICLE 19 Tool Kit: “Hate speech” Explained, December 2015, available at: <http://bit.ly/1PfLHh4>
- 6th Session of Istanbul Process focuses on practical measures to implement UN HRC Resolution 16/18, ARTICLE 19, 12 September 2016; available at: <http://bit.ly/2kxIGXf>

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- <sup>1</sup> HRC Resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief”, adopted by consensus on 24 March 2011; available at: <http://bit.ly/1Si1zVc>
  - <sup>2</sup> HRC Resolution 31/26 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief”, adopted by consensus on 24 March 2016; available at: <http://bit.ly/2kRLxFJ>
  - <sup>3</sup> Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility of violence, A/HRC/22/17/Add.4, 5 October 2012; available at: <http://bit.ly/2fTNMG6>
  - <sup>4</sup> Hate is being mainstreamed” – global update by the High Commissioner at the 32nd Session of the Human Rights Council, 13 June 2016; available at: <http://bit.ly/2kGFgeQ>
  - <sup>5</sup> Report of the Special Rapporteur on freedom of religion and belief, A/HRC/34.50, 17 January 2017; available at: <http://bit.ly/2lriyfw>
  - <sup>6</sup> The Camden Principles on Freedom of Expression and Equality, ARTICLE 19, 2009; available at: <http://bit.ly/1XfMDrL>
  - <sup>7</sup> *Op. Cit.*, FN5.
  - <sup>8</sup> Joint Declaration of the International and Regional Freedom of Expression Mechanisms on Defamation of Religions, 20 April 2008; available at: <http://bit.ly/2gna3g4>
  - <sup>9</sup> Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, 12 September 2011; available at: <http://bit.ly/1xmySgV>





## DEFENDING FREEDOM OF EXPRESSION AND INFORMATION

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