

FREEDOM OF EXPRESSION:

A Handbook for Lawmakers and
Law Reform Advocates



Development Practitioner Series

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Law Reform Advocates



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About Boresha Habari

Boresha Habari (“Better News”) is a program funded by the United States Agency for International Development (USAID) Mission to Tanzania via an Associate Award under the Strengthening Civil Society Globally (SCS Global) Leader with Associates (LWA) Cooperative agreement. Boresha Habari aims to support an open, inclusive environment in which Tanzanian media and civil society provide accurate and impartial information that promotes participation, inclusion, and accountability.

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TABLE OF CONTENTS

INTRODUCTION	2
A. GENERAL PRINCIPLES OF FREEDOM OF EXPRESSION	3
B. ACCESS TO INFORMATION	5
C. PROHIBITED SPEECH	10
D. CRIMINAL LIBEL AND DEFAMATION	12
E. ONLINE CONTENT REGULATION	14
F. MEDIA AND FREEDOM OF EXPRESSION	16
G. ACCESS TO INTERNET	18
H. THE RIGHT TO PRIVACY: SURVEILLANCE	19
I. DATA PROTECTION	22

INTRODUCTION

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to the freedom of expression, which it defines as the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person's choice. Similarly, the African Charter on Human and Peoples' Rights protects the right to the freedom of expression in Article 9.

This mini handbook is a tool for interested parties to analyze a law's compliance with international law and best practices governing the freedom of expression. The mini handbook also references best practices which interested parties may use as a basis to reform laws or specific provisions that they determine may violate the right to the freedom of expression. Key references include the ICCPR and reports issued by various bodies under the United Nations, and the African Commission on Human and Peoples' Rights' Declaration on Principles of Freedom of Expression and Access to Information (2019) (hereinafter the "ACHPR Declaration").

Each section contains a checklist of questions that consider international legal standards and best practices relevant to a specific topic under the freedom of expression—individuals may use specific checklists to determine whether a law complies with international standards governing access to information, the regulation of the media and online content, and privacy rights, among other topics.

How to Use the Checklist

Each question corresponds to a response column: responses marked with an arrow ("→") indicate that the law may not be in accordance with international law, and prompts the user of the checklist to view the corresponding "best practice under international and regional standards." Lawmakers and other stakeholders may use the best practice as a basis to reform laws or specific provisions that may violate the right to the freedom of expression.



A. GENERAL PRINCIPLES OF FREEDOM OF EXPRESSION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
A1 Does the law limit the right to exercise the freedom of expression based on a person's race, ethnic group, color, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status?	Yes → No	All persons shall have the right to exercise the freedom of expression, regardless of any defining or perceived characteristics. ICCPR Article 19(2). African Charter on Human and Peoples' Rights Article 9.
A2 Where the law protects the right to the freedom of expression, is the right to freedom of expression protected both online and offline?	Yes No →	The law should make clear that protections of the freedom of expression guaranteed under the law are equally applicable offline and online. <u>U.N. DOC. A/66/290, Para. 14.</u>
A3 Does the law specifically limit the ability of civil society actors to exercise their right to the freedom of expression?	Yes → No	Civil society actors, including human rights defenders, journalists, and other media practitioners should not be subject to additional restrictions on the right to exercise the freedom of expression. <u>U.N.DOC. A/HRC/14/23, Section D; U.N. DOC. A/HRC/20/17; U.N.DOC. A/HRC/11/4.</u>
A4 Can any person who reads the law easily understand the restrictions on the freedom of expression?	Yes No →	Restrictions on the freedom of expression must be "provided by law," meaning that the restriction is contained in the law and is sufficiently precise so that a person reading the law can understand prohibited behaviors.



A. GENERAL PRINCIPLES OF FREEDOM OF EXPRESSION (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION
<p>A5 Where there is a restriction on the freedom of expression, does the law clearly explain how the restriction will further one of the following goals?</p> <ul style="list-style-type: none">• to respect the rights or reputations of others• to protect national security or public order• to protect public health or morals	<p>Yes</p> <p>No →</p>	<p>Restrictions on the freedom of expression must be undertaken to further at least one of the three listed goals:</p> <ul style="list-style-type: none">• to respect the rights or reputations of others• to protect national security or public order• to protect public health or morals <p>ICCPR Article 19(3).</p>
<p>A6 Is each restriction on the freedom of expression the least restrictive means to achieve the goals in Question A5?</p> <p>Consider: are there other ways to meet the goals in Question A5 that place less restrictions on the freedom of expression?</p>	<p>Yes</p> <p>No →</p>	<p>Restrictions on the freedom of expression must be “necessary,” which is understood to mean the least restrictive means to achieve the goals listed in Question A5</p> <p>ICCPR Article 19(3).</p>



B. ACCESS TO INFORMATION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
B1 Does the law guarantee the right to access to information to all individuals (and not just to citizens)?	Yes No →	Every person has the right to access information. <u>ACHPR Declaration</u> Principle 26(1)(a) and (b).
B2 Does the law provide access to information from both government bodies and private bodies that either (1) implement a duty typically assigned to the government or (2) receive government funding?	Yes No →	Every person has the right to access information held by public bodies and relevant private bodies. A “relevant private body” is a private body that would otherwise be a private body but is owned partially or totally, or is controlled or financed directly or indirectly by public funds, or a body that carries out a statutory or public function or a statutory or public service. See ACHPR Declaration Principle 26(1)(a) and (b) and 26(2).
B3 Does the law provide guidelines for public bodies and private bodies that serve a public function to create, keep, organize, and maintain information?	Yes No →	Public bodies and relevant private bodies shall keep, organize, and maintain information in a manner that facilitates the exercise of the right of access to information. Guidelines might clearly lay out, for example, the length of time and format in which public and relevant private bodies must keep information. ACHPR Declaration Principle 30.
B4 Does the law generally require public bodies to publish and disseminate documents of significant public interest?	Yes No →	Public bodies and relevant private bodies shall be required, even in absence of a specific request, to proactively publish information of public interest through all available mediums. ACHPR Declaration Principle 29. See also the U.N. Special Rapporteur on freedom of opinion and expression’s Access to information factsheet.



B. ACCESS TO INFORMATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
B5 Does the law state that meetings of governing bodies are presumed to be open to the public?	Yes No →	<p>Legislation should establish a presumption that meetings of governing bodies are open to the public, subject to specific limitations covered in this checklist.</p> <p>“Governing bodies” means agencies, boards, committees and other decision-making groups at the local, state, and federal government levels.</p> <p>See the U.N. Special Rapporteur on freedom of opinion and expression’s Access to information factsheet.</p>
B6 Is all information held by public bodies subject to disclosure, except in limited circumstances where there is a strong public interest not to disclose the information?	Yes No →	<p>The right of access to information shall be guided by the principle of maximum disclosure. Access to information may only be limited by narrowly defined exemptions, which should be clearly explained in the law and otherwise comply with international human rights law and standards.</p> <p>Some examples of permissible grounds for exemptions to disclosure include if the release of information would endanger the life, health, or safety of an individual, or would result in the unreasonable disclosure of the personal information of a third party.</p> <p>ACHPR Declaration Principle 28. See ACHPR Declaration Principle 33 for a full list of permissible grounds for withholding information.</p>
B7 Does the law mandate a public body or relevant private body to charge fees <u>only</u> to cover costs of producing information in a particular format (e.g. fees to cover printing information rather than sending a digital copy)?	Yes No →	<p>No fees shall be payable other than the reasonable reproduction cost of requested information. The cost of reproduction shall be waived where the requester is indigent.</p> <p>ACHPR Declaration Principle 31(4).</p>



B. ACCESS TO INFORMATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
B8 Does the law require persons requesting information to provide a justification for the request?	Yes → No	No one shall be required to demonstrate a specific or personal interest in the information requested or to provide a justification for a request. ACHPR Declaration Principle 31(2).
B9 Are the reasons for the denial of access to information clearly and narrowly designed?	Yes No →	The law should clearly and narrowly articulate the exceptions to the right to access information. Some examples of permissible grounds for exemptions to disclosing information include if the release of information would cause substantial prejudice to a legitimate commercial or financial interest of relevant stakeholders or other third parties, or would result in the disclosure of confidential communication between a medical practitioner and patient, lawyer and client, journalist and sources, or that is otherwise privileged from disclosure in legal proceedings. See the U.N. Special Rapporteur on freedom of opinion and expression's Access to information factsheet. See ACHPR Declaration Principle 33 for a full list of permissible exceptions to the right to access information.
B10 Can a person easily understand the reasons for denial of a request to access information outlined in the relevant law(s)?	Yes No →	Any refusal to disclose information shall be provided in a timely manner and in writing. In Nigeria, the Federal High Court has ruled that public institutions must supply specific bases for refusal in a notice to an applicant within seven days of a request for information (Boniface Okezie v. Attorney General of the Federation and the Economic and Financial Crimes Commission, Federal High Court of Nigeria, FHC/L/CS/514/2012 (February 22, 2013). ACHPR Declaration Principle 31(5).



B. ACCESS TO INFORMATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
B11 Does the law restrict the period for withholding information as only that which is necessary to serve the public interest?	Yes No →	Information should only be withheld for the period in which the harm outweighs the public interest. ACHPR Declaration Principle 33(1)
B12 Does the law stipulate a maximum period for withholding information?	Yes No →	Laws governing classification of information shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, never indefinitely. For example, South Africa's Promotion of Access of Information Act requires information holders to disclose information that came into existence over 20 years before the request for access. Uganda's Access to Information Act sets a similar general 20-year limit on exemptions to disclosure, while setting a 10-year expiry of protection of information that may frustrate the operations of public bodies. ACHPR Declaration Principle 33(3).
B13 Where a request to access information is denied, does the applicant have the right to appeal against the decision?	Yes No →	Any refusal to disclose information shall be subject to an expeditious internal appeal process at no cost to the applicant. The right of further appeal against the outcome of an internal appeal process shall lie to the oversight mechanism and, ultimately, the courts. ACHPR Declaration Principle 32.



B. ACCESS TO INFORMATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>B14 Do national laws provide protection from liability for officials who, in good faith, disclose information by following procedures laid out in domestic law(s)?</p> <p>Relevant procedures include right to information legislation, if enacted, or other existing frameworks such as a whistleblowers law.</p>	<p>Yes</p> <p>No →</p>	<p>No person shall be subject to civil, criminal, administrative or employment-related or other sanctions or harm for releasing information on wrongdoing or which discloses a serious threat to health, safety or the environment, or whose disclosure is in the public interest, in the honest belief that such information is substantially true.</p> <p>States shall adopt laws to establish protected disclosure regimes and independent institutions to oversee the protected disclosure of information in the public interest.</p> <p>ACHPR Declaration Principle 35. See also the U.N. Special Rapporteur on freedom of opinion and expression's Access to information factsheet.</p>
<p>B15 Is there an independent and impartial oversight mechanism to monitor, promote, and protect the right to access to information and resolve disputes on access to information?</p>	<p>Yes</p> <p>No →</p>	<p>An independent and impartial oversight mechanism shall be established by law to monitor, promote and protect the right of access to information and resolve disputes on access to information.</p> <p>ACHPR Declaration Principle 34(1).</p>



C. PROHIBITED SPEECH

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>C1 Does the law prohibit any speech that advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility, or violence?</p> <p>Incitement means actions that explicitly and deliberately aim to trigger discrimination, hostility, or violence.</p> <p>Discrimination means the taking of adverse actions on grounds of characteristics such as race, color, sex, religion, among others.</p> <p>Hostility means intense and irrational emotions of opprobrium, enmity and detestation towards the target group.</p> <p>Violence means any act that results in or is likely to result in physical or mental harm or suffering.</p>	<p>Yes</p> <p>No →</p>	<p>Advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.</p> <p>ACHPR Declaration, Principle 23(1); ICCPR Article 20(2); U.N. DOC. A/HRC/67/357; and U.N. Doc. A/HRC/74/486.</p>



C. PROHIBITED SPEECH (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
C2 Does the law only criminalize prohibited speech as a last resort, and only for the most severe cases?	Yes No →	<p>Prohibited speech (i.e. speech that advocates for national, racial, religious or other forms of discriminatory hatred that constitutes incitement to discrimination, hostility, or violence) should only be criminalized as a last resort, taking into account the:</p> <ul style="list-style-type: none">• prevailing social and political context;• status of the speaker in relation to the audience;• existence of a clear intent to incite;• content and form of the speech;• extent of the speech, including its public nature, size of audience and means of dissemination;• real likelihood and imminence of harm <p>ACHPR Declaration Principle 23(2).</p>



D. CRIMINAL DEFAMATION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
D1 Is defamation considered a crime?	Yes → No	States shall repeal laws that criminalize sedition, insult, and publication of false news. States shall amend criminal laws on defamation and libel in favor of civil sanctions. Instead, the law could favor non-pecuniary remedies for damage to reputation, such as an apology, rectification, or clarification. ACHPR Declaration Principle 22(2) and (3). See also U.N. DOC. A/HRC/38/35 .
D2 Does the law deem a statement to be defamatory only if it meets all of the following criteria: <ul style="list-style-type: none">• it is published in a spoken, written, pictured or gestured form;• it is false (i.e., the contents are totally untrue);• it is injurious;• it is “unprivileged” (i.e. the individual that publishes the statement is not in a protected category. For example, someone who is making the statement in their professional capacity is “privileged” and cannot be sued for defamation for that statement.)• the statement was made with actual malice (i.e., a real willingness to harm the defamed person)	Yes No →	The international legal definition of defamation is laid out in U.N.DOC. A/HRC/4/27 para. 27.



D. CRIMINAL DEFAMATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
D3 Does the law only apply the concept of “defamation” to false statements about people (as opposed to false statements about ideas such as national identity, state symbols, etc.)?	Yes No →	The legal definition of defamation should be limited to false statements about people. <u>U.N.DOC. A/HRC/4/27</u> , para. 54.
D4 Are public figures required to tolerate a greater degree of criticism (than non-public figures)?	Yes No →	Public figures should be ready to accept criticism and public screening in a greater measure than the ordinary citizen. <u>U.N.DOC. A/HRC/4/27</u> , para. 52.



E. ONLINE CONTENT REGULATION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>E1 Are intermediaries protected from liability for the content that third parties publish on their platforms?</p> <p>Note: an “intermediary” is a company that facilitates the use of the internet, including internet service providers, search engines, and social media companies.</p>	<p>Yes No →</p>	<p>Intermediaries should not be held liable for content that third parties publish on their platforms.</p> <p>See U.N. DOC. A/HRC/38/35, paras. 14-16.</p>
<p>E2 Does the law require intermediaries to monitor and rapidly remove user-generated content?</p>	<p>Yes → No</p>	<p>States shall not require internet intermediaries to proactively monitor content which they have not authored or otherwise modified.</p> <p>ACHPR Declaration Principle 39(2). See also U.N. DOC. A/HRC/38/35, paras. 15 and 67.</p>
<p>E3 If yes, are the rules requiring intermediaries to restrict content easily understood (i.e. that an intermediary can predict the types of content it must restrict)?</p>	<p>Yes No →</p>	<p>States shall not require the removal of online content by internet intermediaries unless such requests are:</p> <ol style="list-style-type: none"> clear and unambiguous; imposed by an independent and impartial judicial authority, submitted by law enforcement agencies to remove content that poses imminent danger or constitutes real risk of death or serious harm to a person or child, provided the removal is subject to review by a judicial authority; subject to due process safeguards; justifiable and compatible with international human rights law and standards; and implemented through a transparent process that allows a right of appeal. <p>ACHPR Declaration Principle 39(4); Manila Principles on Intermediary Liability, Principle 3.</p>



E. ONLINE CONTENT REGULATION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
E4 Does the law require authorities to receive a court order before ordering an intermediary to remove or restrict content?	Yes No →	Authorities shall obtain an order by a judicial authority before requiring an intermediary to restrict content. ACHPR Declaration Principle 39(5); Manila Principles on Intermediary Liability, Principle 2; U.N. DOC/A/HRC/38/35, para. 66.
E5 Does the law impose harsh penalties (e.g., high fines or imprisonment) on intermediaries for failure to remove restricted or prohibited content?	Yes → No	States should refrain from imposing disproportionate sanctions, whether heavy fines or imprisonment, on Internet intermediaries, given their significant chilling effect on freedom of expression. U.N. DOC. A/HRC/38/35, para. 66.
E6 Does the law require platforms to remove links, websites, or content hosted by intermediaries outside of the country (i.e., extraterritorial)?	Yes → No	States seeking removal of content hosted by extraterritorial intermediaries should be required to make such requests in every jurisdiction where relevant, through regular legal and judicial processes. U.N.DOC. A/HRC/38/35, para. 18



F. MEDIA

AND THE OF FREEDOM OF EXPRESSION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
F1 Does the law guarantee the right to establish various forms of independent media, including print, broadcast and online media?	Yes No →	States shall guarantee the right to establish various forms of independent media, including print, broadcast and online media. ACHPR Declaration Principle 12(1).
F2 Does the law protect media diversity and pluralism (i.e., neither the state nor a private company has a monopoly over print, broadcast, and online media)?	Yes No →	State or private monopoly over print, broadcast and online media is not compatible with the right to freedom of expression. ACHPR Declaration Principle 11(1).
F3 Does the law establish a public complaints system to adjudicate complaints about media content?	Yes No →	Public complaints systems for print, broadcast, online media and internet intermediaries shall be widely accessible and determined in accordance with established rules and codes of conduct. ACHPR Declaration Principle 18(1).
F4 Does the law hold the state liable for the conduct of law enforcement, security, intelligence, military and other personnel that threatens, undermines or violates the safety of journalists and other media practitioners?	Yes No →	States shall be liable for the conduct of law enforcement, security, intelligence, military and other personnel that threatens, undermines or violates the safety of journalists and other media practitioners. ACHPR Declaration Principle 20(5).



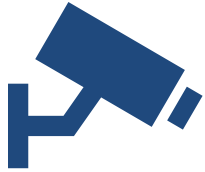
F. MEDIA AND THE FREEDOM OF EXPRESSION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
F5 Does the law require journalists or media practitioners to reveal confidential sources of information or disclose other material held for journalistic purposes only after the disclosure has been ordered by a court after a full and fair public hearing?	Yes → No	<p>Journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing.</p> <p>It is recommended that a court should only order disclosure of sources of information where:</p> <ol style="list-style-type: none">the identity of the source is necessary for the investigation or prosecution of a serious crime or the defense of a person accused of a criminal offence;the information or similar information leading to the same result cannot be obtained elsewhere; andthe public interest in disclosure outweighs the harm to freedom of expression. <p>ACHPR Declaration Principle 25(1).</p>
F6 Does the law require states to obtain an order by an impartial and independent court before conducting communication surveillance of confidential sources of information for the media or journalistic material?	Yes No →	<p>States shall not circumvent the protection of confidential sources of information or journalistic material through the conduct of communication surveillance except where such surveillance is ordered by an impartial and independent court and is subject to appropriate safeguards.</p> <p>ACHPR Declaration Principle 25(3).</p>
F7 Are sources who provide information in good faith to journalists protected by a whistleblowers law?	Yes No →	<p>No person shall be subject to civil, criminal, administrative or employment-related or other sanctions or harm for releasing information on wrongdoing or that discloses a serious threat to health, safety or the environment, or where disclosure is in the public interest, in the honest belief that such information is substantially true.</p> <p>States shall adopt laws to establish protected disclosure regimes and independent institutions to oversee the protected disclosure of information in the public interest.</p> <p>ACHPR Declaration Principle 35. See also the U.N. Special Rapporteur on freedom of opinion and expression's Access to information factsheet.</p>



G. ACCESS TO INTERNET

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
G1 Has the state adopted laws, policies, and other measures to provide universal, equitable, affordable, and meaningful access to the internet?	Yes No →	Some examples of policies or actions that states may take include: <ul style="list-style-type: none">• developing independent and transparent regulatory mechanisms for effective oversight;• improving information and communication technology and internet infrastructure for universal coverage;• establishing mechanisms for regulating market competition to support lower pricing and encourage diversity;• promoting local access initiatives such as community networks for enabling the increased connection of marginalised, unserved or underserved communities; and• facilitating digital literacy skills for inclusive and autonomous use. See ACHPR Declaration Principle 37(3).
G2 Does the law prohibit the state from engaging in disruption of access to the internet or other digital technologies?	Yes No →	States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population. ACHPR Declaration Principle 38(2).
G3 Does the law apply a tax on information and communication technology (ICT) service end-users, such as a social media tax?	Yes → No	States must ensure that taxes, levies and duties on ICT service end-users do not undermine universal, equitable, affordable, and meaningful access to the internet. See ACHPR Declaration Principle 38(3).



H. THE RIGHT TO PRIVACY: SURVEILLANCE

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>H1 Does the law protect the right of every person to be protected against arbitrary or unlawful interference with that person's privacy, family, home, or correspondence as well as unlawful attacks on that person's honor or reputation?</p> <p>"Interference" includes surveillance of a person, even where surveilled information is still sent and received by the surveilled person. Surveillance technology includes developing technology such as closed-circuit TV, drones, and spyware.</p> <p>"Unlawful" means that the interference has taken place in a situation that has not been envisaged by the law.</p>	<p>Yes</p> <p>No →</p>	<p>The right to privacy is an essential requirement for the realization of the right to the freedom of expression. The law should state that persons should not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honor and reputation.</p> <p><u>U.N. DOC. A/HRC/23/40</u>, para. 24. See also ACHR Declaration Preamble and Principle 40; ICCPR Article 17.</p>
<p>H2 Does the law clearly name the institutions that are authorized to engage in interference with a person's privacy, family, home, or correspondence?</p>	<p>Yes</p> <p>No →</p>	<p>The law should clearly designate authorities who may engage in interference with the right to privacy.</p> <p>See <u>U.N. Human Rights Committee (CCPR) General Comment No. 16</u>, para. 8.</p>
<p>H3 Does the law specify the precise circumstances under which authorities may engage in interference with a person's privacy, family, home, or correspondence?</p>	<p>Yes</p> <p>No →</p>	<p>Legislation must specify in detail the precise circumstances under which authorities may interfere with a person's privacy, family, home, or correspondence.</p> <p>CCPR General Comment No. 16, para. 8.</p>



H. THE RIGHT TO PRIVACY: SURVEILLANCE (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>H4 Does the law provide for a mechanism through which persons may complain of a violation to their right to privacy?</p>	<p>Yes No →</p>	<p>The harmful sharing of personal information, such as child sexual abuse or the non-consensual sharing of intimate images, shall be established as offences punishable by law.</p> <p>Every individual shall have legal recourse to effective remedies in relation to the violation of their privacy and the unlawful processing of their personal information.</p> <p>Oversight mechanisms for the protection of communication and personal information shall be established by law as independent entities and include human rights and privacy experts.</p> <p>ACHPR Declaration Principle 42(6)-(8).</p>
<p>H5 Does the law require that any targeted communication surveillance be (1) authorized by law AND premised on a specific and reasonable suspicion that a serious crime has been or is being carried out, or (2) carried out for another legitimate aim?</p> <p>“Legitimate aim” means the permissible aims laid out under international law for restrictions on fundamental human rights, namely:</p> <ul style="list-style-type: none">• to respect the rights or reputations of others• to protect national security, public order or public safety• to protect public health or morals	<p>Yes No →</p>	<p>States shall only engage in targeted communication surveillance that is</p> <ol style="list-style-type: none">1. authorized by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been, or2. being carried out or for any other legitimate aim. <p>ACHPR Declaration Principle 41(2).</p> <p>Note: “Mass” or “untargeted” surveillance of electronic communications is increasingly recognized as impermissible under international law. See European Union Court of Justice’s Judgment in Joined Cases C-293/12 and C-594/12 for emerging standard on incompatibility of mass surveillance with protection of human rights.</p>



H. THE RIGHT TO PRIVACY: SURVEILLANCE (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>H6 Does the law allow for “mass” or “untargeted” surveillance?</p> <p>“Mass” or “untargeted” surveillance means the collection, analysis, or generation of data on indefinite or large numbers of people.</p>	<p>Yes → No</p>	<p>States shall not engage in or condone acts of indiscriminate and untargeted collection, storage, analysis, or sharing of a person’s communications.</p> <p>ACHPR Declaration Principle 41(1). See also explanation for Question H5.</p>



I. DATA PROTECTION

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
<p>I1 Is there a law that specifically protects personal data (e.g., a data protection Law)?</p> <p>“Personal data” is any information that enables another person to directly or indirectly identify a person from that information, including biometric data.</p>	<p>Yes</p> <p>No →</p>	<p>States must ensure adequate safeguards for the right to privacy.</p> <p>ACHPR Declaration Principle 41(3). See also United Nations General Assembly Resolution 75/176.</p>
<p>I2 Does the law clearly articulate the authorities that are allowed to process personal data?</p> <p>NOTE: “Processed” means when a person’s data is being collected and translated into meaningful information, such as through sorting and interpreting data to draw conclusions about that person.</p>	<p>Yes</p> <p>No →</p>	<p>Safeguards must be articulated in law relating to the nature, scope and duration of possible interference with the right to privacy, the grounds for ordering the interference, the authorities competent to authorize, carry out and supervise the interference.</p> <p>U.N. DOC. A/HRC/23/40, para. 81. See also ACHPR Declaration Principle 41(3).</p>
<p>I3 Does the law clearly articulate the purposes for which an authority may process personal data?</p>	<p>Yes</p> <p>No →</p>	<p>The law should explicitly lay out the purposes for which an authority may process personal data.</p> <p>See guidance in Question I2, above.</p>
<p>I4 Does the law clearly articulate for how long personal data should be stored?</p>	<p>Yes</p> <p>No →</p>	<p>Data access, analysis, or other use should be kept to the amount necessary to fulfill its purpose.</p> <p>United Nations Development Group Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda.</p>



I. DATA PROTECTION (CON'T)

QUESTION	RESPONSE	BEST PRACTICE OR GUIDANCE UNDER INTERNATIONAL & REGIONAL STANDARDS
15 Does the law guarantee every person the right to ascertain what personal data, if any, is being stored, and for what purposes that data is stored?	Yes No →	The law shall protect every person's right to be informed in detail about processing of that person's data, and to be able to access personal information that has been or is being processed. ACHPR Declaration Principle 42(3).
16 Does the law guarantee that individuals have the right to request rectification, completion, or erasure of data where incorrect personal data have been collected or processed contrary to the provisions of the law?	Yes No →	Individuals should have the opportunity to rectify, complete, or erase personal information that is inaccurate, incomplete, or prohibited from collection, use, disclosure, or storage. ACHPR Declaration Principle 42(3)(d).

