



*Eurasian Coalition
on Male Health*

MANUAL ON MONITORING AND DOCUMENTATION OF LGBTQ HUMAN RIGHTS VIOLATIONS

ECOM
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Eurasian Coalition
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INTRODUCTION BY ECOM

According to data obtained between 2015 and 2018, the HIV epidemic continues to develop among MSM and trans people in the majority of the countries of Central and Eastern Europe and Central Asia (CEE-CA).

In the 2016 Political Declaration on HIV and AIDS, passed by the UN General Assembly, UN members, including all states in our region, confirmed that the realization of all human rights and fundamental freedoms contributes to global measures taken in response to the HIV epidemic, and pledged to promote the adoption of laws, strategies, and approaches aimed at eliminating HIV-related stigma and discrimination.

ECOM believes that one of the key elements to putting an end to the concentrated HIV epidemic in the CEECA region is the elimination of legal, social, economic, and gender barriers to accessing services.

Legal and normative barriers in countries of our region are exacerbated by stigma in society, which, in turn, is strengthened by government actions, or inactions regarding the investigation of cases of violence and discrimination towards gay men, other MSM, and trans people.

In such a situation, a tremendous responsibility falls on the shoulders of civil society itself.

Civil society is a key player in driving change and achieving prevention goals for two main reasons. Community organizations in all their diversity can provide relevant and needed HIV prevention services to young people and to key populations under circumstances where the government is not ready to do this in full. Civil society organizations can also advocate for legal and policy reforms, which would allow for the implementation of effective programs on a large scale.

ECOM developed this manual on monitoring and documenting violations of the rights of gay men, other MSM, and trans people in order to help activists in countries of the region to strengthen their skills related to collecting and systematizing data on violations of the rights of communities, including the right to health. This manual is also aimed at helping activists to use the data obtained to advocate for policy reforms at the national level.



SECTION 1

WHAT ARE HUMAN RIGHTS?

Since the middle of the last century and until the beginning of this century, people believed that, from the legal point of view, human rights and freedoms are manifested only in the relations between **a person and the state**. This is so called «vertical» manifestation of such rights.

For example, there is a right to the «freedom of religion.» What does this right mean? It means that I, as an individual, have a right to choose my religion at my own discretion and exercise it in any way that I like: in a religious facility together with other people, at weekends in a house of worship, at home alone, by distributing leaflets in the streets or in any other way. The state should not interfere with my freedom of religion and the way I exercise it. In the same way, I have a right not to choose or practice any religion, not to believe in anything – and the state cannot make me practice any religion. This is one side of the right to the «freedom of religion.»

On the other hand, if I want to build a church on my own or with other people, and the state has a law, saying that the land for the construction of religious facilities is provided in a certain way, I should have a right to use this law and to get such land in the same way as any other religious groups, provided that I comply with the requirements of such law. The only restrictions that may be applied by the governments to religious groups and communities are the restrictions associated with the breach of public order, security and dissemination of ideas calling to violence, which may be a threat to other people.

The attempts to describe human relations based on the human rights methodology and terminology (so called «horizontal» manifestation of such rights – between one individual and another individual) failed, so today, when we are talking about human rights, in most cases we are talking about the relations of a person and the state, except several situations, which fall within the definition of «discrimination» and «domestic violence.» We will review those situations separately and will define to what extent the government is responsible in such cases.

As for all the other human rights (e.g. the above-mentioned right to the «freedom of religion»), the relations between two individuals are not an object of violation and, thus, protection of human rights.

That is why the widespread term «wounding religious feelings» does not make sense from the legal point of view. The fact that there are people who practice one religion, people who practice another religion and people who do not practice any religion is not an object of consideration from the human rights point of view. All those three groups do not violate each other's rights. Moreover, the state should not interfere with their choice of religion or make them choose any other religion. In the same way, the state should not, for the benefit of one religious group, prohibit another religious or social group or restrict its rights.

Human rights are **individual, not collective (or group) rights**. They are exercised by individuals. Thus, human rights do not include the rights of national minorities — that is the realm and the terminology of politics.¹ Instead, they include the rights of people who are members of the national minorities. In a similar way, we do not talk about the human rights of people with disabilities as a group but about the rights of each member of such group. The situation with the LGBTQ human rights is the same. It is not a set of some «special» rights of LGBTQ. Human rights of gay, lesbian, bisexual, trans and queer people is the same as human rights of any heterosexual cisgender people.

Human rights are **inalienable** rights. They are the natural rights with which all humans are born and which may not be denied. A document that an individual signs saying that he denies his personal freedoms and agrees to be someone's slave, will not have any legal force and will be void from the start. On the other hand, we may dispose of our property or restrict our ownership rights. In the same way, restricting an individual's right to movement in case if such individual commits a crime and is convicted by a fair court will not be a human rights violation. Thus, human rights may be restricted. However, it is not possible to deprive someone of human rights entirely and permanently.

The key term in the human rights concept is the inherent **human dignity**. Human dignity is related to the very essence of humanity, it stems from the very fact that someone is a human being. Both a baby who has not done anything good or bad yet and the biggest criminal have human dignity.

Human dignity should be distinguished from the personal dignity, which is close to honor — such personal dignity should be «earned,» it grows when we act in a decent and honorable way, and we may lose it if we do something bad. When talking about human rights, we focus on the first concept of human dignity.²

Human rights and freedoms are the frame, the shield protecting the dignity of every individual from infringement from the side of the state. Thus, human rights do not guarantee that we will be loved, happy or successful; they do not even guarantee justice or well-being — they only protect us from humiliation, infringement on our dignity from the side of only one, but the most powerful of all the possible perpetrators — the government, which in a democratic state means the will of majority.

¹Such a collective right would be, for example, the right to autonomy.

²Article «What are Human Rights» by Marek Nowicki. «Its grounds can be found in many different religions and philosophies. To a Christian, it follows from the fact that created as the image and likeness of God, man possesses a particle of dignity of his Creator. However, the actual way in which the existence of human dignity is justified and the specific religion or philosophy from which that dignity is derived appears not to be of greater importance for our further reasoning: discussing the consequences of its existence, we ultimately reach highly approximating catalogs of freedoms and rights due to the individual in his relations with state authority: rights which protect him against humiliations, abasement, and inhuman treatment by powerful state with its means of constraint.»



Freedom (which is sometimes called a negative right) means the prohibitions imposed on the state to interfere into certain areas of people's lives. Freedom of expression, freedom of religion, etc. mean that the state should not interfere with those areas of human activities. In other words, if I have a right, the state must do something for me, must act to make sure I can exercise this right, while, if I have a freedom, the state should refrain from any actions.

For example, the state should refrain from interfering with my freedom of expression and freedom of religion. It does not have to do anything to make sure I can exercise those freedoms. Meanwhile, for me to be able to exercise my right to education, the state should build schools and hire teachers.

Personal rights and freedoms

Personal rights and freedoms are also called **civil liberties**. Most of them are acquired by every individual from the moment of his birth, are inherent and may not be restricted in any way. Civil liberties are aimed to ensure the freedom of an individual as a member of society, secure his legal protection from unlawful external interventions.

Personal rights include the rights to life; respect for human dignity; liberty and security of person; private life; freedom of movement and choice of place of stay and residence; freedom to choose nationality and language of communication; fair trial; presumption of innocence, etc.

Political rights and freedoms

Political rights and freedoms enable a person to take part in social and political life as well as state governance. A distinctive feature of the political rights is that many of them belong not to all people, but only to the citizens of a certain state. Citizens can enjoy them in full scope as soon as they reach the age of majority.

Political rights include the right to participate in state governance; freedom to elect and be elected; freedom of expression; right to peaceful assembly; right to association, etc.

Economic, social and cultural rights

Economic, social and cultural rights are about social and economic living conditions; they define people's positions in the labor market, their well-being and social security. Economic and social rights include rights to work; rest; social security; housing; decent standard of living; health, etc.

Cultural rights guarantee the spiritual development of an individual. They include the rights to education; access to cultural heritage; free participation in the cultural life of community; freedom of artistic expression and creativity; right to enjoy the benefits of scientific progress, etc.

Observance of the civil and political rights does not depend on the level of economic development of a country. It depends only on the will of the state. Thus, people must demand respect for those rights immediately – «**here and now.**»

Observance of social and economic rights, however, directly depends on the well-being of a country: if the economy is weak, the government can hardly find resources to provide for the decent standard of living for people. Social and economic rights are enforced progressively. They are provided to a fuller extent with the development of economic potential of the state.

The state should strictly and scrupulously observe personal and political rights. Meanwhile, social and economic rights are a goal, a target, which the state should gradually strive to approach.

Different nature of those two groups of rights was one of the reasons why the United Nations approved not one Covenant on Human Rights, but two covenants – one for each of the groups. Those rights are very different, and thus require different mechanisms of protection.³

For the purpose of this publication, considering that the EECA countries are signatories of various international human rights treaties, for classification we will use the documents approved at the UN level as they are mandatory for all the EECA countries. In cases when we need to expand certain terms or concepts, we will use other international documents, always naming the source.




³ Based on the article «What are Human Rights» by Marek Nowicki, with examples and amendments.

Why do civil society organizations document information on human rights violations?




Eventually, every group of activists has to answer the questions: «What are we doing and why?» and «Why do we need information?» For the purpose of this publication, we are assuming that you already work with information on the individual rights violations. To make sure that this information does not get stuck in your computers, we would like to offer you a system to categorize and analyze information on the individual human rights violations, taking into account further actions, which you as activists, an initiative group and/or a civil society organization can take for the benefit of your members and to achieve your mission so that the actions you plan are professional and effective.

Information on individual human rights (HR) violations may and should be used to take the following public actions to protect human rights based on both individual and group interests.

Individual protection:

-  **legal support to people who suffered HR violations;**⁴
-  psychological support to people who suffered HR violations;
-  telling about the violations in mass media to draw public attention and stop the violations.

Actions to protect the group interests:

-  monitoring;
-  **advocacy;**
-  public awareness-raising campaigns.

Legal support to people who suffered HR violations is a set of legal actions to redress and/or to receive compensation for the right violated.

Legal support in individual cases (when a certain individual suffered violation of their right or freedom) is possible only when such individual gives their consent to such actions and understands both the scope of the legal support that may be provided and the possible consequences.

Legal support is not possible if the people whose rights are violated do not want to disclose their names and personally engage in further actions. In case of human rights violations, legal support may not be anonymous.

⁴ For the purpose of this publication, we will not use the familiar term «victims of HR violations,» instead we suggest another term – «people who suffered HR violations.»

Legal support may include but is not limited to the following elements:

- ✔ consultations with lawyers/advocates on the possible scope of actions;
- ✔ building the strategy of proceeding with the case and choosing the actions to which the persons who suffered HR violations would give their consent;
- ✔ consultations on possible medical examination;⁵
- ✔ collecting evidence⁶ related to the case and their documentation to be used in the complaint;
- ✔ preparing and submitting complaints to the higher governmental authorities (e.g. a complaint on the actions of medical personnel may be submitted to the chief physician, to the district or regional Department of Health, to the Ministry of Health or to the Ombudsman);
- ✔ preparing and submitting complaints (crime reports) to police or prosecutor's office (depending on classification of the crime and the mandates of police and prosecutor's office in your country) – this option should be used in case if the violation falls within the provisions of the national Criminal Code;
- ✔ preparing and filing a lawsuit;
- ✔ handling the case in court;
- ✔ preparing and submitting complaints to international judicial (the European Court of Human Rights) and quasi-judicial (UN committees) agencies.

Psychological support to people who suffered HR violations is a range of psychological consultations provided to the complainant by a qualified specialist who can work with relevant traumas, with consent of the complainant.

Psychological support should be provided to people who suffered human rights violations only by qualified psychologists capable of working with traumas, post-traumatic symptoms and understanding the peculiarities of working with various social groups in order to avoid traumatization of the individuals receiving psychological support as a result of psychologists, for instance, not being able to work with the LGBTQ community or expressing their own views on the patriarchal family structure when talking to people who suffered domestic violence.

Public disclosure and pressure on the offenders. This is a debatable way to seek redress for the violated right and/or affect the offenders to punish them and make them pay compensation to the complainants.

⁵ In order to receive legal support and further submit a complaint on human rights violation, medical examination should be properly documented, taking into account the rules applied in a certain country, to be accepted by the court as an adequate evidence.

⁶ Similarly, to use the evidence effectively, familiarize yourself with the rules of collecting and documenting evidence in your country. The rules of using audio and video evidence differ significantly between countries. Internet evidence, witness testimony, mass media and other sources of evidence may also be used if properly collected and documented.



We will not describe this method in detail, but we urge you to take into account that the key element here is consent of the individuals who suffered human rights violations to disclose their personal data (at least name and family name) as well as thorough planning. Besides, it is important to remember that when mass media come on stage, it is extremely difficult to guarantee respect for human dignity, non-traumatic coverage of the incident and to avoid repeated victimization. Those are the negative consequences of publicity, which should be considered in advance and which the person giving their consent to disclosing their story should be aware of.

Actions to protect the group interests

In the beginning, we defined that human rights are individual rights. From the point of view of a specific individual who suffered human rights violations, there is a specific incident, violation of a certain right and a specific perpetrator who should be punished, as well as the measures which may be used to redress for the violation.




For example, a person was fired after the company management learned that he is gay.

WHICH RIGHT WAS VIOLATED?	WHO VIOLATED THE RIGHT?	WHAT CAN BE DONE TO RESTORE THE VIOLATED RIGHTS?
right to work	person who disclosed the information	reinstate the fired employee
right to be free of discrimination	person who made a decision on employment termination	punish the offenders (reprimand, taking away bonus, fine, dismissal)
		ensure compensation of the material and/or moral harm

On the other hand, we often use such words as «the situation with LGBTQ human rights in our country is bad,» «religious people in our country are prosecuted» or «in our country people with disabilities are not able to exercise their rights.» This way, we try to underline that there are numerous violations of human rights against people who belong to a certain social group and that it is an issue for all members of such group. In other words, even if a person has not been exposed to human rights violations, the very fact that this person belongs to a certain **unprotected social group** puts him/her at risk.

When there are many individual human rights violations in a certain area of public life and/or against a certain social group, we start summarizing those cases and talking about mass violations of certain rights or about mass violations against certain groups of people.

Human rights organizations may use the following tools to respond to such mass violations:

-  advocacy;
-  monitoring;
-  public awareness-raising campaigns.

Advocacy means actions or measures aiming at changes in policies and documents at the legislation or society level for the LGBTQ community in line with the international human rights standards.

Advocacy is a process, which involves identifying issues, analyzing them in comparison with the existing international human rights standards and taking appropriate actions to change the situation (thus, advocacy always has a specific goal)⁷.

Simply saying, advocacy is the process of influencing decision-makers to improve the observance of human rights. We need advocacy to improve the situation in a certain area of life for a specific group of people.

Effective advocacy requires identifying the issue, choosing the ways to resolve it and finding allies.

⁷ Definition of advocacy from the publication by ILGA-Europe «Make It Work: Six steps to effective LGBT human rights advocacy,» 2010, written by Aengus Carroll, edited by Beth Fernandez.



Other definitions of advocacy

Advocacy is speaking up, drawing a community's attention to an important issue, and directing decision-makers towards a solution. Advocacy is working with other people and organizations to make a difference.

Centre for Development and Population Activities (CEDPA)

Advocacy is a process that involves a series of political actions conducted by organized citizens in order to transform power relationships. The purpose of advocacy is to achieve specific policy changes that benefit the population involved in this process. These changes can take place in the public or private sector. Effective advocacy is conducted according to a strategic plan and within a reasonable time frame.

The Arias Foundation (Costa Rica)

The term «advocacy» is rather flexible and may be used in line with the specifics of work of every civil society organization (CSO). This term may be interpreted in different ways depending on the areas of activities of the organization and its main mission. There are many types and methods of advocacy, and each of them may be chosen depending on its efficiency in achieving the main goal of the organization.⁸

Advocacy example from Belarus⁹

In 2017, Belarus-based "Identity and Law" human rights initiative group together with the "Eurasian Coalition on Male Health (ECOM)" prepared and submitted to the UN Human Rights Committee (HRCtee) an alternative report on the situation of LGBTQ human rights in Belarus. Considering that the state of Belarus has not submitted its reports to the UN HRC for 16 years, it was a truly historical moment as the CSOs accumulated a lot of information on human rights violations in the recent 16 years. Belarusian activists turned this information into an advocacy report: «We have included all the instances of human rights violations known to us, which happened to LGBTQ in Belarus in 2012-2018 and prepared our recommendations on how the government could change the situation.»

⁸ Ibid.

⁹ Prepared based on the description by Natalia Mankovskaya, Identity and Law human rights initiative group, full text is available at http://identitylaw.org/novosti/chto_dumaiet_oon_po_povodu_prav_lgbt_v_bielarusi_?fbclid=IwAR3eXObR7evgLRA9nrZlTdAsskW1MXgWfmW138ratqQCNRHACdJdsUursho

In the table below, we will show how and with which documentation and analysis data information may be confirmed for the advocacy reports, taking as an example the work done by our colleagues from Belarus.

The issue you would like to cover in your advocacy report (based on the example of Belarus advocacy report)	Which documented cases you may use as confirmation
Lack of the effective mechanisms of protection from discrimination in general and against LGBTQ in particular	Here there should be a review of the existing laws – what legislation provisions are lacking or why the existing legislation is not enough for protection/some groups cannot use them.
Non-extension of employment contract with employees due to their sexual orientation or gender identity	Monitoring data – you do not have to give all the names in your report, but it is important to state for how long such cases have been documented, how many people reported such violations and what was the response of state authorities to the violations. Ideally, a brief description of one case should be taken to illustrate the issue and included into the advocacy report (if necessary, names may be changed for the purpose of security, with a relevant comment in a footnote).
Discriminatory statements from the side of higher public officials, the President and the Minister of Interior	It is important to back such general statements with the monitoring data – e.g. monitoring of mass media publications in 2012-2017 was performed, with X cases documented when higher public officials made discriminatory statements against LGBTQ. An illustrative example can be given with a quotation of 1-2 sentences and a reference to the source of quote plus your monitoring data.
Ineffective investigation of hate crimes, humiliating treatment of people who suffer violations and refusal from prosecuting the aggressors	The most important evidence here would be the documented cases of hate crimes. You can separately state the number of cases documented by your CSO, separately state the number of reports to police (and if those reports were accepted for investigation) and the number of cases brought to court. One of the cases may be described in detail as an illustration (it is possible not to disclose any personal data of the people affected, with a relevant footnote). If you are stating that the investigation was not effective, mention the reason – if the police does not want to do its work or if there are procedural obstacles, e.g. legislation issues; analyze the situation.

<p>Discrimination of trans people when seeking health services or even denial of such services</p>	<p>Number of documented cases. Based on personal stories, demonstrate what kind of denials and in which health services trans people face. Analyze the regulatory framework and state the reason of such situation – legislation issues, attitude of doctors, lack of possibility to complain about the services. It is all important for the treaty bodies to be able to form high-quality recommendations for your government.</p>
<p>Torture by police officers</p>	<p>Number of documented cases. As well as in other cases, one of the stories may be used to illustrate the situation. If you cannot provide personal data (change the location or the name), always make a footnote. The committees (or other treaty bodies) may request additional information on the cases to make sure that the cases you describe are real.</p>
<p>Police raids on LGBTQ parties and compiling «gay lists»</p>	<p>Your monitoring data – the number of cases documented. You may also analyze the existing regulations to see if compiling «gay lists» is against the laws, what violations it may lead to and if there are any known cases of SOGI disclosure after such raids.</p>
<p>Threat of gender transition disclosure: inability to change the ID number (with pre-transition gender marker encoded) and retaining data on «gender reassignment» in the Passport database (with all police staff having access to this database)</p>	<p>This issue should be divided into several components:</p> <ul style="list-style-type: none"> ● threat of gender transition disclosure – analysis of the problem, source of threats, why such threats may not be responded to at the national level, number of documented cases; ● analysis of the regulatory framework on gender markers in passports and other identification documents, checking if there have been any cases when people asked to make changes in IDs and what the response was.
<p>Violation of the right to freedom of expression, association and assembly related to the LGBTQ activism</p>	<p>Type of violation, how it is manifested – authorities do not give permission to conduct assemblies; analyzing which groups can use their right to freedom of peaceful assembly, and which – cannot. If there have been any cases when LGBTQ activists submitted a request to hold a peaceful assembly, which was rejected. Court resolutions, if any. How the police acts during peaceful assemblies, if it ensures public order and security of the participants.</p>

How thoroughly you classify your cases will influence how full and detailed information you will get for further use in your advocacy campaigns. We will talk more about categorizing the cases below.

Monitoring is a process of systematic collection and analysis of information on the violation of human rights of people from a certain social group on a certain territory.

Simply saying, monitoring is collecting the cases of violations of the rights of (for example) LGBTQ in access to (for example) health services (for example) in Uzbekistan.

In this case, we will be seeking to answer the following questions:

- ① who is denied access to health services;
- ① which medical facilities deny access to health services;
- ① which health workers deny access to health services;
- ① what is the response of the Department of Health to such situation;
- ① what we can do to change the situation (**what is our advocacy goal**).

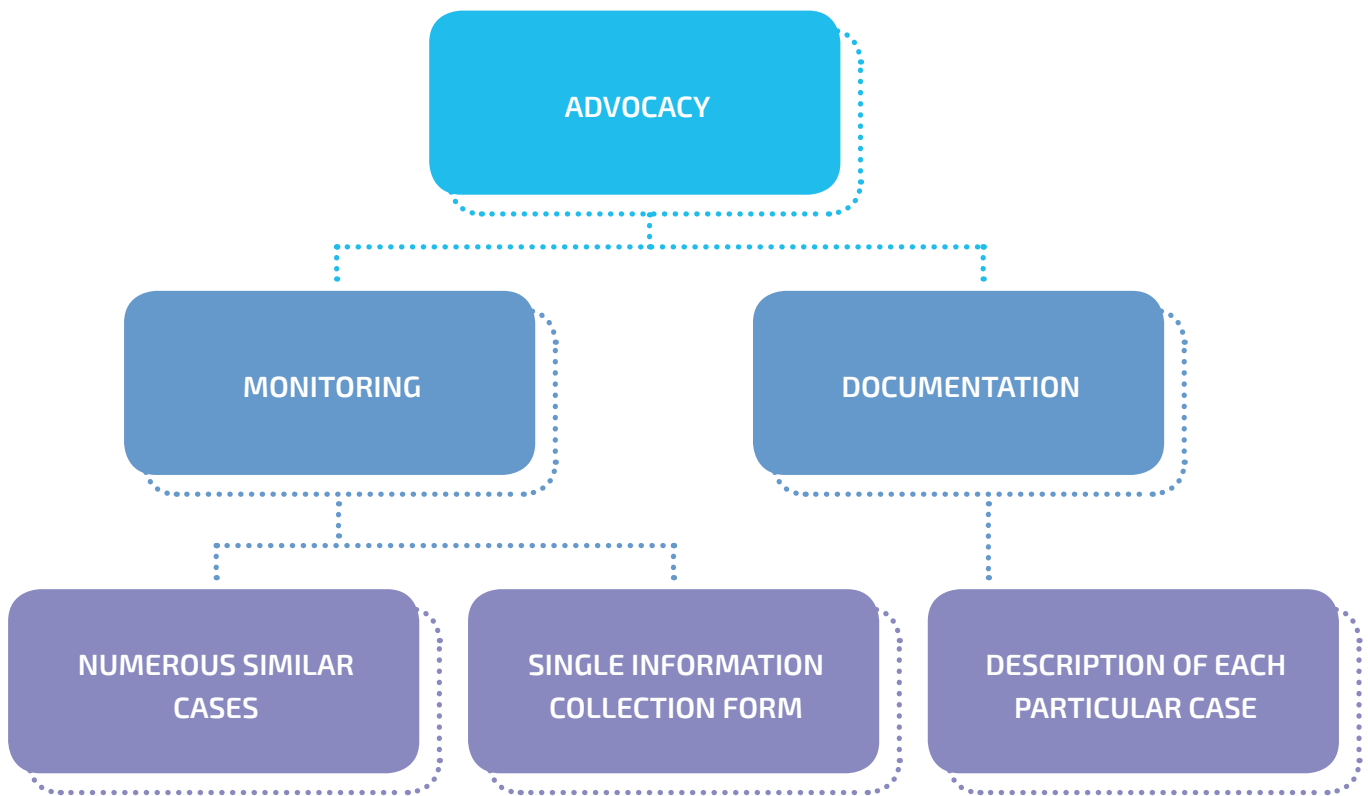
Monitoring, as opposed to documentation, is always aimed not only at collecting information, but also at its systematization and analysis for further use. Most often, monitoring data is used for advocacy.

Documentation means collecting information on human rights violations against an individual (or a group of individuals) and its processing. Processing of information means filling in documentation forms to help us answer the following basic questions:

- ① what happened;
- ① who suffered;
- ① who is to blame;
- ① what evidence we have.

Mass documentation of similar cases using the set methodology (and pre-agreed forms) with further analysis of the reasons leading to the current situation is called monitoring.

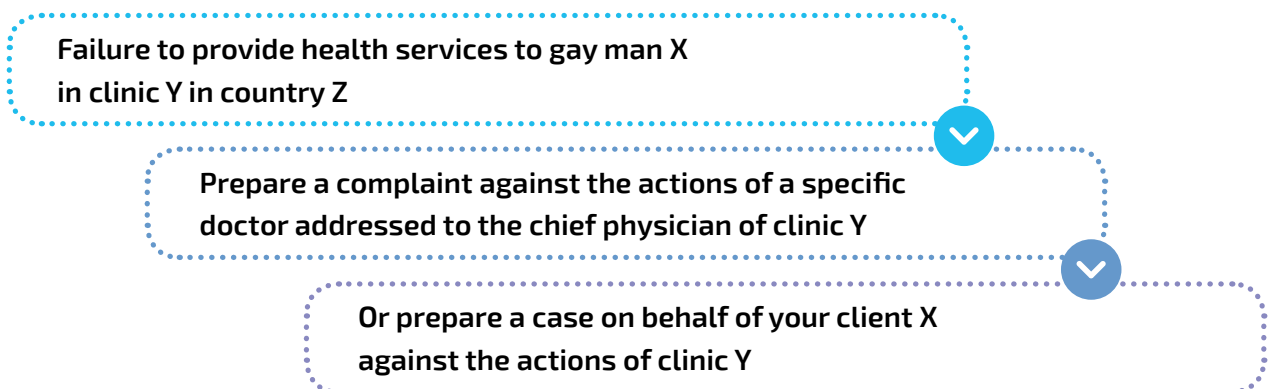




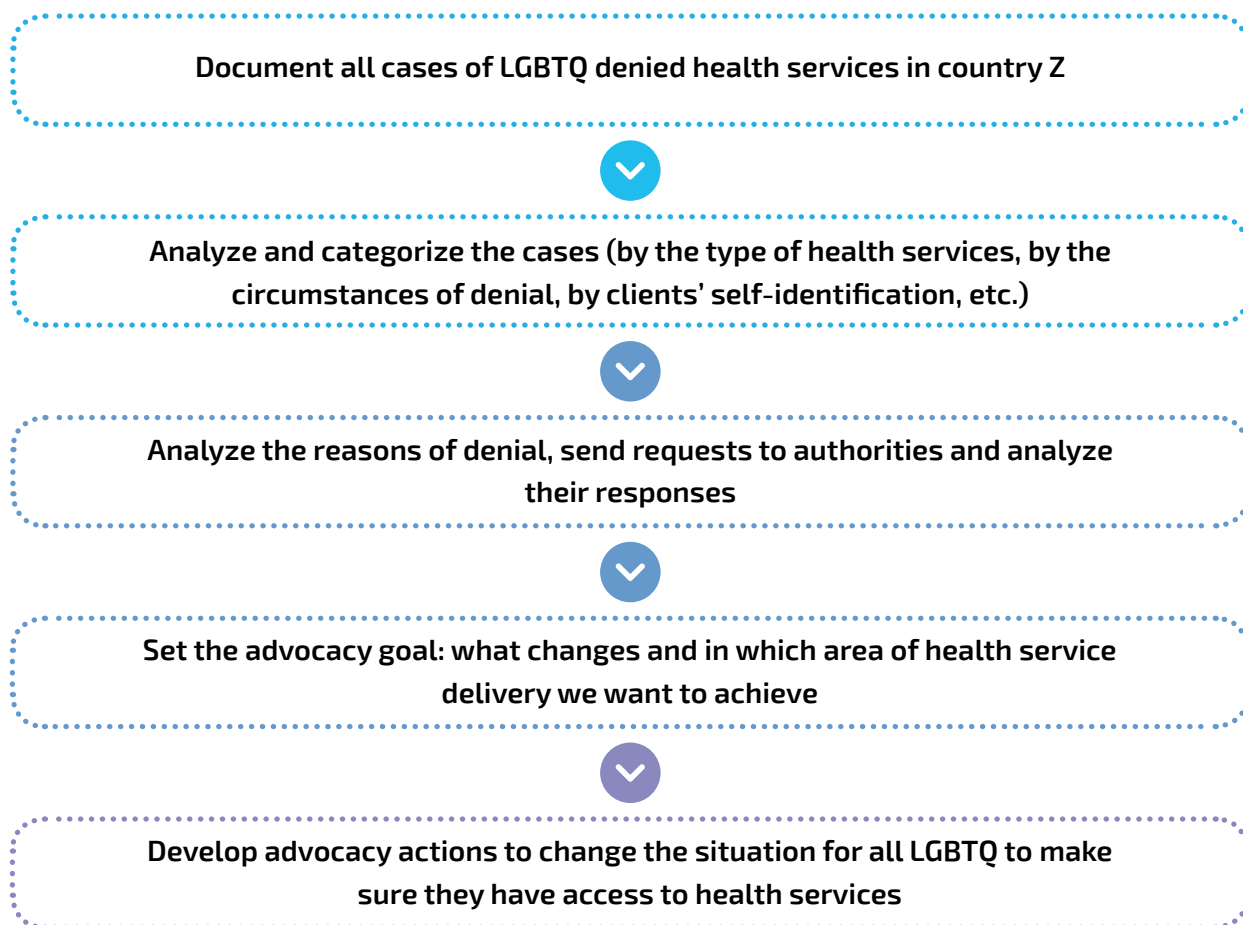
Documentation is needed to build the strategy of handling one case or several similar cases. Documenting usually precedes processing of individual complaints and looking for the redress of individual rights.

We need monitoring to assess the scope of the problem, find its routes and build the strategy to eliminate the problem. Monitoring may also be needed to plan further advocacy activities. Monitoring and advocacy are the tools used in responding to mass violations of human rights of a certain social group.

For example, there is a problem of LGBTQ not having access to health services in state-run health facilities. It may be viewed as the problem of an individual client of your human rights organization:



At the same time, if there are many similar complaints, it may be viewed as a general problem of LGBTQ not having access to health services in the country:



The most widespread monitoring methods include:¹⁰

- 🌟 desk study (mass media, internet, social networks, court decisions, resolutions of government agencies and local authorities, changes in legislation and other informational materials);
- 🌟 interviews (with experts, representatives of government agencies, journalists, activists and other stakeholders as well as with people whose rights were violated);
- 🌟 observation (the monitor may be present at the events which are key for the monitoring process – court hearings, mass events, rallies, cultural and/or entertainment activities for the community).

Thus, sources of information for the monitoring purposes may be divided into **primary** and **secondary**.

¹⁰ A methodology guide for Russian non-governmental organizations on monitoring and documentation activities – Minority Rights Group, available in Russian at https://minorityrights.org/wp-content/uploads/2016/03/MRGE_Monitoring-toolkit_CDROM_RUSS.pdf

Secondary sources — information in mass media, regulatory innovations and other documents – can be of great help. Starting the monitoring process, it is a good idea to create a media map with a list of the main regional and national mass media and journalists interested in your area of activities. Information in mass media often becomes the source of data for further investigation of the cases of human rights violations. **Working with primary sources** includes interviews with people who report human rights violations (and/or with those who are accused of human rights violations as well as witnesses of such violations) and observing the ongoing events (such as court hearings, visits to service delivery sites or peaceful assemblies).

Public awareness-raising campaigns are systematic planned public actions aimed at changing the attitude of society (or some part of it) to a certain social issue.

Attitude or behavior changes are some of the most important goals of public awareness-raising campaigns, in addition to such basic goal as raising public awareness on certain issues and their routes. We need to not only raise the level of awareness of our target audience about a certain phenomenon or problem, but also motivate such target audience to change their usual behavior to such behavior which we consider more appropriate and which would reduce the cases of human rights violations. To put it in a very simple way, public awareness-raising campaigns aim to make some people a little bit better so that other people do not have to suffer so much because of living next to them.

There are different types of public awareness-raising campaigns. By the types of activities planned within the campaign, there are media campaigns (involving only mass media), communication campaigns (different channels, mass media + leaflets, social advertising, street advertising) and integrated campaigns (+ public events, rallies, protests).

In terms of goals, awareness-raising campaigns may be strategic (to change people's attitudes and behaviors in relation to a certain social group or another phenomenon, as when we set an ambitious goal to change the attitude of society to LGBTQ in general) and tactic (we need to achieve a certain goal or change and for this purpose we need public support, as when we want to amend the adoption law and our campaign aims to show that orphanages are bad for children, while families of different types are much better).

In terms of coverage, campaigns can be national (when we cover the whole country) or local (when we focus on a certain city or institution/professional group).

For example, we assume (based on our monitoring data) that the level of homophobia among health workers is so high that it is one of the barriers preventing LGBTQ from accessing timely and adequate health services. One of the actions we can take as activists may be an awareness-raising campaign targeted at health workers. Then we need to define what exactly we want to tell them, what channels we will use to deliver this information and what behavior changes we are expecting as a result of such campaign (how we will evaluate the success of our campaign).

For all the above-mentioned actions aimed at the protection of human rights (advocacy, monitoring, public awareness-raising campaigns), we may need data on specific human rights violations – categorized, systematized and ready for further analysis and public use. Let us try to understand how to categorize the data on human rights violations.

We are offering you a system to categorize information depending on the type of right violated and we will try to make sense of various terms used to describe different violations.

Classification by type of human rights violations in line with the international documents

Let us first have a look at human rights from the perspective of international documents and try to answer the question «What does this or that right mean?» Understanding the essence of human rights is the first step in creating an effective classification system to document violations. The next step would be to develop the methods of monitoring, advocacy, public awareness raising/impacting public opinion.

Civil and political rights — based on the International Covenant on Civil and Political Rights (ICCPR)¹¹ we will try to demonstrate, using examples, what such rights mean for LGBTQ.

 **Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.**¹²

This right means that no one shall be arbitrarily deprived of his life by the state (people who represent the state – public officials).¹³ In countries, which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes pursuant to a proper investigation and a final judgment rendered by a fair and independent court.

If we have a homicide report – we do not categorize it as a violation of the right to life. If we are talking about a homicide of an LGBTQ community member, in terms of documenting human rights violations we will be interested not in violation of the right to life (as it is not applicable), but in adequate, timely investigation of the crime (homicide) and punishment of the perpetrators.

In the context of human rights violations, a homicide of an LGBTQ community member may be documented as a **hate crime** (see next sections) or as **domestic violence** (see next sections).

¹¹ Adopted by the Resolution 2200 A (XXI) of the UN General Assembly dated 16 December 1966, full text in English is available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹² ICCPR, Article 6

¹³ This provision first of all relates to the staff of law enforcement agencies – police, prosecutor's office, service for the execution of sentences, border guard service, security service, and courts. Besides, it applies to other staff working in state-funded institutions, even if they are not considered public officials

The right to life is also often mentioned in the context of abortion ban attempts. In this regard, we should remember that at present moment the international human rights bodies (UN and ECHR¹⁴) understand human life as a life of a born human being (from the moment of birth, not conception).

! No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.¹⁵

Cruel, inhuman or degrading treatment or torture – as a human rights violation – may be exercised only by the state.

If an LGBTQ community member reports beatings from the side of police (or medical staff), we will be talking about violation of the right to freedom from torture, cruel, inhuman or degrading treatment or punishment.

We will use the terms «torture,» «cruel treatment,» «inhuman treatment» or «degrading treatment» depending on the context and severity of the incident. If a person is insulted when filing a complaint with police (but without physical violence) – we will be talking about degrading treatment. If a complainant or a suspect is exposed to physical abuse, depending on its severity we will categorize such case as cruel treatment and/or torture.

DEGRADING AND/OR INHUMAN TREATMENT

- Verbal abuse (from the side of public officials and/or law enforcers)
- Humiliation and harassment

TORTURE AND/OR CRUEL TREATMENT

- Long-term emotional pressure and abasement of human dignity
- Physical abuse (from the side of public officials and/or law enforcers)

Cases of physical and/or psychological abuse not from the side of public officials (when performing their duties), but from the side of strangers or family members shall be categorized as hate crimes, discrimination or domestic violence (see detailed information in the next sections)

¹⁴ In this case, the UN Committees and the European Court of Human Rights.

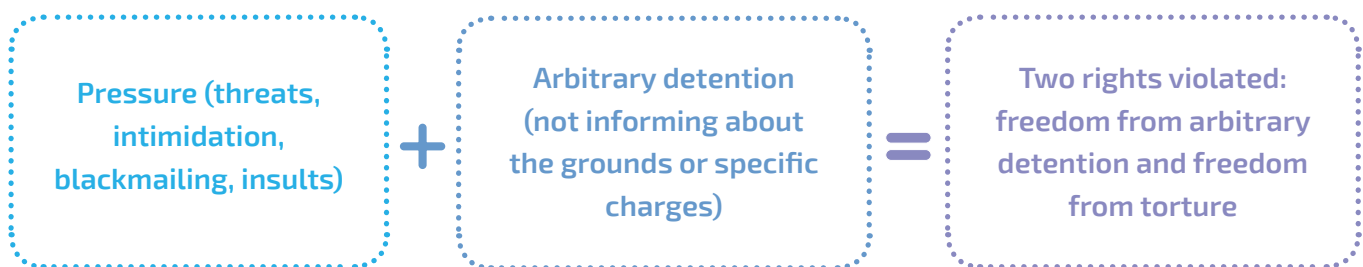
¹⁵ ICCPR, Article 7 (incomplete text)

- ① **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**
- ② **Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.¹⁶**

In the context of LGBTQ human rights violations, an example of violation of this right (not to be subjected to arbitrary arrest or detention) would be mass detention of night club visitors (not explaining the reasons of detention), detention (and transportation to a police station for identity verification) of people from the cruising or dating venues, arrest and documentation of the witness evidence in crimes committed against LGBTQ.

This right is violated when the police arrests people and takes them to a police station for no apparent cause, detains people beyond the time required for identity verification (those terms differ between countries), fails to register arrests in a register/protocol (when the arrestee is not allowed to leave the police station, without explaining the aim of detention, without identity verification or filling in a protocol and without the arrestee being allowed to contact his lawyer and/or family members).

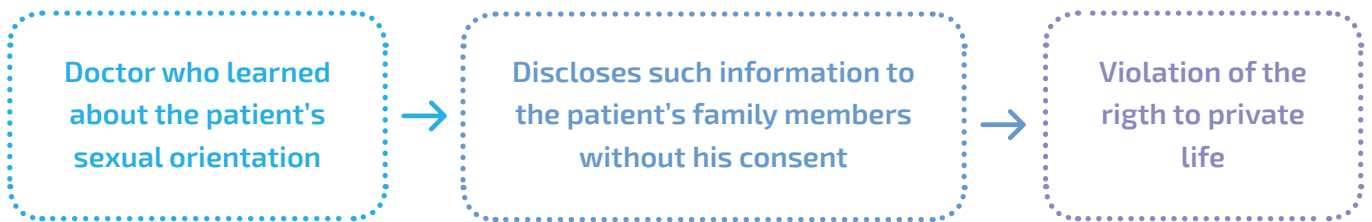
Another example of violation of the right not to be subject to arbitrary detention, apart from the cases when there are proper grounds for such detention and the procedure is performed in line with the law, are the cases when the police, when detaining LGBTQ, instead of serving the person with charges starts putting «pressure» on the detainee, threatening to disclose their sexual orientation and/or gender identity (inform the family, employer or college) and extorting money or demanding information about other LGBTQ, intimidating or insulting the person – this case shall be categorized as violation of the right «not to be subject to arbitrary arrest» + «torture and other cruel, inhuman or degrading treatment.»



¹⁶ ICCPR, Article 9 (incomplete text)

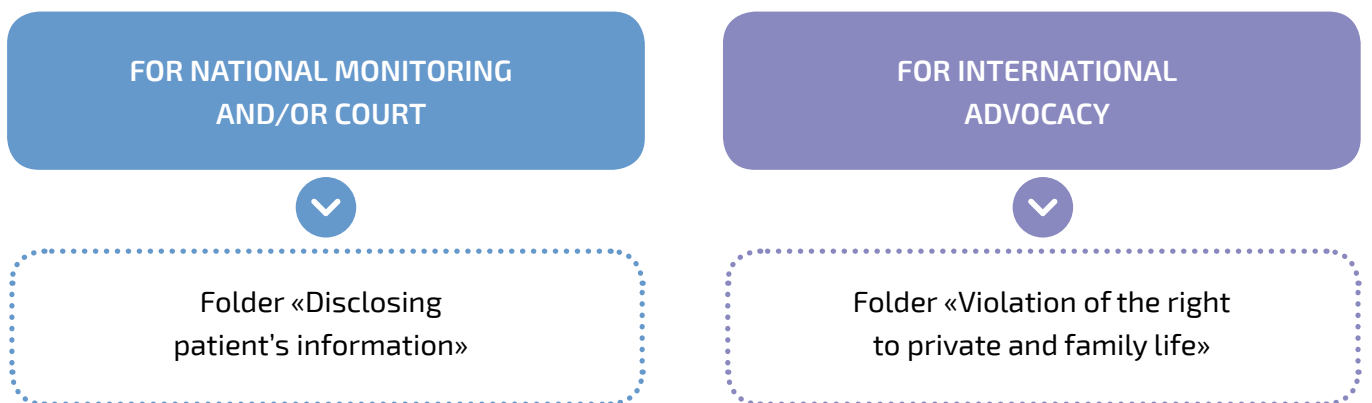
- ① *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- ② *Everyone has the right to the protection of the law against such interference or attacks.¹⁷*

The right to private life includes the right to non-disclosure of information concerning an individual's private life by public officials to any third persons.



Besides, this right means that law enforcers are not entitled to enter someone's private property without a search warrant properly issued by a court. Such arguments as «we only want to talk» and «this is for your own benefit» are an apparent violation and may lead to unwarranted search, which may put the person under risk.

Medical information should also be protected. Remember that the laws of most countries contain provisions prohibiting disclosure of medical information to any third parties without the patient's consent (apart from the cases of justified and necessary from the medical point of view disclosure of patient's information to another doctor taking care of such patient in line with the confidentiality terms).



¹⁷ ICCPR, Article 17

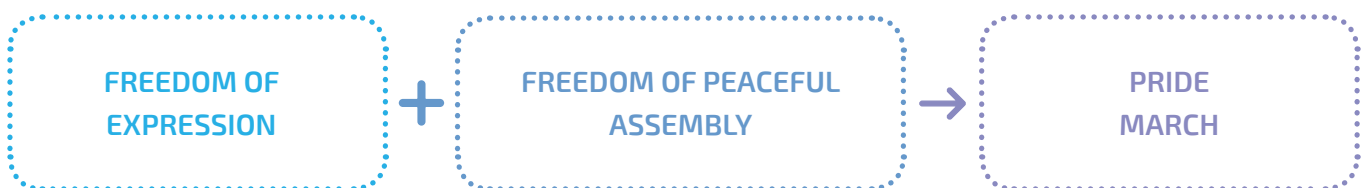
- ① *Everyone shall have the right to hold opinions without interference.*
- ② *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹⁸*

This is the right, which in everyday life is often referred to as the «freedom of expression.» It means that the state should not interfere with what information we seek, receive, use as well as impart, except any cases when the information imparted puts public order and security under threat.

Simply saying, as long as we do not call other people to make a coup, kill people based on certain grounds, lynch cats or commit any other serious crimes on all squares of our cities, we can publicly say whatever we want.

This right does not mean that the state must create conditions for us to be able to publicly express our opinions. However, it means that the state should not prohibit us to print our newspaper, start our TV channel or use the existing public platforms to express our opinions.

In the context of LGBTQ human rights, people often attempt to exercise this right together with another right to freedom of peaceful assembly. Thus, any attempts of the state to prohibit LGBTQ peaceful assemblies violate not only the freedom of peaceful assembly, but also the freedom of expression.



The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.¹⁹

This right means that any social group (or another group of people united with a common issue or thought that they want to deliver to the society) should be able to hold a peaceful assembly in a public place and voice their wishes, concerns or complaints.

¹⁸ ICCPR, Article 19 (incomplete text)

¹⁹ ICCPR, Article 21

The right of peaceful assembly belongs to LGBTQ to the same extent as it belongs to heterosexual people who want to organize a march to protect heterosexual families; to religious communities, who want to hold a public prayer and carry icons from one church to another; to animal rights activists who want to protest against the development of fur production industry or any other people who would like to use public venues to make their appeal to the authorities and/or society stronger.

We will be talking about violation of the LGBTQ right to peaceful assembly if local authorities refuse to register a peaceful assembly; if police refuses to ensure protection of public order during an LGBTQ peaceful assembly; if a court issues an unfair resolution on prohibition of a peaceful assembly; if during a peaceful assembly police does not cope with protection of the public order, which affects participants of the peaceful assembly (attacks, bodily injuries, inability to complete the assembly, demands to evacuate participants of the peaceful assembly and failure to detain attackers/opponents).

- ① ***Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.***
- ② ***No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.²⁰***

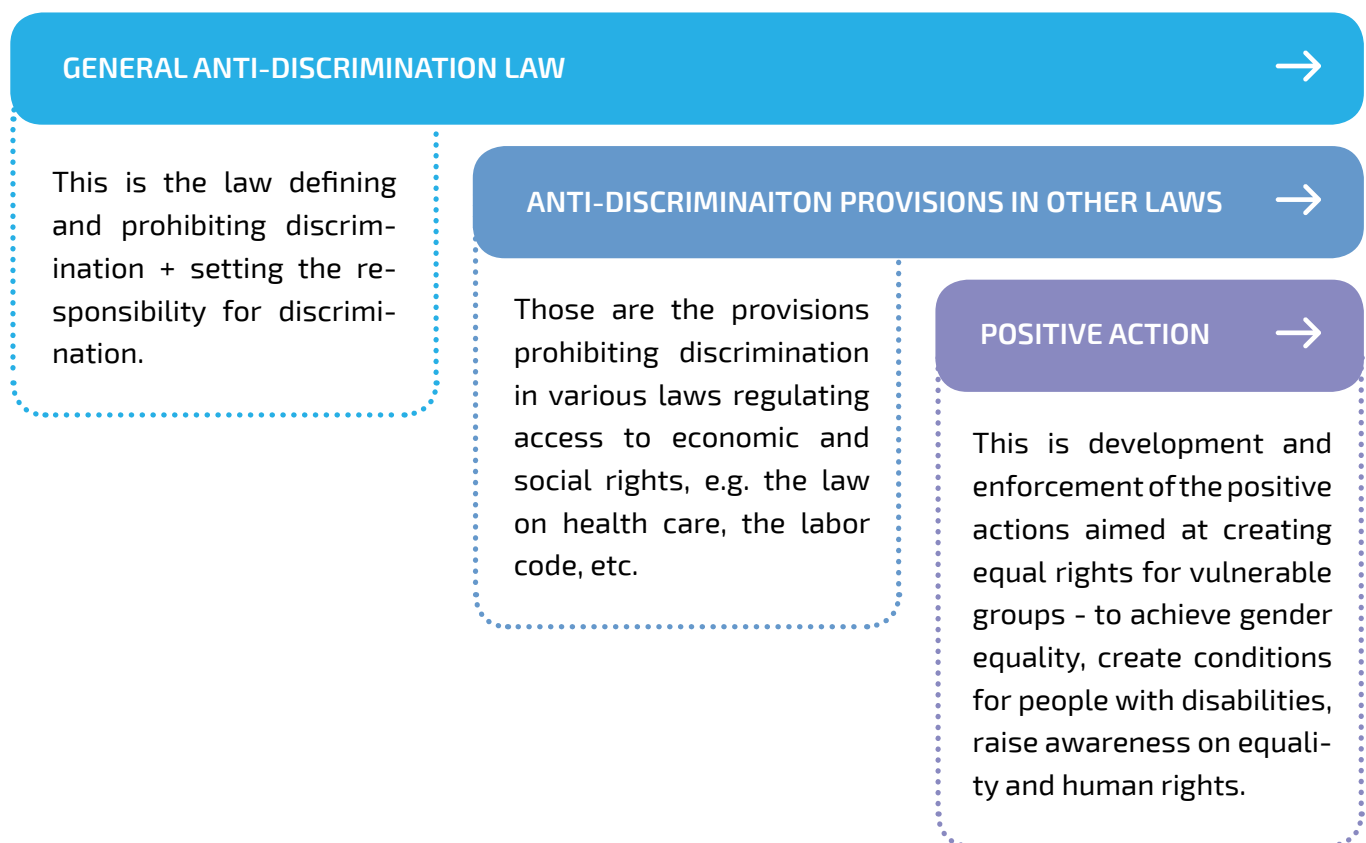
For LGBTQ, this right means not only a possibility to join and leave trade unions, but also a possibility to participate in the public life on equal terms with other people. It means that if in your country there is a procedure to register a civil society organization and/or charitable foundation, it should be the same for LGBTQ as for any other social group. If in a country a group of activists protecting the rights of national minorities can officially register a civil society organization, while a group of LGBTQ is denied registration after complying with all the formal regulations and submitting all the documents required for such registration, it is a violation of the right to freedom of association.

This right does not mean that the state is obliged to fund civil society organizations. However, we need to remember that if there are programs to allocate government funding to civil society organizations and open calls for proposals to access such funding, an LGBTQ organization denied access to funds (if it meets all the requirements and complies with the set procedure) will be a violation of the right to freedom of association and discrimination.

²⁰ ICCPR, Article 22 (incomplete text)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²¹

This right means that the state should create conditions to protect any person under its jurisdiction from discrimination in all areas of social life.



For the monitoring purposes, it is important to document violations of other rights, if they relate only to LGBTQ, as discrimination. For example, if a person does not get a job only because of their SOGI, it is employment discrimination (violation of the right to work + violation of the right not to be subject to discrimination).

In the next sections, we will review in more detail how discrimination is manifested.

This is an incomplete list of articles of the International Covenant on Civil and Political Rights. You may try to analyze other articles on your own, using the examples offered by ECOM in this publication.

²¹ ICCPR, Article 26

Now we shall have a look at the possibilities to exercise **economic, social and cultural rights**. Let us review the list of articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²² and do the same exercise – based on the examples, analyze what those rights mean to LGBTQ.

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.²³

It means that any LGBTQ community member, as well as any heterosexual person, should have a right to find employment, be employed and work with no fear of disclosure of their sexual orientation or gender identity and with no fear of being dismissed in case of such disclosure. This right also includes protection from harassment in the workplace because of sexual orientation or gender identity and the right to equal work conditions and equal pay for one's work.

The right to work is violated when LGBTQ:

- ✔ are not hired (when the potential employer asks personal questions at job interviews or comments on a trans person's appearance not corresponding to the passport data);
- ✔ are harassed (abused or bullied) by other staff members when disclosing their sexual orientation or gender identity with company administration understating or ignoring such situation (or supporting the harassment);
- ✔ are dismissed because of their sexual orientation or gender identity.

- ① ***The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.***
- ② ***The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:***
 - a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;***
 - b) The improvement of all aspects of environmental and industrial hygiene;***
 - c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;***
 - d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.***²⁴

²² Adopted by the Resolution 2200 A (XXI) of the UN General Assembly dated 16 December 1966, full text in English is available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

²³ ICESCR, Article 6

²⁴ ICESCR, Article 12

This right includes access of LGBTQ to all the health services offered in the country on equal terms with other people. If there is a fixed list of health services available in the country, LGBTQ should access such services in the same way as cisgender and heterosexual people. Denial of medical care because of SOGI is both violation of the right to medical care and discrimination.

For trans people, the right to access health care also includes the duty of the state to develop procedures and protocols to provide all the necessary medical services related to gender reassignment procedure.

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.²⁵

Firstly, this right means that every child should have access to primary and secondary education. All children, irrespective of their characteristics or the characteristics of their parents, should attend school. Primary and secondary education should be provided free of charge in public schools. There may also be private schools, but even such schools may not «select their students» on any other grounds than their ability to pay for the education (financial status).

Secondly, this right means prohibition of discrimination at school – all students should be educated in the environment of respect to their human dignity irrespective of their characteristics. Harassment of LGBTQ children or children whose parents belong to the LGBTQ community, their bullying, intimidation or physical punishment at school by classmates or other students is an offense. Failure of teachers, school administration and the department of health to respond to such behavior from the side of other children is violation of the right to education and discrimination.

This is an incomplete list of articles of the International Covenant on Economic, Social and Cultural Rights. You may try to analyze other articles on your own, using the examples offered by ECOM in this publication.

The second option to categorize human rights violations is by the type of violation (not by the right/freedom or by the article of international human rights documents).

²⁵ ICESCR, Article 13 (incomplete text)



Classification by the type of violation (or by the terminology used to describe human rights violations)

For the purpose of such classification, we will review some familiar terms, such as «discrimination,» «hate crimes» and others to compare them with the requirements of the international law and to know how to process and categorize these cases and to understand which human rights violations they relate to.

Stigma

The first thing we need to remember about the term stigma is that it is not a legal concept.

In Latin, stigma means «stain,» «mark of disgrace,» «open wound» and comes from the Greek word meaning «prick,» «burn» or «brand.» In the Ancient Greece, the term stigma was used to describe bodily characteristics, which marked something bad or unusual about the moral status of an individual. The signs cut or burned on a human body showed that the person with such signs was a slave, a criminal or a traitor, i.e. a person who disgraced himself and who should be avoided, especially in public. Now this term is also widely used but usually means not a sign on a human body, but a certain status (characteristic) of an individual.

According to the UNAIDS Terminology Guidelines, stigma means a mark or a stain and refers to beliefs and/or attitudes. Meanwhile, the process of devaluation, leading to significantly discrediting an individual in the eyes of other people, is called **stigmatization**.

Stigma is a social construct, affecting stigmatized people and leading to their devaluation.

Stigma, like a coin, has two sides: it may be external and internal, depending on whether it is directed at other people or at one's own self.

The **external stigma** is aimed outward at a stigmatized person. It may be caused by such person belonging to a certain group or may be strictly individualized. In case of external stigma, a person becomes an object of stigmatization from the side of other people, while the forms of its manifestation may vary and include physical violence, humiliation, avoidance, etc.

Internal stigma first of all refers to the feelings of shame, apprehension, anxiety, depression, inferiority, personal guilt and fear to be stigmatized and discriminated. It develops when a person internalizes the external reactions to himself/herself.

Internal stigma can be manifested as a sense of personal inadequacy, inferiority, attempts to prove that you are better than other members of the group, that you are not “like them all,” inability to build relationships with people (not) belonging to the group, fear of discrimination from the side of other people, feeling of being helpless, lack of control over the situation, being confident that your opinions and interests do not matter.²⁶

Definition of stigma and explanation what it is about, how the stigmatization process develops and to what human rights violations it may lead is an important stage in apprehending the processes occurring in the society, understanding how attitudes to the LGBTQ community members are formed and developing educational and/or awareness-raising campaigns.

For the monitoring and advocacy purposes, it is better to use other strictly legal terms and document cases of discrimination.

Simply stated, discrimination is unequal treatment of people in similar circumstances because of certain characteristics of such people.

Grounds of discrimination (which are also called protected grounds):

- ✓ race (skin color)
- ✓ ethnic background (nationality)
- ✓ citizenship
- ✓ religious beliefs
- ✓ political views
- ✓ age
- ✓ sex
- ✓ sexual orientation
- ✓ gender identity
- ✓ language
- ✓ social background
- ✓ financial status
- ✓ family status
- ✓ disability
- ✓ health
- ✓ place of residence
- ✓ etc.

Not all these grounds are listed in the international documents **documents in the same consequence and with the same wording**. One of the reasons is gradual and slow development of the international human rights law. Many of the documents concerning human rights were developed in the middle of the last century, when understanding of what discrimination is and what the protected grounds should be was significantly different from the understanding that we have today.

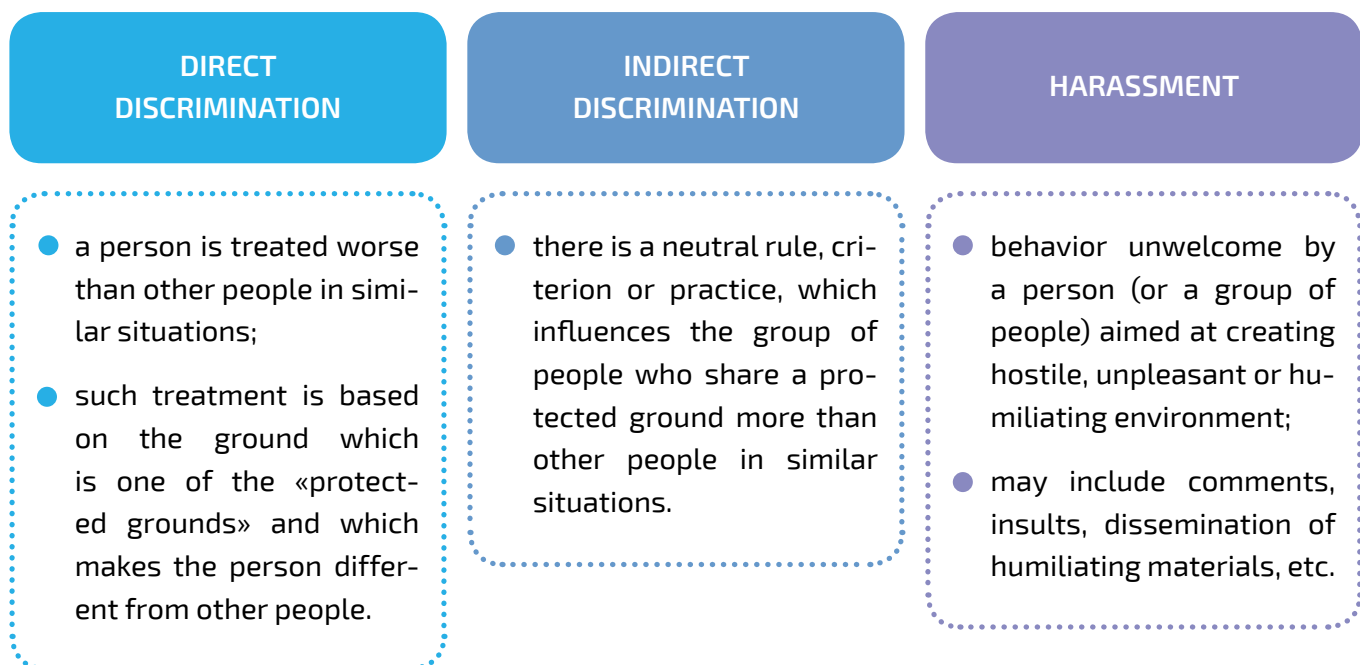
²⁶ Definition and description of stigma from the Training Module on Work with Public Officials on Human Rights and Combating Stigma and Discrimination against Gay Men, Other MSM and Trans People / N. Verbytska, M. Didenko — T.: Eurasian Coalition on Male Health, 2018.

Laws are developing, with new grounds included into the provisions prohibiting discrimination in the international documents and in the national legislations. For this purpose, such provisions (prohibiting discrimination) should always end with the words «**and other grounds**.» Such wording allows international and national courts to extend the coverage and protection of anti-discrimination provisions through precedents. Thus, at some point the European Court of Human Rights added to the Convention such grounds as sexual orientation and gender identity (SOGI), health and disability status through its practice.

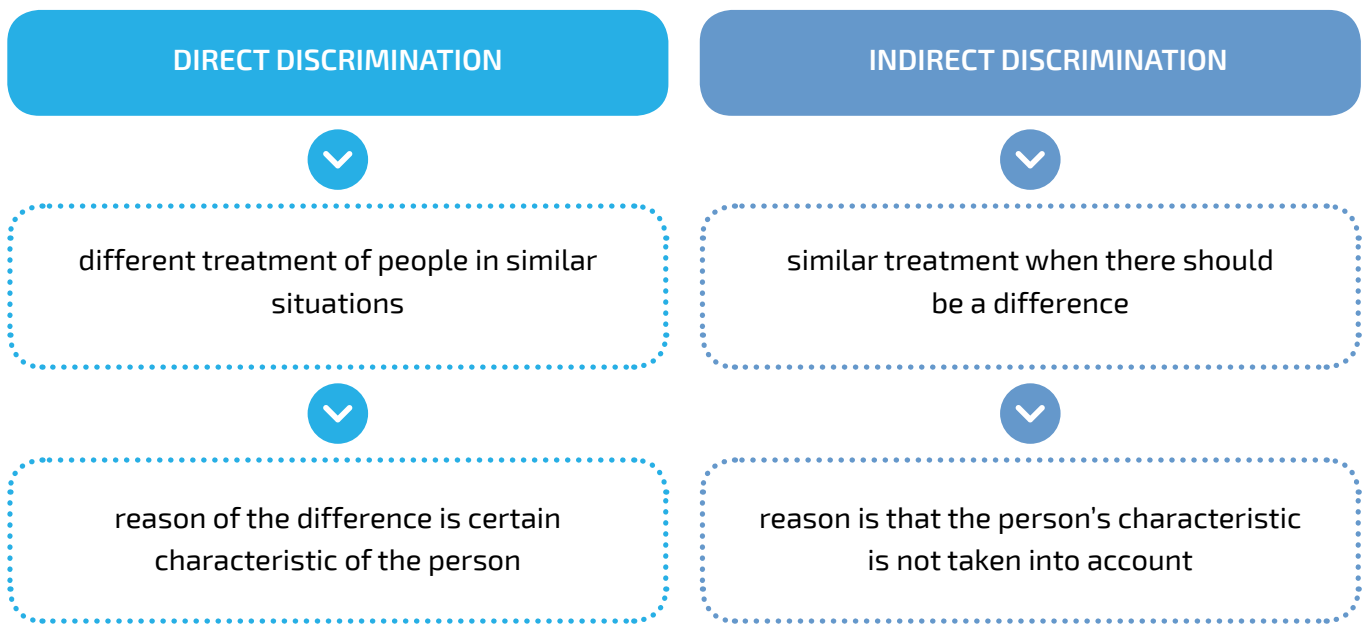
When you document human rights violations and want to use your data for international advocacy, do not worry that many international documents do not mention SOGI. The practice of reviewing complaints and shadow reports shows that the UN treaty bodies thoroughly analyze the reports on discrimination based on SOGI. For you it is important to document and categorize such cases appropriately, so that your data would confirm your conclusions both on the scope of LGBTQ human rights violations in your country and on the specific areas where such rights are violated.

To categorize the cases of discrimination and understand what strategies would help NGOs to respond to discrimination effectively, it is important to know the forms of discrimination. In the same way as with the list of protected grounds, the forms of discrimination are not stated in the international documents (except the European Union directives), but they stem from the resolutions of international courts and treaty bodies on individual complaints.

Forms of discrimination



There is another way to show the difference between direct and indirect discrimination:



To determine whether there was discrimination in a particular case, every time we need to make a «test»:

- ✓ determine what happened and which human right was violated;
- ✓ define if there is a linkage between the violated right and certain characteristic of the person – in other words, we need to determine that the reason of violation was the fact that the affected person belongs to the LGBTQ community (this «exercise» is also called «find a comparator» – another person without a certain characteristic in a similar situation – to make a comparison);
- ✓ determine whether there was a lawful and objective reason for such difference in treatment;
- ✓ analyze if the difference in treatment was reasonable or, in other words, if it was possible to act in another way and do less harm to the person.

When we answer all four questions of the «test,» we will get a brief situation analysis and will be able to definitely say if there was discrimination.

It is important to remember that a lawful and objective reason for different treatment of two people (one with a certain characteristic and another one – without such characteristic) is not any reason.

A lawful reason is a reason set forth in laws aimed at the protection of national security, public order, public health and/or confidentiality of information. The lawful and objective reason should also be related to such concept as public necessity, i.e. the reason named by someone should bring benefit not only to this particular person, but to the society as a whole.

In terms of prohibition of discrimination in the workplace (not hiring and/or dismissing a person because of a certain characteristic), a lawful reason may only be a linkage between the person's characteristic and the nature of work (specific and inherent requirements to the professional duties). In other words, it will be difficult (if possible at all) for an employer to prove that there is any linkage between the work of a mechanic and, for example, homosexual orientation of a candidate to this position

DIRECT DISCRIMINATION	INDIRECT DISCRIMINATION	HARASSMENT
Denial of health care after a medical worker learned that the patient is gay.	A trans woman is not let to enter a train because her photo and ID differ from the way she looks.	Colleagues started making fun of a gay man after they learned about his sexual orientation.

Hate crimes

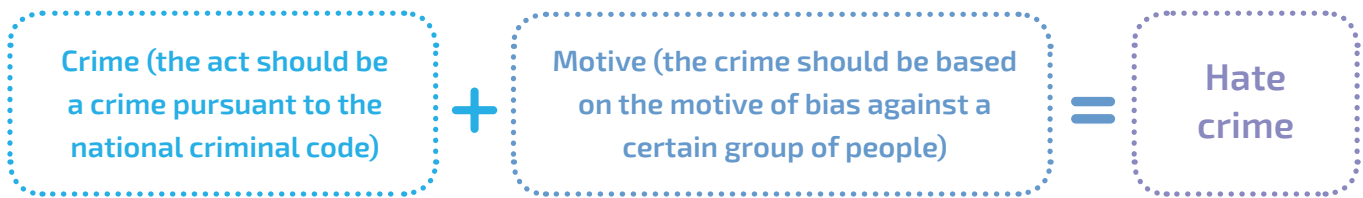
In legislation of many countries (including countries of the EECA region), there are definitions of «hate crimes» in criminal codes or in any other codes of criminal offenses. In a similar way, law enforcers do not understand why the offenses called «hate crimes» must be thoroughly investigated and why the offenders must always be punished.

Hate crimes are crimes based on prejudice. They happen everywhere; no society is immune to the effects of prejudice and intolerance. Hate crimes send a message of the whole communities being rejected and carry the seeds of potential conflicts, as they can escalate both in terms of numbers and levels of violence. If this is understood and firm measures taken, the cycle of violence can be stopped.²⁷

Hate crimes against LGBTQ show the level of acceptable homophobia in a society. Thus, if such crimes are not thoroughly investigated, with the results of such investigations becoming public and with the perpetrators punished for committing aggravated crimes, the society receives a signal that violence against LGBTQ is acceptable. LGBTQ cannot feel safe in such society.

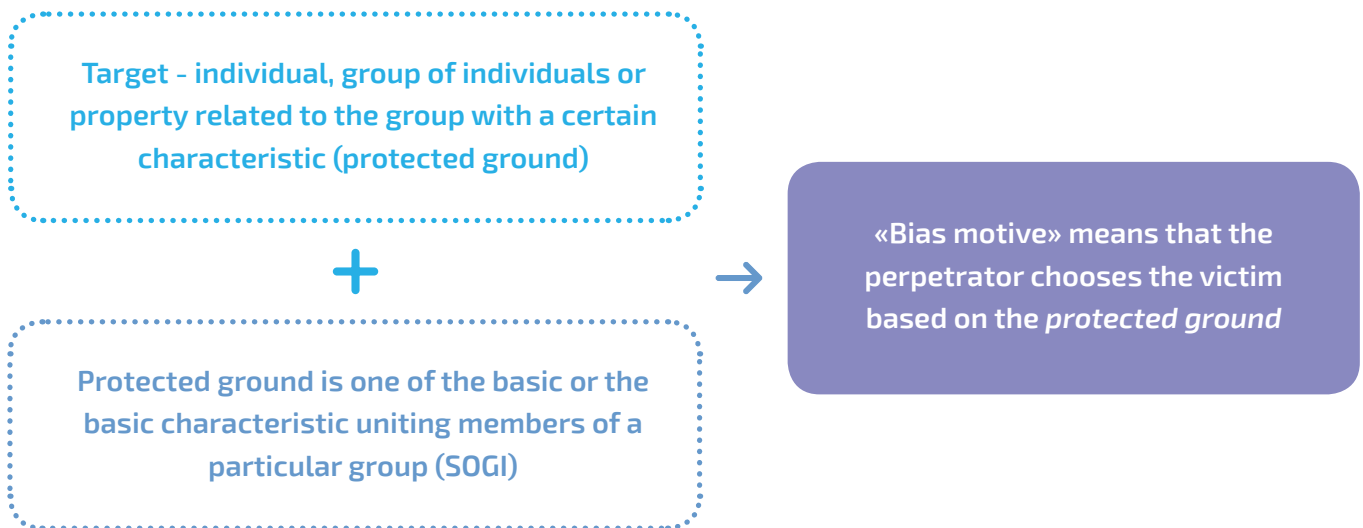
Crimes motivated by intolerance towards certain groups of society are described as hate crimes. Hate crimes always consist of two elements – the crime and its motive.

²⁷ Understanding Hate Crimes: A Handbook for Ukraine. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2015. Available in English at <https://www.osce.org/odihr/understanding-hate-crimes-a-handbook-for-ukraine?download=true>



Most crimes in the Criminal Code can be the base offenses for hate crimes. Those are intended bodily injury of medium gravity, grievous bodily injury, murder, torture, damaging property as well as other crimes.

OSCE approach to the definition of hate crimes as well as their monitoring and investigation allows for the so-called mixed (or double) motive, when the hate motive (bias) is combined with a motive of economic (financial) gain, with those two motives intersecting. For example, a mixed motive is present in a robbery of a discriminated and marginalized group member, when the perpetrators know that such person will most likely not report the incident to law enforcement bodies.



In a hate crime, the perpetrator does not have to personally hate the individual against whom such crime is committed. The bias motive means that the perpetrator has a prejudiced attitude to a certain individual or group of individuals as they belong to a certain population. Such biased attitudes are reflected in the perpetrator choosing the victim or are in some other way manifested in the course of incident.

Anyone can be the victim of hate crime, although members of marginalized social groups, ethnic or religious minorities are the most frequent targets. Hate crimes also affect property belonging to, or associated with, a community, such as places of worship.

In order to determine if the crime described by a person may be categorized as a hate crime, a number of questions should be asked to get the information, which will confirm or deny the assumption of a potential hate crime.

Victim/witness perception	Does the victim, or do witnesses perceive the incident to have been motivated by bias?
Comments, written statements, gestures or graffiti	<ul style="list-style-type: none"> ● Did the suspect make any comments, written statements or gestures about the victim's community? ● Were drawings, markings, symbols or graffiti left at the scene of the incident?
Racial, ethnic, gender and cultural differences	<ul style="list-style-type: none"> ● Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation? ● Is there a history of animosity between the victim's group and the suspect's group? ● Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred? ● Was the victim engaged in activities promoting their group at the time of the incident?
Organized hate groups	<ul style="list-style-type: none"> ● Were objects or items left at the scene that suggest the crime was the work of a nationalist organization or hate group? ● Is there evidence that such a group is active in the neighborhood (e.g. posters, graffiti or leaflets)?
Previous bias crimes/ incidents	<ul style="list-style-type: none"> ● Have there been similar incidents in the same area? ● Who were the victims? ● Has the victim received harassing mail, phone calls or been the victim of verbal abuse based on their affiliation or membership of a targeted group?
Location and timing	<ul style="list-style-type: none"> ● Was the victim in or near an area commonly associated with, or frequented by, a particular group (e.g. a community center, mosque, church or other place of worship)? ● If property was targeted, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery? <p>Did the incident occur on a date of particular significance (e.g. a religious holiday or national day)?²⁸</p> <ul style="list-style-type: none"> ●

²⁸ Understanding Hate Crimes: A Handbook for Ukraine. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2015. Available in English at <https://www.osce.org/odihr/understanding-hate-crimes-a-handbook-for-ukraine?download=true>

By analyzing every case of suspected hate crime using the above-mentioned questions/criteria, you will be able to put it in the proper category and identify what happened. It will help you both for the purpose of providing legal advice if necessary and for the purpose of conducting LGBTQ rights monitoring in your country.

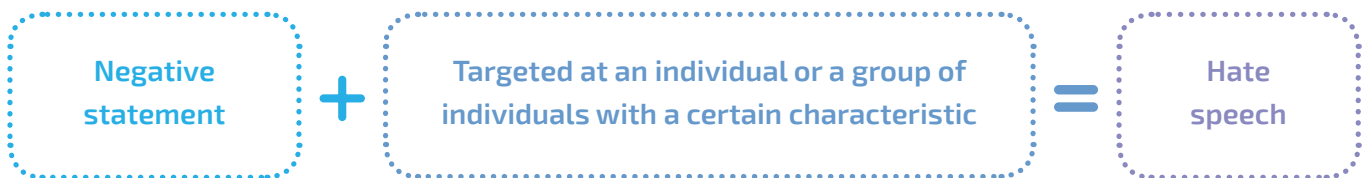
All the EECA countries are members of OSCE. It is important to remember that OSCE pays a great attention to the response of the participating states to the issue of hate crimes and every year collects from CSOs data about the incidents, which occurred throughout the year, and their investigation by law enforcement agencies. Within the international advocacy, your monitoring data related to hate crimes against LGBTQ should be submitted to the OSCE (details at <http://hatecrime.osce.org>).

Hate speech

As in the case of documenting hate crimes, the biggest challenge with the term «hate speech» is that it is not a legal concept. This term is missing from the laws of EECA countries as well as from many other national laws. For the purpose of this publication, we will use the definition from Recommendation No. R (97) 20 of the Committee of Ministers of the Council of Europe to Member States.

According to the Recommendation, the term «hate speech» shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

Another, simpler definition of hate speech is manifestations of discrimination at the verbal or discursive level or at the level of communication targeted at an individual, who, in the perception of the hate speech source (author) belongs to a group unworthy of good and equal treatment. In this sense, hate speech is an option to discriminate against anyone who “differs” or against any group that we define as a minority.

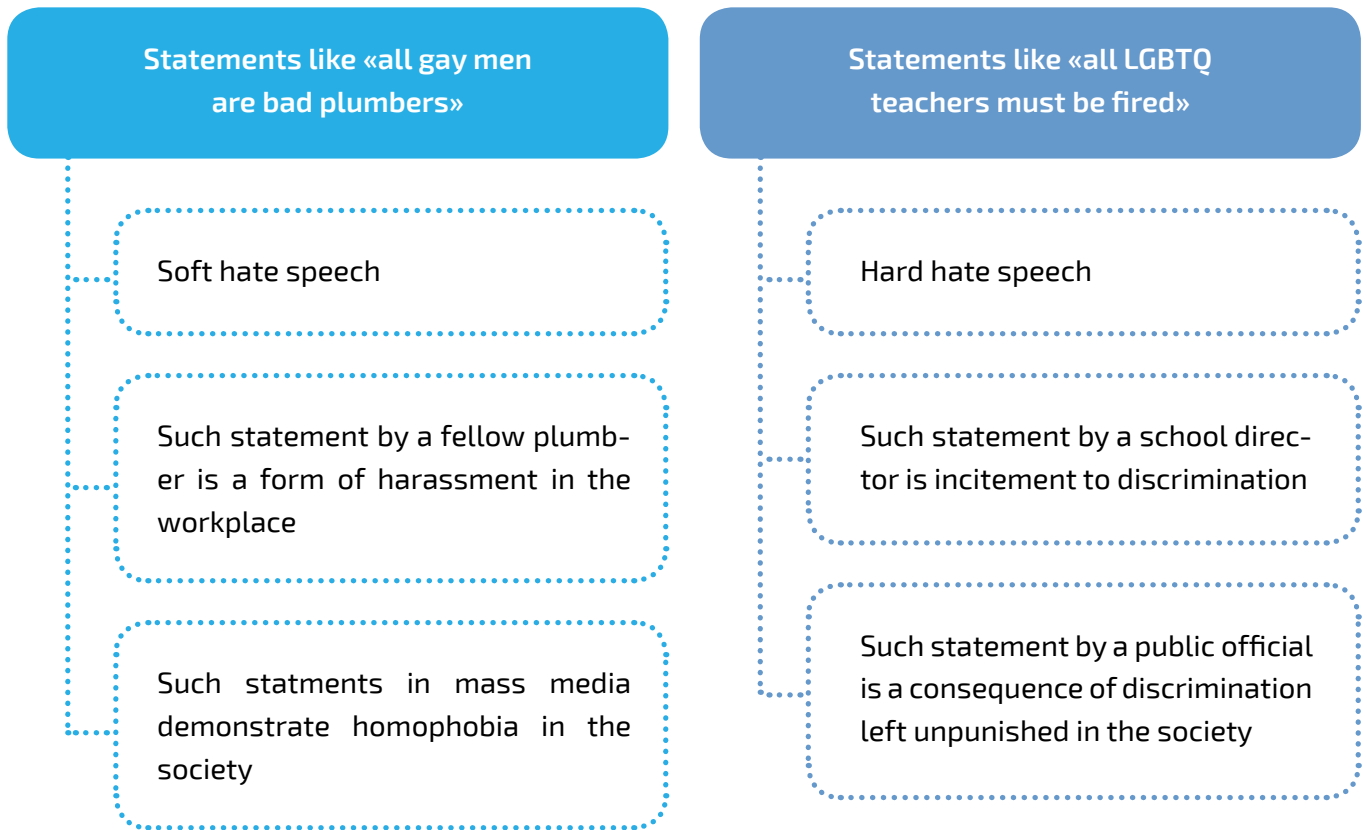


Different systems are offered to classify speech for the purpose of documenting hate speech manifestations and further advocacy. Let us have a look at the classification offered by the SOVA Center for Information and Analysis (Russian Federation).²⁹

²⁹ More information about SOVA Center for Information and Analysis in English: <https://www.sova-center.ru/en/about-us/>

Hard hate speech	Moderate hate speech	Soft hate speech
Direct calls to violence	Justification of the historical cases of discrimination and violence	Building a negative image of an ethnic or social group
Calls to violence using general slogans	Publications and statements, challenging generally recognized historical facts of violence and discrimination	Mentioning an ethnic or social groups in a derogatory context
Direct calls to discrimination	Statements concerning historical crimes committed by a certain ethnic or social group	Statements about inferiority of an ethnic or social group
Calls to discrimination using general slogans	Statements concerning the linkage of a social group with Russian and/or foreign political and governmental authorities to discredit such group	Statements concerning moral disadvantages of an ethnic or social group
Veiled calls to violence and discrimination (e.g. propaganda of any positive contemporary or past experience of violence and discrimination)	Statements concerning criminal behavior of an ethnic group	Mentioning a social group or its members in a humiliating or insulting context (e.g. in crime news)
	Reflections on disproportional supremacy of an ethnic or social group in material wealth, representation in governmental authorities, etc.	Citing xenophobic statements or publishing xenophobic texts with no comments to differentiate between the opinion of an interviewee and position of the author (journalist); giving newspaper space for apparent nationalist propaganda without editor's comments or other debates
	Calls not to allow certain social groups to settle in the region (district, city, etc.)	

Hate speech should be classified not only by its degree of severity, but also by its source or, simply saying, by the author of hate speech. It will help to categorize such cases by the types of human rights violations and to systematize your monitoring for further effective advocacy. Remember that mass media in most cases only serve as platforms to disseminate hate speech, so always identify the author when you are talking about an article written by a journalist or the name of person cited in mass media.



Domestic violence

Domestic violence is a generic term. It refers to all forms of physical, sexual, psychological or economic violence in families.

The first question that has to be answered is how does it relate to human rights, if we consider the vertical aspect of human rights, i.e. the relations between the state and an individual?

The answer is rather simple but complex at the same time. In terms of non-interference to observe human rights, the state should not interfere into the private and personal life of an individual and does not have to know what happens in families «behind closed doors.» At the same time, the state must ensure security and protection of an individual in case if there are any threats to the dignity, health or life of such individual. Thus, when we are talking about domestic violence from the human rights perspective, first of all we refer to the duty of the state to respond to the cases of domestic violence and build the systems to protect people exposed to domestic violence.

Such systems would include:

- ✓ laws setting forth responsibility for the domestic violence;
- ✓ law enforcement agencies capable of investigating the cases of domestic violence and respond to them in a timely and adequate manner;
- ✓ support to people exposed to domestic violence;
- ✓ mechanisms of protection from perpetrators.

From the human rights perspective, such systems should not only be present on paper (in laws and other regulations), but should be effectively implemented and accessible for the people affected. For example, it means that if in the country there is a law prohibiting domestic violence, but a person, who reports such violence to police, has to go home and be exposed to repeated violence, while the maximum punishment which may be imposed on the perpetrator is a fine, which is often paid from the family budget, such system can hardly be called effective.

For a long time, domestic violence was viewed only as violence against women and children, but today it is considered that LGBTQ, people with disabilities, elderly people, people living with HIV and other groups are also under risk.

LGBTQ human rights organizations may use different classifications to categorize the cases of domestic violence for the monitoring and further advocacy purposes.

For example, cases of domestic violence against lesbians, bisexual and trans women may be documented as violations of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁰

Cases of domestic violence against LGBTQ adolescents (minors) – as violation of the Convention on the Rights of the Child.³¹

Cases of domestic violence against LGBTQ community members also may be categorized as violation of the right to an effective remedy and to a fair trial, if we look at the situation as actions of the state to protect people affected and prevent violence in future. If we have any documented cases when people from the LGBTQ community are not able to receive protection from police and/or social services because of their characteristics (SOGI), we can talk about discrimination because assistance to any people exposed to domestic violence as well as other social services should be provided free of discrimination.

³⁰ Full text of the UN Convention on the Elimination of All Forms of Discrimination against Women is available in English at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

³¹ Full text of the UN Convention on the Rights of the Child is available in English at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

From the advocacy perspective, it is important to use such cases to illustrate the specific issue that we want to resolve. The task of advocacy may be creating a complex of services for the LGBTQ exposed to domestic violence. Then we will be talking about unacceptability of discrimination from the side of law enforcement bodies, courts and social services

Sexual harassment

Sexual harassment is one of the types of harassment. Often, in the national legislations sexual harassment is distinguished as a separate form of discrimination with a more severe punishment. Rape is an extreme manifestation of sexual harassment and an offense leading to criminal responsibility.

Sexual harassment may occur in public or in private/personal life. If we consider sexual harassment in family life, such cases fall under the category «domestic violence.» Sexual harassment among acquaintances, staff members/colleagues or fellow students refers to the realm of public life, so such cases should be documented separately.

Sexual harassment is a type of violation, which all people may face, irrespective of their sexual orientation or gender identity. It includes not only sexual coercion, but also sexual jokes, remarks, unwanted touches or any actions that are not acceptable for a certain type of relationship (formal or informal) and unwelcome by the recipient.

The main and fundamental feature of sexual harassment is that **such behavior is unwelcome.**

Examples of sexual harassment:

- ✔ Verbal: sexual innuendo, hints, insults, threats, jokes, sexual offers.
- ✔ Non-verbal: expressive glances, offensive or indecent sounds, whistling, obscene gestures.
- ✔ Physical: touching, pinching, stroking, sexual coercion and/or attempted rape.

For the purpose of this publication, we will use the UN classification³² to explain the phenomenon and nature of sexual harassment through the example of the right to work.

³² More information in English is available at <http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>

Sexual harassment is defined as:

- ✔ sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as a term or condition of an individual's employment;
- ✔ when forced submission to or rejection of such conduct by a woman is used as a basis for employment decisions affecting such woman;
- ✔ when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may affect both men and women. The perpetrator may also be a man or a woman. Sexual harassment may be of heterosexual or homosexual nature.

Let us review some other words, terms and concepts, which you may have met or used in your work. We will talk about *homophobia*, *transphobia* and *xenophobia*.

None of the words above is a legal term. In your press releases and articles, you can write, for instance, about «*high level of homophobia*» in city N, illustrating this statement with the cases of hate crimes against LGBTQ recently committed in city N.

Of course, you can use the words *homophobia* and *transphobia* in your advocacy reports, but please be ready to confirm them with examples and documented cases.

In fact, when you write «*in country N, homophobia level reached an all-time high,*» for the purpose of international advocacy you need to explain clearly and in detail what exactly you mean. Besides, of course, you need to confirm this statement with your monitoring data.

When we are talking about «high level of homophobia,» we can mean:

Term	Legal definition	Source/perpetrator	Confirmation
Hate speech	Calls to discrimination, infringement of the equality of citizens, abasement of honor and dignity (depends on the national legislation)	Who calls? Mass media Mass media transmits the words of MPs, politicians, public officials, ministers (or others)	Data of media monitoring Documented statements of politicians and/or public officials

<p>Discrimination of LGBTQ community members</p>	<p>What forms of discrimination and in which areas do you mean (according to your national legislation or according to the international documents ratified by your country)?</p>	<p>Authorities (which?) Public officials (which?) Law enforcement agencies (if relevant)</p>	<p>Data of monitoring of individual cases in the area you describe</p> <p>National legislation monitoring data</p>
<p>Hate crimes</p>	<p>Violations of specific criminal provisions and their official classification (in particular cases when the police refuses to classify such incidents)</p>	<p>Police, prosecutor's office, court (if there are any issues with the verdicts pronounced, which are not related to technical mistakes)</p> <p>Who the perpetrators are, the extent of their perceived freedom/impunity</p> <p>Actions of the national authorities in response to the threats of hate crimes against LGBTQ</p>	<p>Documenting individual cases, in particular data on classification and investigation of such cases</p> <p>Statistics of law enforcement agencies</p> <p>Monitoring of the perpetrators (if possible)</p> <p>Compliance with or analysis of the failure to comply with the recommendations of treaty bodies in this area</p>

Homophobia is a sociology term. According to different sources and authors, it can refer to a wide range of feelings/attitudes from «unexplainable fear and unconscious, irrational hostility or hatred towards homosexual and bisexual people» to «avoidance, fear, bias, discrimination or acts of violence towards lesbian, gay, bisexual and trans people.»

That is why for the purpose of any advocacy or public campaigns you need to clearly classify, explain and confirm what exactly you mean when talking about homophobia in your materials. Our manual will help you with documenting and classifying such cases.



SECTION 2

APPLIED THEORY OF COLLECTING AND DOCUMENTING EVIDENCE

As we have mentioned above, **documentation** means collecting information on human rights violations against an individual (or a group of individuals) and its processing. It is important to understand that documentation is a process of collecting evidence, so how thoroughly this process is organized will influence the quality of evidence for courts and international agencies, where we can use such evidence **both for the purpose of individual rights protection and for the purpose of advocacy**.

As for monitoring, it is systematic and mass documentation using standard methodology. Depending on the monitoring goals, evidence standard may be set at a higher or lower level.

Thus, if you are documenting information to prepare a public campaign, you may lower such standard, using numerous secondary or anonymous sources, your own observations, etc. For instance, to hold a campaign to increase access to treatment we need to collect as many cases, **when people were denied such access or discriminated against, as possible**. If an LGBTQ community member anonymously tells you how he was denied access to treatment with detailed quotes proving that it happened because he belongs to the LGBTQ community, this information may be enough for you to include this case into the public campaign. You can use it both for statistics and as an example.

However, if you would like to use this information to submit a complaint to the ECHR, for advocacy within the UPR mechanism³³ or even for the national court proceedings – such evidence standard will definitely not be enough. In such case, you will need a detailed case description signed by the victim and the witnesses as well as any documents confirming the information presented, video and photo evidence (if possible), any physical evidence, analysis of the previous behavior pattern³⁴ in the relevant health facility (if there have been any cases of discrimination against LGBTQ before), etc.

Our recommendation is to use the highest possible standard when documenting human rights violations. It will allow you and your organization to use the evidence collected for a variety of purposes, from public campaigns to international advocacy and complaints to international judicial and quasi-judicial bodies.

In every type of documentation and/or monitoring, the main source of information is interview with the complainant/victim. It is not only because the victim is able to provide accurate and detailed information about the incident, but also because this way you will have a claimant.

³³ UPR is the Universal Periodic Review, more information at <https://www.ohchr.org/EN/hrbodies/upr/pages/basicfacts.aspx>

³⁴ Similar cases or, in other words, «sequence chain» in the behavior of health workers towards LGBTQ patients

Claimant is an individual or a legal entity submitting an official claim/complaint/written request to any formal national or international bodies. Of course, your organization can also be a claimant, using summarized and classified information, but without data and evidence of individuals it will be very difficult to raise the profile of your statements and complaints. Thus, for you the interview with the affected person will be the basis of evidence collection as any other evidence will be based on such interview.

We have to remember that, apart from the claimants, we can also interview **witnesses** – those who witnessed the incident/crime and those who may be aware of any circumstances significant for the investigation/advocacy.



The **interview** should be conducted in an atmosphere allowing the claimant to feel safe and convenient. It is not always easy but the interviewer should do everything possible to create such atmosphere.

Why are people not willing to tell their stories honestly and with all the details?

- ✓ fear of retaliation (witnesses/claimants may be afraid of the revenge from the side of suspects/perpetrators or related groups (or in some cases – even their own family members or acquaintances); witnesses are often concerned not only about their own safety, but also about the safety of their families and friends);
- ✓ concerns about not to being able to return to the familiar settings, to the place of birth or residence (e.g. place of work, hometown, etc.);
- ✓ fear that the information about the assistance provided to investigators/the incident/their orientation will become public;
- ✓ fear of emotional consequences, such as painful memories and experiences;
- ✓ feeling ashamed because of the tradition of «victim blaming» in case of sexual harassment and cultural taboos to discuss such cases;
- ✓ being sure that the investigation will not be unbiased and will not result in any punishment.

Both claimants and witnesses may be afraid of taking the stand in court. Those concerns are often aggravated when a witness is asked to sign any written documents. Even the witnesses who are ready to talk openly may be reluctant to cooperate when they realize that the purpose of the interview is to make them sign a witness report.

As for the claimants, they have to go through all the trial process, having to speak out against their opponents, who often possess powerful administrative resources. They may be afraid of not getting support, breaking relations with their friends, developing a new reputation in the public eyes, etc. Sometimes claimants do not cope with the pressure of court proceedings and withdraw their complaints. To avoid such situations, efforts should be made to prepare the claimant for the trial, trying to take into consideration all the nuances the claimant may face.

Some of the concerns of claimants/witnesses about testifying in legal proceedings:

- ✔ fear to meet the suspect in court;
- ✔ fear of the testimony in cross;
- ✔ health issues, which either make relocation (to a safe place) impossible or difficult;
- ✔ concerns that there will be no one to take care of the family members, when the witness is in court, in particular – no one will protect them from any potential harm;
- ✔ inability to take a leave or receive reimbursement for the salary lost and the costs incurred;
- ✔ belief that there will be no access to emotional, psychological and medical support;
- ✔ fear of possible harassment after court hearings are over.

If a witness agrees to talk to you, you have to be ready to resolve such issues, which may arise, and should be able to explain in detail all the protection measures and support mechanisms available in the course of court proceedings.

The goal of the interviewer is to cope with such fears and, of course, ensure the highest possible safety and confidentiality for the witness.

First contact with the witness

Documenters should set the procedure to maintain contact using phone calls or internet and should be very careful when contacting witnesses. A phone call or another contact with a foreigner or stranger can lead to the authorities or other groups taking all the communications of the witness under control. As a result, the witness may be endangered.*

*Sometimes it is worth looking for safe channels to keep in contact with witnesses. Currently, Signal is considered to be the safest messenger, which is easy to install on mobile devices both to you and the witness.

When you first contact the witness, he/she may offer means of communication, which he/she considers safe. Ask the witness if he/she is comfortable using phone or internet. Develop your communications protocol.

Documenters should think twice before introducing themselves over the phone and discussing the details of any particular case. The first conversation will give you the understanding if phone calls are safe. Later, if there is a need to discuss something on the phone, it is better to start conversation with the phrase: «Can you talk now?».

You need to be very careful when having a direct contact with a witness. Sometimes it is a good idea to engage someone you trust to act as an intermediary. Even if the safety level is high, sometimes contacting a potential witness may be dangerous. It may be the case if the witness is a member of a controlled group, such as an opposition political party, certain ethnic or religious groups or if he is a public figure or a well-known human rights activist as his contacts and movements may be a subject of focus.

People who are isolated and do not have access to support mechanisms, such as LGBTQ, face even higher risks. The witness may be eager to meet the interviewer, but reluctant for his friends, family members or neighbors to know about such interview.

Every situation is unique and has its challenges. There may be a need to establish first contact through third parties, such as a local who is trusted in the community or through a representative of a well-known international organization. After talking to representatives of independent and reputable international or national/local human rights organizations or groups, peacekeeping missions, international support organizations and other agencies, the interviewer can make a list of trusted contact persons, who know how to safely communicate with victims/witnesses of crimes. These people may help to maintain contact with witnesses after the documenter leaves the monitored territory.

How to hold an interview

- ✓ Do not hold your interview outside or in any public places. It is not only dangerous, but will also not add courage, comfort or feeling of safety to your claimant/witness. The best idea is to hold the interview in an office or at home, in a safe closed place, which creates the atmosphere of trust both for you and for your witness. If you hold an interview not in your own city, try to find a partner organization, which is ready to provide their office for your interview, rather than meet the witness in a hotel. However, if there are no other options, a hotel is better than a restaurant.
- ✓ During the interview, there should be no strangers in the room, including any colleagues who have nothing to do with the interview. The interviewee should feel safe and comfortable.
- ✓ The interviewer should ask such questions and in such a way so that there is no need to have another interview with the victim. It is important not to make the interviewee go through the stress again, describing what happened to him or her.

- ✔ From time to time, the interviewer should ask the interviewee if he or she needs a break (a short or a longer one).
- ✔ Offer some water to the interviewee.
- ✔ There should be no language barrier between the claimant/witness and the interviewer. If there is a language barrier, there should be an interpreter available. IMPORTANT! The interpreter should be informed about their responsibility for disclosing any information and should sign a non-disclosure form (see Annex 4). Do not tell the interpreter the name or any personal information of the claimant/witness.
- ✔ The gender aspect should be taken into account, especially in case of an actual or attempted sexual offense. E.g. in case of sexual abuse of a woman it is almost never possible for a man to conduct the interview. In case of sexual abuse of a man, it may also be undesirable for a man to conduct the interview as in such cases it is easier for the affected person to tell a woman what happened.
- ✔ Age of the interviewee should also be duly considered. It is strongly recommended to interview minors with a teacher or a psychologist present. Besides, interview with a minor without presence/written consent of their legal representatives (parents, guardians) does not have any legal force and may not be used in any legal proceedings. Consent form for parents/guardians is attached in Annex 3.
- ✔ Emotional state of the complainant/witness should be taken into account. If necessary, there may be a break in the interview (a short one or a longer one for several days).
- ✔ You should explain that the identity of the complainant/witness and the data provided by him/her will be kept confidential, except any cases when the documenter is obliged to disclose any information in line with the legal requirements and rules of procedure. The interviewee is to be informed that official statements have to be disclosed to the court and to the defense team (though they may be edited to protect the witness and other people).
- ✔ Give the complainant/witness contact information in case if the person has any questions or needs to get in touch with the documenter.
- ✔ The complainant has to know that even if he/she does not sign the papers and refuses to testify in court, the court may request the documenter to disclose their identity and details of the conversation. Up to a certain moment, the court may prohibit to disclose information about the identities of the complainants/witnesses to public and to the defense team. However, the complainants/witnesses should understand that some information, e.g. exculpatory evidence, has to be presented to ensure justice in the suspect(s).

Assesment of and response to threats

Documenters should define the reasons of the witnesses' concerns about their safety and understand the roots of such reasons. When a witness expresses concerns about their safety, the documenter has to define what the witness is concerned about and if the witness is afraid of what may happen or if he/she already faces some threats.

Throughout the period of your contact with the complainants/witnesses or up to the moment when your colleagues take upon such obligations, you are responsible for:

- ✓ assessing the threats the witnesses may face (as reasonably possible);
- ✓ identifying the reasons why the complainants/witnesses are concerned about their safety;
- ✓ discussing with the witnesses how they can protect themselves;
- ✓ informing the witnesses about other possible means of protection you are aware of (e.g. LGBTQ shelters and so on);
- ✓ making sure that you are not promising any protection you cannot provide.

Important! Any information received from other people should be separated from what the complainant/witness saw, heard or perceived in some other way. In other words, there should be a clear distinction between direct evidence and hearsay.

Scheme of an interview with a complainant and/or witness (claimant)

● Introduction

- Introduce yourself – tell your name and family name as well as the organization that you represent. Tell about the goals of the interview – why do you hold it.
- Clearly explain why the claimant should talk to you.
- Inform the person where and how the information received from him/her will be used and what the consequences of its use may be.
- Tell about the possible risks and how they can be mitigated.
- Make sure that the person is comfortable with being interviewed and happy with the place where the interview is conducted. If not, continue the interview in a different place or re-schedule it.
- Ask the claimant if he/she needs protection and discuss the feasible options to provide such protection.

- Ask the interviewee if he/she would like the interview to be confidential or if he/she is ready to provide their name and contact details.
- If you talk to a person whose human rights were violated or a potential claimant, ask him/her if he/she wants the case to be presented in the national courts/international bodies.
- Ask the person to sign an informed consent for the interview and/or a letter of authority for legal representation (Annex 1).
- Discuss the approximate time which may be needed for the interview and ask the interviewee how much time he/she has.
- Ask the claimant if you can make audio/video recording of the interview. If the person says no, do not come back to this question.

● Information for future reference

- Record personal data of the claimant using the designated form (Annex 2).
- Collect general information concerning personal and professional life of the claimant.
- Ask if there is any personal information, which does not directly relate to the incident, but potentially may be important.
- Ask the interviewee what is the most convenient means of communication (phone, e-mail, skype, personal contact, etc.).

● Information about the crime/incident

- Ask the claimant to tell you what happened in the chronological order.
- You should be able to clearly determine what happened, when, where and why.
- The claimant should give you as many details as possible and tell everything he/she knows about the place of incident.
- Ask suggestive questions to assess the person's ability to clearly see or hear the things mentioned in the report (e.g. what was the distance between the suspect and the complainant/witness, what was the light, if the interviewee was able to hear the conversation, etc.)

Example:

(A) If the claimant is saying that the incident happened on a certain day or at a certain time, ask him/her how he/she knows the exact timing.

(B) If the claimant is saying that the suspect was a staff member of a certain organization, ask him/her if the suspect was wearing any badges, what clothes he/she had on or what were the other signs which made the claimant assume such affiliation of the subject.

(C) If the claimant is saying that the suspect was from a certain country or locality, ask about the dialect or other features that could prove such information.

- Clarify any information, which can help the court to determine how trustworthy the evidence is.
- Any information received from other people should be separated from what the complainant/witness perceived in any way. In other words, there should be a clear distinction between direct evidence and hearsay.
- If in the course of the interview the interviewee says that there are witnesses or other victims, the interviewer should ask him/her if it is possible to talk to them as well. It could be beneficial to make the case complete and could allow collecting more detailed information about the incident.
- Ask the interviewee if he/she has any physical evidence related to the incident. Physical evidence may include health documents in case if the person sought assistance/examination at a health facility after the incident, inspection results, photos of bodily injuries. If there is any physical evidence, ask the person if you can make copies. If during the interview you notice any injuries, delicately ask the person if such injuries are the result of the incident. If yes, ask permission to make photos of the injuries. Besides, tell the interviewee about the importance of going through medical examination and about its procedure.

● Information about the suspect

- The claimant should provide as detailed description of the suspect as possible.
- Ask the claimant about the suspect's height, hair color, eye color or any important physical peculiarities (this is relevant for attacks and hate crimes).
- Besides, ask questions about the suspect's clothes, badges, accent, weapons, means of transport and any other details which could help to identify the perpetrators.
- The claimant should quote the specific words, which the suspect or other people said during the incident. Thus, if the incident occurred in a health facility or at work, an exact quote may be the key to classify the incident. It is ideal when other people, apart from the victim, were present when such words were said. If there is a video or audio recording, it is even better.

● Wrapping up the interview

- When the interview is over, read your records aloud to make sure that you have understood everything correctly/give your records to the interviewee to check.
- Manage your expectations – most likely, you will not hear anything else from the interviewee.
- Try to convince the claimant that the details of your conversation have to be submitted to different agencies. In the best-case scenario, the claimant should sign every page of your records. After the interview is over, ask the interviewee if you can use the information received for reports, statements and speeches at formal and informal events. Explain to the claimant, which part of the information could be made public, and which could remain confidential. If the claimant does not object, ask him/her to sign a written consent allowing you to use the information (Annex 1). Such written consent will help you to avoid misunderstandings and even conflicts in future, if the person who gave you the consent to distribute such information later has any complaints about it.
- Discuss what would be the best way to keep in touch if necessary.
- «I am sorry that it happened to you»
- «I am sorry about your loss»
- «Thank you for this conversation»
- All traumas are individual, so never say thing like: «Other people suffered even more»

Clarifications and details of the interview

Statements of one complainant or witness should not be disclosed to another complainant or witness. If there are explicit inconsistencies between the words of different people, they should be clarified through additional interviews.

Information received from third parties may be included into the interview and accepted by the documenter, if it is relevant. Therefore, if you think that such information is important, it should be included. However, the source of such information should be distinctly stated. For example, «*I did not witness it, but I was told by (name of the person) that (information).*»

Always specify the source of hearsay. For example, «*There were also (other people), who heard (the information).*»

Besides, include other details, which can confirm the hearsay. For example, «*I think that a journalist of the XYZ newspaper published an interview with one of the suspects, where he confirmed that he was there.*»

Expert witnesses

Expert witnesses are not those who are hired to give false testimony to support propaganda.

An expert witness is a person, who due to their profession or occupation can provide more qualified and even expert information. Such people are doctors, forensic experts, military personnel, police officers, teachers, trade union staff members, etc.

Statements of the expert witnesses should include all the information about their qualification and experience. If doctors, autopsists or other specialists use any specific professional terms, they should be asked to give a simplified explanation of such terms so that they would be understandable for a person who is not an expert. Such explanations can be given in footnotes or in a glossary. Doctors and autopsists should be asked to give their opinion on the possible reasons of injuries or death, with detailed clarifications of the reasons and consequences of such injuries. The same goes for the forensic experts.

Storage of evidence

All interview records should be encoded and stored in safes. Electronic copies of the interviews, wherever you store them, should always be encoded. Do not use the codes traditionally applied in your organizations (e.g. mother's initials and date of birth), make a new code for storing evidence. It is better to avoid using any personal data in such codes. When collecting evidence, you can tell the claimant about the system you use to protect data and specify who will have access to non-encoded data (the best option is to have not more than one person apart from the interviewer to access the data).

As for other evidence, used to reconfirm information provided in the interview, the marking should be linked to the main code of the interview. Thus, if the interview with the claimant is encoded as CA01, all other related evidence should be encoded as CA01_1, CA01_2, etc.

To record each piece of the information collected it is better to keep a register (table), specifying the place, time, and identities of the claimants. Courts assign a higher value to the evidence provided by the people affected and to the information that you (as representatives of the organization) collected personally. Neither evidence has any force without background information or, even better, without support of the person who collected such evidence.

Sample table:

Object No.	Date	Submitted by (name, signature)	Accepted by (name, signature)
CA01_2	28/07/2018	Artemjev I. 	Safronov P. 

Some evidence may be collected in the course of the interview. Thus, for example, you can request the complainant/witness to draw a scheme of the attack, ask for copies of photos with the witness signing each copy, etc.

Photo and video evidence

Special attention should be paid to photo and video evidence. Today, the international judicial practice is more and more focused on the digital evidence, with a stronger emphasis on video and photo evidence.

The main thing you need to know about photos and videos serving as evidence is the importance of storing metadata. Most contemporary data storage media/devices store metadata of photo and video files by default. It is important not to delete it to prove the authenticity of photo and video evidence. If you are documenting information in challenging or dangerous environment (e.g. during assemblies or attacks), you may use special services to mitigate the risks, such as Eye Witness.³⁵

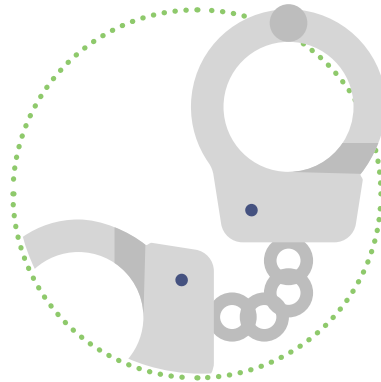
In other cases, you just need to be careful and not change any files that you received – **do not edit!**

Important! Before you start collecting video evidence, you need to familiarize yourself with the regulations on taking photos or making videos in public places, hospitals, courts, etc. In many countries, such actions are prohibited. Besides, you and your team should think about the safety measures for the cases when you decide to openly make footage of a public figure in a public place. It is very risky (you may face physical attacks, damage of equipment, arbitrary arrests, etc.)

³⁵ <https://www.eyewitnessproject.org>

Before collecting video evidence

Assess the risk



Before you start filming, make sure video is the right choice to get the word out; because you, your organization, friends and the people you film all face potential risks. Risks occur when you film, when you edit and when you distribute.

Video camera is a perfect tool to quickly collect big volumes of information. However, it has certain limitations and should rather be used as a tool to take general view. From a short distance or to record details, it is better to use a photo camera. One of the main problems with videos is size and distance distortion. However, video records may show a better perspective, show the settings as well as the linkage between different parts of the location.

Video records also help to understand what the venue looked like originally and what was dislocated or altered in the process of examination/evidence collection. It is also a valuable source of information about the place of the incident and the incident itself. For example, there might be an object which cannot be collected or carefully examined and which later becomes a key evidence in the case. Video records will serve as a confirmation of existence and location of such object (lost belongings of a suspect or a victim, traces of a fight, etc.).

There are many classification of evidence. Let us review the video evidence classification offered by Witness* to understand what kind of videos we collect/look for/make:

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Allows a key fact to be established or presumed true unless it is disproved. It should be noted that disproving video evidence in international bodies is very problematic, as the other side has to provide video evidence disproving your video evidence, which is almost impossible.

Example: *footage of attacks against LGBTQ, torture, threats, etc.*

* <https://www.eyewitnessproject.org>

<p>Corroborative evidence</p>	<p>Information that supports or verifies already existing evidence; also known as back-up information.</p> <p>Example: <i>footage of injuries corroborating a medical exam, interview with additional witnesses, etc.</i></p>
<p>Contextual evidence</p>	<p>This evidence allows interested parties to better understand the atmosphere, geographic location, or political climate in which the events occurred, e.g. to see that the crime was committed on the grounds of SOGI or that the offense was based on discrimination.</p> <p>Example: <i>videos where public figures make statements calling to discrimination, video of police violence, where the police attacks only people with rainbow flags, etc.</i></p>
<p>Inferential evidence</p>	<p>Information that allows us to make an educated guess as to the intent of the perpetrator, which must be further corroborated.</p> <p>Example: <i>photos from a police station where torture was reported, with traces of blood and instruments of torture, photos of internal hospital regulations on certain actions discriminatory in terms of SOGI to be performed, etc.</i></p>
<p>Notice evidence</p>	<div data-bbox="528 1196 1426 1496" style="background-color: #d4edda; border-radius: 15px; padding: 10px; margin-bottom: 10px;"> <p>IMPORTANT! Information that proves that a supervisor or leader received information which ensured they knew – or should have known – that the people they had authority over were committing crimes. This type of evidence also includes different public statements by people of authority with the calls to commit hate crimes or discriminatory actions.</p> </div> <p>Example: <i>In an interview with the minister of health, he denies in the strongest terms that MSM can be blood donors; chief doctor of a clinic saying that there «have never been and will never be any services for trans people» in the clinic, etc.</i></p> <p>Collection of such evidence is safer, can be managed by CSOs and teams of documenters, but requires patience and skills to work with open data sources. However, it is important to realize that such evidence may not be separated from specific crimes/victims and only serve as an additional confirmation of unlawful policies and approaches of decision makers and the fact that they were informed about the unlawful actions of people subordinated to them.</p>

Exculpatory evidence

Information that helps prove a defendant is innocent or did not intend to commit a crime. Most often, it is information from public independent sources (e.g. security camera footage showing someone else committing the crime).






Example: *there is an attempt to blame one of the witnesses in committing a hate crime, but security cameras of the nearest bars confirm that he was not involved. The status of this person in the police investigation changes from the suspect to a witness.*

If you can document the fact of human rights violation, violence against LGBTQ, hate crime or discrimination, you should build a picture (scenario) of the video in advance, treating video footage as evidence.

Your video should include the following elements:

- 1 Shortly introduce yourself.
- 2 Tell the date, the time and the place of footage.
- 3 If possible, make a view from the top and film the horizon as a date and place confirmation. Include any available landmarks (mountain, river, mayor's office, church, etc.).
- 4 Make a slow 360-degree overview of the place where you start your video.
- 5 Make 10-second wide shots in the corners of the crime scene.
- 6 Make 10-second medium shots in the corners of the crime scene.
- 7 Make close-up shots of details to restore the course of events.

Recommendations:

-  **Never reconstruct anything**, just depict the place as you have found it.
-  Sometimes, **even a long time after the incident**, it makes sense to prepare video evidence.
-  Make sure that all your moves while you are making video are **slow and careful**.
-  Try to keep the focus.
-  If it is possible, use a tripod



Landmark



360°



Horizon with sun or moon



Overview



Wide



Medium



Close Up

Important! Making human rights videos may be dangerous. Your personal safety as well as safety of the people and communities you are trying to protect is always more important than making footage.

The most challenging task: identification of perpetrators

An important stage of monitoring and documentation is to identify all the perpetrators who were in some way involved in the incident and to restore the instruction chain. Civil society organizations play a vital role in the process of communication between the victims and the governmental authorities committing crimes, where individual complaints often do not achieve the desirable results. When a victim does not trust official bodies, CSOs can take the lead in maintaining communication with the authorities, including suspected perpetrators. Information about perpetrators can help to target the prevention measures. For example, in the course of documentation, while collecting information bit by bit, we may see that most discriminatory offenses are committed by one police department headed by a specific person. For CSOs, such information will be decisive in building the response and the preventive measures. Thus, if a court trial is not an option, CSOs may organize an advocacy campaign to respond to the impunity of such police department engaging mass media.

Of course, as compared to official authorities CSOs have limited access to information about perpetrators and evidence of their involvement in committing crimes. However, it is important to know the key regimes of responsibility for human rights violations:

Personally committing a crime	Someone personally and on personal grounds attacks an activist, causing injuries
Incitement and instigation	An anti-rally leader calls to isolate and kill all LGBTQ
Aiding and abetting	A person financing an attack of an LGBTQ shelter or providing a car to the attackers.
Complicity/collusion	Police officers from one police department systematically beat all arrested trans people and use psychological abuse.
Order of a crime	Administration of the Ministry of Internal Affairs gives an informal order to «take all sex workers away from the streets» before an international summit to be held in the capital city.
Command responsibility	Supervisor of a police department where trans sex workers are tortured and beaten knows that his subordinates regularly commit offenses, but is doing nothing to prevent or stop such offenses.

Why it is important to identify the individuals responsible for committing a crime? Firstly, very often only the direct perpetrator of a crime is brought to responsibility, while other people involved go unpunished. Secondly, when we are talking about systematic violations, e.g. about discriminatory actions against LGBTQ in the health care system, it is important for us to restore the chain of people responsible for the offenses not only to proceed with the trial but also to use this information for advocacy and promotion of human rights as well as system changes. Sometimes, if we influence the decision-maker (e.g. chief physician), we may change the bad practices of all people under such person's authority.

Instead of a summary

Very often, CSOs do not believe that it is possible to make an impact on health care systems, law enforcement bodies, court practices, to change public opinion, to increase the level of tolerance, to create precedents of punishing perpetrators for LGBTQ human rights violations or to change laws. Of course, all those tasks are very ambitious and require long-term efforts, but changes are POSSIBLE. Increasing the evidence standard, conducting professional monitoring and documentation will become the bricks, which will form the foundation for you to protect yourself and the community in your country.

To Director _____

From:

Address:

Tel.:

CONSENT FORME

/for information use/

I, **(name, family name)** **(date)** contacted **(organization name)** with a request for legal/psychological support/human rights protection/other **(select all that apply)**.

I was interviewed by a staff member of **(organization)**

(full name of the staff member)

in the course of which I provided to the **(organization)** the information, which was recorded in a questionnaire **(No. of the questionnaire)**

Herewith I give my consent to **(organization)** to use the information received from me for the following purposes: **(select all that apply)**

- Make statements in mass media
- Make official statements during public events
- Apply to national and international human rights, governmental, intergovernmental, and non-governmental organizations and agencies
- Draft reports, reviews, submit/distribute such reports to/among third parties
- Prepare individual messages to the UN Special Rapporteur
- Other (specify)

I give my consent for the information received from me to be used stating/not stating my name and family name **(underline)**.

Date

Place

Signature

CASE DOCUMENTATION FORM

1. COMPLAINANT/CLAIMANT/WITNESS

Name, nickname, (client code)	
Age as of the time of the incident	Gender <input type="checkbox"/> male <input type="checkbox"/> female <input type="checkbox"/> other (specify)
Sexual identification <input type="checkbox"/> homosexual <input type="checkbox"/> heterosexual <input type="checkbox"/> bisexual <input type="checkbox"/> man having sex with men not identifying himself as gay <input type="checkbox"/> other (specify)	
Family status <input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> divorced or widowed <input type="checkbox"/> same-sex partnership	
Children <input type="checkbox"/> yes <input type="checkbox"/> no	
Education <input type="checkbox"/> incomplete secondary <input type="checkbox"/> professional secondary (vocational/technical school) <input type="checkbox"/> secondary <input type="checkbox"/> incomplete higher <input type="checkbox"/> higher	
Occupation at the time of the incident	
Contact details tel. (cell, home): e-mail:	
Comments	
2. PERPETRATOR	
<input type="checkbox"/> individual <input type="checkbox"/> group of individuals <input type="checkbox"/> health worker <input type="checkbox"/> public official	
Name, family name Organization Position	
Age as of the time of the incident: (approximately)	Gender <input type="checkbox"/> male <input type="checkbox"/> female <input type="checkbox"/> other (specify)
Occupation at the time of the incident	

Contact details (tel., e-mail, postal address)	
Comments	
3. CONFLICT SITUATION/INCIDENT	
Period of the situation: from: _____ to: _____	
Region City/village (type, name)	District
Venue of the incident	
Linkage between the victim and the perpetrator (select all that apply) <input type="checkbox"/> relatives <input type="checkbox"/> neighbors <input type="checkbox"/> acquaintances from work/studies <input type="checkbox"/> victim dependent on the perpetrator (financially, at work, etc.) <input type="checkbox"/> virtual strangers before the conflict <input type="checkbox"/> total strangers before the conflict	
Description	
Did the complainant make any steps to counter discrimination or human rights violation? If yes, describe step by step:	
Steps/actions	Their results
4. CONFLICT SITUATION	
Source of information <input type="checkbox"/> CSO representative <input type="checkbox"/> victim <input type="checkbox"/> victim's relative or acquaintance <input type="checkbox"/> stranger	

Source/witness (name, nickname)

Organization represented (if any)

Contact details tel. (cell, home):

e-mail:

Is there any documentary evidence (copies of complaints, official documents, photos from the crime scene, videos, publications, etc.)? What exactly?

5. CONFIDENTIALITY

Does the complainant/witness agree for the information about the violation to be used for human rights activities?

- yes, all information
 yes, except name and contact data
 no, no information and under no conditions

Comment

6. LEGAL SUPPORT

Does the complainant want to receive a primary legal consultation?

- yes no n/a

Comment

CASE PROFILE

Place of documentation

Date of documentation

Documenter (name, family name)

Contact details tel. (cell, home):

e-mail:

Interviewer's signature

Claimant's/witness' signature

**CONSENT FOR MINOR'S PARTICIPATION
IN INTERVIEW/EXAMINATION**

Parent's (guardian's) name _____

Minor's name _____

Date _____

Participation in interview (please write YES/NO in each line):

_____ I know who conducts the interview and why.

_____ My consent to the minor's participation is voluntary. I realize that refusal to participate in the interview will not lead to any consequences.

_____ I allow making photos of the minor.

_____ I allow publishing photos of the minor.

_____ I allow making videos with the minor.

_____ I allow publicly using videos with the minor.

_____ I allow using/publishing the minor's voice.

_____ I do not allow making photos of the minor.

_____ I do not allow publishing photos of the minor.

_____ I do not allow making videos with the minor.

_____ I do not allow publicly using videos with the minor.

_____ I do not allow using/publishing the minor's voice.

I clarify my prohibitions below:

I know that if the situation changes, I should contact the interviewer/organization to discuss such changes.

_____ I allow using the interview with the minor to apply to national and international human rights, governmental, intergovernmental and non-governmental organizations and agencies.

_____ I allow using the interview with the minor in a summarized form in articles and reports.

Signature:

Interviewer:

Full name:

Signature:

Place:

Organization:

Date:

Date:

INFORMED CONSENT TO THE CONFIDENTIALITY TERMS

Interpreter's full name _____

Interviewer's full name _____

_____ Herewith I agree to keep any information received during the interview confidential and refrain from disclosing it to any third parties in public and in private.

_____ I understand the responsibility for disclosing such information.

_____ The interviewer warned me about the legal consequences of disclosing such information.

Signature:

Interviewer/Full name:

Full name:

Signature:

Place:

Organization:

Date:

Date:

