



UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

LEGISLATION FACTSHEET

INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA)

May 2019

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USCIRF's Mission

To elevate and promote international religious freedom as a norm and practice.

by Kirsten Lavery, International Legal Specialist and Elizabeth K. Cassidy, Director of International Law and Policy

Overview and Purpose

Freedom of religion is both America's first freedom and a universal human right. Yet many people around the world live in countries where this right is denied or restricted.

Twenty years ago, the [*International Religious Freedom Act of 1998, as amended \(IRFA\)*](#) was enacted to elevate religious freedom as a higher priority in U.S. foreign policy. IRFA provides that U.S. policy includes condemning violations of religious freedom and assisting other governments in the promotion of this right. IRFA created a range of government tools to implement this policy.

IRFA is centered on promoting religious freedom as recognized in international law. This means the right to believe or not believe as one's conscience leads, and live out one's beliefs openly, peacefully, and without fear. The international instruments mentioned in IRFA that enshrine this fundamental right include [*the Universal Declaration of Human Rights*](#), [*the International Covenant on Civil and Political Rights*](#), [*the Helsinki Accords*](#), and [*the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*](#).

Main Features of the Law

IRFA sought to make religious freedom a priority in U.S. foreign policy in a variety of ways, including by creating governmental institutions, requiring monitoring and reporting on religious freedom violations, and establishing consequences for the worst violators.

(1) *Governmental institutions*: IRFA created governmental entities responsible for monitoring religious freedom conditions abroad and promoting religious freedom in U.S. foreign policy, as outlined in the following table.

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

– Universal Declaration of Human Rights, Article 18

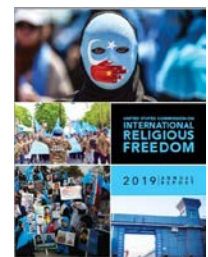
Government Entities Created by IRFA

Government Institution	Description	Primary Duties	Current Leadership
Ambassador-at-Large for International Religious Freedom	A political appointee nominated by the President and confirmed by the Senate, to head an Office of International Religious Freedom at the State Department	(1) Advance the right to freedom of religion abroad, (2) Integrate international religious freedom policies and strategies into U.S. foreign policy efforts, (3) Advise the President and the Secretary of State regarding matters affecting religious freedom, (4) Represent the United States on religious freedom matters diplomatically, (5) Coordinate the United States' international religious freedom policies, and (6) Issue an annual report on religious freedom conditions in all foreign countries.	Amb. Samuel D. Brownback
U.S. Commission on International Religious Freedom (USCIRF)	An independent U.S. government advisory body Led by nine part-time Commissioners appointed by the President and the leadership of both political parties in each house of Congress The Ambassador-at-Large is an ex officio USCIRF Commissioner	(1) Review religious freedom conditions globally, (2) Evaluate U.S. policy, (3) Make recommendations for U.S. policy to the President, Secretary of State, and Congress, and (4) Issue an annual report setting forth USCIRF's policy recommendations.	Chair: Dr. Tenzin Dorjee Vice Chairs: Kristina Arriaga, Gayle Manchin Commissioners: Gary L. Bauer, Anurima Bhargava, Dr. Andy Khawaja, Nadine Maenza, Johnnie Moore, and Tony Perkins
Special Adviser to the President on International Religious Freedom	An adviser within the White House National Security Council staff	(1) Serve as a resource for executive branch officials, (2) Compile and maintain information on the facts and circumstances of violations of religious freedom, (3) Make policy recommendations, and (4) Serve as a liaison with the Ambassador-at-Large for International Religious Freedom, USCIRF, Congress, and as advisable, religious non-governmental organizations.	Has never been appointed by any President

(2) *Monitoring and reporting:* IRFA also requires monitoring of and reporting on religious freedom conditions globally.

- State Department's Annual Report:** The State Department is required to prepare an annual report on religious freedom conditions in each foreign country (*the IRF report*). This report, which is in addition to the department's annual human rights report, is required to be issued on or shortly after May 1 each year. IRFA further requires the State Department to maintain country-by-country lists of prisoners and issues of concern for use by executive and legislative branch officials.

- USCIRF's Annual Report:** USCIRF is required to issue its own *annual report* setting forth its independent recommendations for U.S. policy. USCIRF's report is issued no later than May 1 of each year. It focuses on select countries, generally those with the worst religious freedom conditions, and provides USCIRF's assessment of the U.S. government's international religious freedom policy.



The 2016 Amendments to IRFA (known as the *Frank Wolf Act*) also require that USCIRF, to the extent practicable, make available online lists of prisoners and other victims of certain violations by governments or non-state actors. USCIRF recommends be designated as the worst violators of religious freedom.

(3) *Consequences for violators:* IRFA creates a framework that requires the U.S. government to take action against countries and other actors that violate religious freedom.

- **Standards used to designate worst offenders:** IRFA requires the President—who has delegated this power to the Secretary of State—to annually review the status of religious freedom in each country and designate the worst offenders and others of concern. These designations must be made no later than 90 days after the issuance of the IRF Report.

(A) *IRFA's CPC Standard:* IRFA requires the annual designation of “countries of particular concern,” or CPCs. CPCs are defined as countries whose governments either engage in or tolerate “particularly severe violations” of religious freedom during the reporting year. Particularly severe violations of religious freedom are defined as “systematic, ongoing, egregious violations of the internationally recognized right to freedom of religion,” such as torture or degrading treatment or punishment.

USCIRF's annual reports highlight countries that it concludes meet the CPC standard, which USCIRF refers to as Tier 1 countries.

In April 2019, USCIRF placed 16 countries on its Tier 1 list and recommended that the State Department designate those countries as CPCs. In its most recent CPC designations, in November 2018, the State Department designated only 10 of these countries. In part, this discrepancy arises because USCIRF can focus on religious freedom conditions alone, without needing to balance other bilateral issues. USCIRF also has been more willing to find that countries meet the CPC threshold based on their governments' toleration of particularly severe violations of religious freedom, while the State Department has focused its designations on governments that themselves engage in such violations.

(B) *IRFA's Special Watch List Standard:* The Frank Wolf Act created the State Department's Special Watch List (SWL). The SWL applies to countries that do not meet all of the CPC criteria, but nonetheless have “engaged in or tolerated severe violations of religious freedom” during the reporting year.

Neither IRFA nor the Frank Wolf Act defines the term severe violations. IRFA defines and provides examples of violations of religious freedom and particularly severe violations of religious freedom, which are listed in the following chart.

(C) *USCIRF's Tier 2 Standard:* Before the State Department's Special Watch List category existed, USCIRF created a Tier 2 to highlight countries in which the violations engaged in or tolerated by the government during the reporting year were serious and characterized by at least one of the elements of the “systematic, ongoing, and egregious” CPC standard. While these countries do not rise to the statutory level that would require a CPC designation, they require close monitoring due to the nature and extent of the violations of religious freedom.

(D) *IRFA's Entity of Particular Concern Standard:* Pursuant to USCIRF's recommendation and in recognition that some of the most egregious religious freedom violators are non-state actors, the Frank Wolf Act created a new presidential designation for “entities of particular concern” or EPCs for non-state actors that engaged in particularly severe violations of religious freedom. A non-state actor is defined as a non-sovereign entity that (a) exercises significant political power and territorial control; (b) is outside the control of a sovereign government; and (C) often employs violence in pursuit of its objectives. The President has delegated the power to make EPC designations to the Secretary of State.

Government tolerance of particularly severe violations: USCIRF has recommended that Nigeria be designated a CPC every year since 2009, based on USCIRF's conclusion that the Nigerian government tolerates violence and discrimination on the basis of religion or belief. As sectarian violence between predominantly Muslim herders and Christian farmers increased, the Nigerian government has failed to implement effective strategies to prevent or stop such violence or to hold perpetrators accountable. Despite this recommendation, the State Department has not to date designated Nigeria as a CPC.

Severity of Violations Defined in IRFA

Level of Severity:	IRFA Definition	Examples in IRFA	Designation if country engages in or tolerates
Violations	"Violations of the internationally recognized right to freedom of religion and religious belief and practice, as set forth in international instruments" (IRFA §6402(16))	"(A) arbitrary prohibitions on, restrictions of, or punishment for— (i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements; (ii) speaking freely about one's religious beliefs; (iii) changing one's religious beliefs and affiliation; (iv) not professing a particular religion, or any religion; (v) possession and distribution of religious literature, including Bibles; or (vi) raising one's children in the religious teachings and practices of one's choice; or (B) any of the following acts if committed on account of an individual's conscience, non-theistic views, or religious belief or practice: detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, and execution."	None
Severe Violations	Not defined	None provided	Special Watch List (SWL)
Particularly Severe Violations	"Systematic, ongoing, egregious violations of the internationally recognized right to freedom of religion" (IRFA §6402(13))	"(A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons."	Countries of Particular Concern (CPC)

In its annual report, USCIRF also recommends non-state actors to be designated as EPCs. The State Department has designated more EPCs than USCIRF has recommended, based on the Department's broader interpretation of the requirement of exercising control over territory.

2018 EPC Designations: In [November](#)

2018, the Secretary of State designated the following entities as EPCs: (1) ISIS, (2) the Taliban, (3) al-Shabaab, (4) the Houthis, (5) al-Nusra Front, (6) al-Qa'ida in the Arabian Peninsula, (7) al-Qa'ida, (8) Boko Haram, and (9) ISIS-Khorasan.

In [April](#) 2019, USCIRF recommended that the State Department designate the first four entities listed above, along with Hay'at Tahrir al-Sham (HTS).

- **Responses to Violations:** Along with naming of violators, IRFA requires that the President—who has again delegated this power to the Secretary of State—take targeted responses to violations of religious freedom.

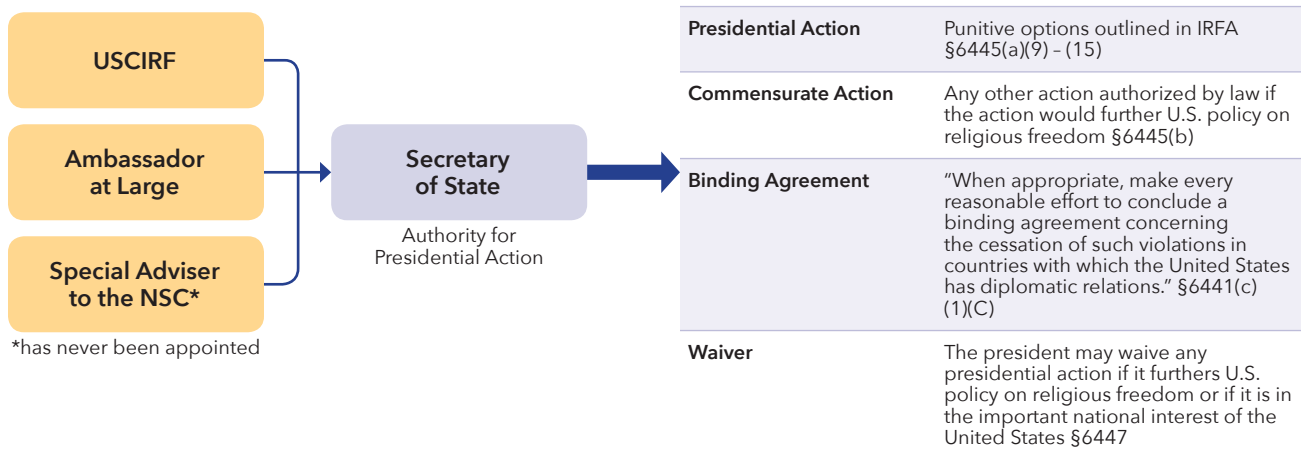
For each foreign country that engages in or tolerates any level of violations of religious freedom, the Secretary of State must oppose such violations and promote freedom of religion or belief in that country. IRFA includes a menu of options for countries designated as CPCs, and a list of actions for countries that violate religious freedom but are not designated as CPCs.

The specific policy options available for CPC countries include negotiating a bilateral agreement concerning the cessation of violations, imposing sanctions of varying severity, taking commensurate action, or issuing a waiver. As a commensurate action, the Secretary of State may determine that pre-existing sanctions are adequate, referred to as "double hatted" sanctions.

2018 CPC Actions: In 2018, the State Department designated 10 countries as CPCs. For Pakistan, which was the only new designee, a waiver was put in place “in the important national interest of the United States.” For the remaining nine CPC designees, the same presidential actions that had been imposed in 2017 were continued. Six are subject to pre-existing (“double hatted”) sanctions and three have waivers.

While the statute permits such waivers and double hatted sanctions, the Frank Wolf Act, consistent with USCIRF’s longstanding recommendation to limit waivers, notes that ongoing and persistent waivers of presidential actions do not fulfill the purpose of the law. USCIRF has expressed similar concern that using pre-existing sanctions or indefinite waivers provides little incentive for CPC-designated governments to reduce or halt egregious religious freedom violations.

Choosing Presidential Actions for CPCs (IRFA §6442)



IRFA also provides a range of options for diplomatic action toward violator countries that are not CPCs, including those placed on the SWL. These actions include a private demarche, a public condemnation, the delay or cancellation of scientific or cultural exchanges, and the denial or delay of official state visits. While there is wide discretion in choosing the appropriate response to religious freedom violations, actions taken under IRFA cannot prohibit or restrict medicine, food, or humanitarian assistance.

Regarding EPC designations, the Frank Wolf Act requires the President to take action “when practicable” to address severe violations of religious freedom committed by EPCs.

Options for Presidential Actions (IRFA §6445)

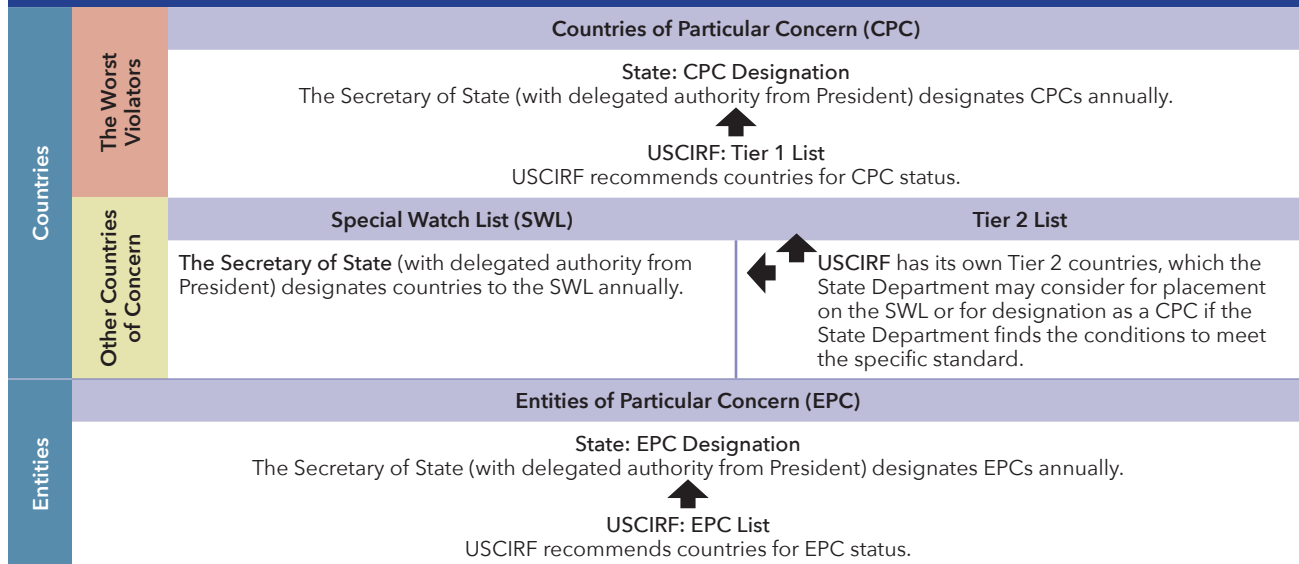
Actions available in response to any religious freedom violations

- 1 A private demarche
- 2 An official public demarche
- 3 A public condemnation
- 4 A public condemnation within one or more multilateral fora
- 5 The delay or cancellation of one or more scientific exchanges
- 6 The delay or cancellation of one or more cultural exchanges
- 7 The denial of one or more working, official, or state visits
- 8 The delay or cancellation of one or more working, official, or state visits

Actions available following a CPC designation

- 9 The withdrawal, limitation, or suspension of United States development assistance
- 10 Denials of credit loans under OPIC or the Export-Import Bank
- 11 The withdrawal, limitation, or suspension of United States security assistance
- 12 Directing the U.S. executive directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations
- 13 Denials of exports under certain instruments such as the Arms Export Control Act
- 14 Prohibiting U.S. financial institutions from making loans or credit to the government, entities, or officials responsible for violations under IRFA
- 15 Prohibiting the U.S. government from procuring goods or services from the government, entities, or officials responsible for violations

U.S. Government Standards to Categorize Religious Freedom Violators



- **Consequences for individual violators:** IRFA also seeks to ensure that there are consequences for individual violators of religious freedom.

(A) **IRFA Visa Ban:** IRFA makes inadmissible to the United States foreign government officials who are responsible for or directly carried out particularly severe religious freedom violations.

(B) **Other Targeted Sanctions:** In addition to IRFA's provisions, two new accountability tools—the 2016 [Global Magnitsky Human Rights Accountability Act](#)

and a related 2017 executive order, [E.O. 13818](#)— allow the President, who has delegated authority to the Secretaries of State and Treasury, to deny U.S. visas to or block the U.S.-based assets of foreigners involved in corruption or human rights abuses, including violations of religious freedom.

(C) *Designated Persons List*: The Frank Wolf Act now requires the State Department to establish, maintain, and submit to Congress every 180 days “designated persons lists” of foreign individuals denied visas or subject to financial sanctions or other measures for particularly severe violations of religious freedom.

(4) *Programs and training*: IRFA contains several additional provisions to ensure that religious freedom is a central element of U.S. foreign policy. IRFA requires that religious freedom be an element of U.S. foreign assistance, cultural exchange, and international broadcasting programs. It also provides that certain government employees, including State Department foreign service officers and U.S. immigration officials, receive training on religious freedom and religious persecution. Consistent with USCIRF’s recommendation, the Frank Wolf Act made this training mandatory.

(5) *Refugee and asylum issues*: In recognition that religious freedom violations can drive displacement, IRFA includes further provisions on U.S. refugee and asylum policy. In addition to requiring trainings on religious persecution for immigration officials, IRFA mandates the president to consider information about religious persecution as part of his annual determination of refugee admissions, and that immigration officials use the IRF Report as a resource in adjudicating refugee and asylum claims. IRFA also sought assessments of whether immigration officials were implementing Expedited Removal—a summary removal procedure that was new when IRFA was enacted—in a manner consistent with the United States’ obligations to protect individuals fleeing persecution, including by *authorizing* USCIRF to examine the issue. USCIRF issued reports on this topic in [2005](#), [2007](#), [2013](#), and [2016](#), documenting major problems that successive administrations have not addressed.

2018 Department of State (DoS) and 2019 USCIRF Country Categories¹

Country	DoS CPC	USCIRF Tier 1	DoS SWL	USCIRF Tier 2
Afghanistan				●
Azerbaijan				●
Bahrain				●
Burma	●	●		
Central African Republic		●		
China	●	●		
Comoros			●	
Cuba				●
Egypt				●
Eritrea	●	●		
India				●
Iran	●	●		
Indonesia				●
Iraq				●
Kazakhstan				●

Country	DoS CPC	USCIRF Tier 1	DoS SWL	USCIRF Tier 2
Laos				●
Malaysia				●
Nigeria		●		
North Korea	●	●		
Pakistan	●	●		
Russia		●	●	
Saudi Arabia	●	●		
Sudan	●	●		
Syria		●		
Tajikistan	●	●		
Turkmenistan	●	●		
Turkey				●
Uzbekistan		●	●	
Vietnam		●		
TOTAL	10	16	3	12

¹ On December 11, 2018, the State Department issued its [list of countries](#) designated as CPCs and Special Watch List on November 28. USCIRF released its 2019 Annual Report on [April 29, 2019](#), which places countries on its Tier 1 and 2 Lists based on religious freedom conditions in 2018.



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