

Joint General Comment/Recommendation on Obligations of State Parties on public policies for addressing and eradicating xenophobia and its impact on the rights of migrants, their families, and other non-citizens affected by racial discrimination

Input from the mandate of the United Nations Special Rapporteur on freedom of religion or belief.

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A. Introduction.....2

B. Substantive responses to questions2

1. How xenophobia should be defined nowadays, in a social and political meaning that could lead to developing public policies directed to address its impact on the rights of migrants - within the scope of this General Comment/Recommendation-, their families, and other non-citizens affected by racial discrimination?.....2

5. How xenophobia should be addressed through an intersectionality lens? How this policy should be reciprocally complemented with policies directed to prevent and eradicate racism? Which measures should be put in place for ensuring a gender approach within a comprehensive policy against xenophobia and gender-based discrimination? Which measures should be implemented for intersecting xenophobia with other factors forbidden by the principle of non-discrimination, including age, gender, disability, sexual orientation, racial and ethnic origin, among others?3

7. How xenophobia could be addressed in the field of education, in order to: a) eradicate xenophobia at schools, and b) prevent xenophobia in the mid and long term, through education practices and subjects directed to build inclusive and cohesive societies?5

10) Which standards should be added to those already existing for preventing, eradicating and prosecuting hate speech, including through digital technologies?7

12) Which could be the role of local governments within a comprehensive policy directed to prevent and eradicate xenophobia and its impact on the rights of migrants, their families and local community?8

A. Introduction

The Special Rapporteur on freedom of religion or belief, Nazila Ghanea, has the honour to present her observations in response to the call for inputs concerning the forthcoming Joint General Comment/Recommendation of the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Rights of Migrant Workers and their Families. Under article 5(d)(vii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), States Parties are obliged to “guarantee the right of everyone, without distinction as to race, colour, national or ethnic origin [...] the enjoyment of [...] freedom of thought, conscience, and religion.” Similarly, article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICMWF) guarantees to migrant workers and members of their families the right to freedom of thought, conscience, and religion, and freedom from coercion in this regard, and respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. Drawing on mandate practice, the Special Rapporteur’s observations are submitted with respect to questions 1, 5, 7, 10, and 12 of the Call for Inputs below.

B. Substantive responses to questions

1. How xenophobia should be defined nowadays, in a social and political meaning that could lead to developing public policies directed to address its impact on the rights of migrants -within the scope of this General Comment/Recommendation-, their families, and other non-citizens affected by racial discrimination?

Definitions of xenophobia must account for instances in which exclusion is driven by actual or perceived religion or belief. The definition of xenophobia adopted by the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance is valuable in that it recognises the socially constructed nature of *perceived* ‘foreignness’, allowing insight into the ways in which xenophobia draws intersectionally on various structures of marginalisation, in a given context, in order to produce exclusion among its victims.¹ Religion or belief is often important among such structures. Indeed, in many countries, religious or belief minorities are explicitly denied citizenship (see Question 5 below);

¹ [A/HRC/32/50](#) paras 26-30, 34

religious tropes can be mobilised in the ‘racialising’ and ‘othering’ of populations, resulting in discrimination and marginalisation. In some cases, it is particular religious or belief groups which are directly or indirectly discriminated against; in others, any groups who are not accepted as adherents to the dominant religious or secular tradition may suffer disadvantage and ‘othering’.

Given the context-contingent and intersectional nature of xenophobic discrimination, difficulties arise in attempting to capture it through a grounds-based framework, including through that of ‘foreignness’. Atrey proposes the adoption of a harm-based framework which would relate a form of discrimination, such as xenophobic discrimination, to a broader theory of the structural process which generates that discrimination.² This allows xenophobic discrimination to be analysed as the result of a structural injustice, such as what Atrey calls ‘disbelongingness’, in a manner similar to the recognition of disability as a social construct as developed under the Convention on the Rights of Persons with Disabilities.³ Such an approach can facilitate recognition of the role that actual or perceived religion or belief may play in occasioning disadvantage among migrants, their families, and other non-citizens affected by racial discrimination. Public policies aimed at addressing this harm could subsequently be designed in accordance with an inclusive model of equality, embracing not only recognition and redistribution, but also participative and accommodating dimensions, making space for ‘difference as a matter of human dignity’.⁴

The mandate benefitted from the above, inclusive, definitions in addressing the advocacy of hate speech based on religion or belief in the Special Rapporteur’s report A/HRC/55/47 to the Human Rights Council. Whilst freedom of religion or belief should not be collapsed under other headings such as race or non-citizenship, the mandate recognises that discrimination on the basis of religion or belief often finds itself in parallel with targeting on the basis of other characteristics.

5. How xenophobia should be addressed through an intersectionality lens? How this policy should be reciprocally complemented with policies directed to prevent and eradicate racism? Which measures should be put in place for ensuring a gender approach within a comprehensive policy against xenophobia and gender-based discrimination?

² Shreya Atrey, ‘Xenophobic Discrimination’, *The Modern Law Review* (2024), available at <https://onlinelibrary.wiley.com/doi/full/10.1111/1468-2230.12829>

³ See for example Committee on the Rights of Persons with Disabilities, General Comment 6 paras 8-11.

⁴ CRPD, fn 2 para 11.

Which measures should be implemented for intersecting xenophobia with other factors forbidden by the principle of non-discrimination, including age, gender, disability, sexual orientation, racial and ethnic origin, among others?

As noted above, xenophobia is often co-constituted with discourses of religion or belief-based ‘disbelongingness’. As such, it is vital to consider and address xenophobia in light of the patterns of marginalisation which may particularly affect migrants and other non-nationals arising from their professed or perceived religion or belief.

In some States, access to citizenship itself and/or identity documents of fundamental importance in accessing social services is inaccessible to certain religion or belief communities, precipitating egregious denials of the range of human rights.⁵ The existence of official State religions and their discursive association with national, ethnic, and racial identity often severely inhibits the rights of migrants to manifest their religion or belief, such as through limitations on access to places of worship.⁶ Such limitations on the right to freedom of religion or belief tend to fall short of the high standard for limitations established by article 18.3 of the ICCPR: that they must be prescribed by law and must be necessary in order to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

With regard to asylum-seeker policies, tropes and stereotypes concerning religion or belief are often utilised to xenophobic ends. Some States in Europe, for instance, have mobilised discriminatory notions based on religion or belief in order to distinguish ‘good refugees’ (primarily Christians) from those they present as less likely to ‘integrate’ (primarily Muslims) in the interest of ‘cultural cohesion’.⁷ Such explicitly discriminatory policies have been underpinned by discourses from senior political figures presenting Muslims as ‘criminals’ who are ‘impossible to integrate’.⁸ Conversely, many refugees or asylum seekers who are fleeing religious persecution in their country of origins also face suspicion or ignorance concerning the potential risks which their forcible return would precipitate, especially those who have converted *sur place*.⁹

⁵ [A/63/161](#) paras 31-36, [A/78/207](#) paras 14-17.

⁶ [A/64/159](#) para 33.

⁷ [A/HRC/49/44](#) para 51.

⁸ [A/HRC/46/30](#) para 43.

⁹ [A/64/159](#) paras 22-24.

Even if accepted as asylum seekers, certain religion or belief minorities may suffer from particular discriminatory forms of socioeconomic marginalisation, such as in relation to employment, housing and shelter.¹⁰ Discriminatory discourses on the basis of religion or belief may also target certain groups of migrant workers, exacerbating fears that the “native” population’s culture and access to work will be undermined.¹¹ The mandate has further expressed serious concern about policies that only focus on assisting, or offering refugee status, only to members of particular religions at the exclusion of others.¹²

In light of xenophobia’s dynamic intersections with religious or belief-based discrimination, these must be explicitly recognised and addressed through any public policy concerning it. Public policies to address xenophobia should therefore recognise religious or belief-based discrimination as an aspect of xenophobic discrimination, along with its legal parameters and prohibitions. Its role should concordantly be recognised in relevant awareness-raising and educational initiatives, data collection, and the provision of community engagement and support services to victims. The freedom of religion or belief should be protected within the constitutional and legislative order in line with international human rights standards in a manner that robustly protects those belonging to different religions and beliefs on an equal basis.¹³

7. How xenophobia could be addressed in the field of education, in order to: a) eradicate xenophobia at schools, and b) prevent xenophobia in the mid and long term, through education practices and subjects directed to build inclusive and cohesive societies?

Over the 38 years of existence of the mandate, successive Special Rapporteurs have elaborated detailed recommendations concerning the role of education in eradicating religion or belief-based discrimination.

Children from religion and belief minorities are more likely to be subject to discrimination in school environments:¹⁴ this may manifest itself, inter alia, through coercion which may impair their freedom to have or adopt a religion or belief of their choice (*forum internum*) or through limitations on their freedom to manifest their religion or belief (*forum externum*). All

¹⁰ [A/HRC/46/30](#) paras 33, 38.

¹¹ [A/72/365](#) para 19.

¹² [A/HRC/52/38](#).

¹³ [A/78/207](#).

¹⁴ [A/71/269](#) para 53.

Rapporteurs have noted that special attention must be given to protecting the *forum internum* component and the *forum externum* component of freedom of religion or belief, which requires that safeguards be put in place to allow the manifestation of one's religion or belief and the freedom not to be exposed to any pressure to practice religious or belief activities.¹⁵ For instance, when religious instruction or religious ceremonies are performed in school, safeguards are needed to ensure that no child feels compelled to participate against their will or the will of their parents.¹⁶ Moreover, any restriction on the manifestation of religion or belief must comply with the limitations regime under international human rights law.¹⁷ A particular topic in focus here concerns the religious dress of students. Cases of both an imposition of religious dress codes in schools and the denial of access to education for wearing religious dress¹⁸ have arisen, with previous Rapporteurs calling for a 'flexible and tolerant' attitude to religious dress.¹⁹ Other safeguarding recommendations have included removing discriminatory stereotypes from textbooks,²⁰ prohibiting segregated classes, condemning racism in schools,²¹ and preventing disrespectful treatment of children during religious fasting seasons.²² The eradication of xenophobia at schools can be supported through preventing these violations of freedom of religion or belief and promoting a safe space for religious minorities in schools who may be considered as 'other'.

The education system provides a unique opportunity to foster mutual understanding, tolerance, non-discrimination and respect amongst peers to prevent xenophobia in the mid and long term. Previously, Rapporteurs have encouraged a wider knowledge of the diversity of religions and beliefs, and of the history, traditions, languages and cultures of religious minorities in society.²³ Certain pedagogical approaches to religious education in schools can encourage this appreciation, with pupils learning about religions and learning from religion.²⁴ For instance, focusing classes on the comparative history of religions and thought systems helps to emphasise their mutual influences and to deconstruct manipulative discourses portraying

¹⁵ [A/HRC/16/53](#) para 57.

¹⁶ [A/71/269](#) para 55.

¹⁷ [A/73/362](#) para 40.

¹⁸ See Joint Allegation Letter [FRA 13/2023](#).

¹⁹ See how a prohibition on religious dress led to humiliation and stigmatization of female students in France [A/HRC/16/53](#) para 101. Also see [A/75/385](#) para 39 for how regulating religious dress affects access to education for women and girls.

²⁰ [A/HRC/28/66](#) para 42.

²¹ [A/55/280](#) para 116.

²² [A/71/269](#) para 54.

²³ [A/RES/77/221](#) Recommendation 14 (l).

²⁴ [A/HRC/16/53](#) para 47.

religions or beliefs as irreconcilable.²⁵ The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools provides practical guidance on preparing curricula for teaching about religion and beliefs,²⁶ and built on the Consultative Conference on School Education in relation to Freedom of Religion or Belief which were produced under the auspices of the mandate in Madrid in November 2001. The Toledo Guiding Principles include recommendations to encourage religious and belief exchanges, to ensure gender equality, to carry out effective teacher training, and to evaluate existing curricula to determine whether they are impartial, balanced, inclusive, age appropriate, free of bias and meet professional standards²⁷ States ensure that schools serve as a platform for constructive dialogue amongst students, teachers and parents, that can contribute to the elimination of negative stereotypes that affect religious or belief minorities and those considered as ‘other’ in the mid and long term.

10) Which standards should be added to those already existing for preventing, eradicating and prosecuting hate speech, including through digital technologies?

In her 2024 report to the Human Rights Council, the Special Rapporteur considered transformative approaches to the advocacy of hatred based on religion or belief.²⁸ The report notes that hatred on the basis of religion or belief intersects and overlaps with other structures of marginalisation, including xenophobia.

Numerous tools exist within the international legal order to guide states in responding to advocacy of hatred based on religion or belief within the framework of international human rights law, notably the United Nations Strategy and Plan of Action on Hate Speech, and the Rabat Plan of Action. The latter provides States with a six-part threshold test to identify the types of hate speech which must be prohibited in accordance with international human rights law. This must be determined on a case-by-case basis in order to avoid undue infringement of human rights, including of freedom of religion itself.

Debates concerning advocacy of hatred based on religion or belief have tended to foreground a dichotomy of criminalisation and counter-speech as the tools to address it. The Special Rapporteur recognises both approaches as important and necessary. Nonetheless, thoroughly

²⁵ See the 2019 report to the General Assembly of the Special Rapporteur on the right to education.

²⁶ See <https://www.osce.org/files/f/documents/c/e/29154.pdf>

²⁷ [A/HRC/16/53](#) para 61.

²⁸ [A/HRC/55/47](#).

addressing the scourge of hatred requires a broader transformative toolkit which also draws on the promotion of dialogue and collaboration; training and oversight of government officials; educational projects; encouraging representation and promoting freedom of religion or belief; and multilateral cooperation through international fora set up towards this end.

12) Which could be the role of local governments within a comprehensive policy directed to prevent and eradicate xenophobia and its impact on the rights of migrants, their families and local community?

The role of local and municipal governments is of fundamental importance to the effective protection and promotion of the right to freedom of religion or belief. Lamentably, it is often laws and regulations, as well as the actions or inactions of particular functionaries at the local level which occasion denial of this right. The Special Rapporteur's 2023 thematic report to the General Assembly cites several examples in this regard.²⁹ These include establishment of official religions and associated religious codes at regional or local level, limitations or prohibitions on the activities of certain minority faiths, anti-conversion laws, or the imposition of particular laws for particular religious groups. The Special Rapporteur has also received credible and alarming reports of the direct involvement of local government functionaries refusing to prevent, or being involved in direct violence, or incitement thereto, on the basis of religion or belief.

A further key issue arising at the local level is that of land, zoning, and tenure. Local authorities are often responsible for the allocation of land necessary for worship or burial, security of tenure for religious or belief minority communities, and the demarcation of protected indigenous land. Regrettably, in this context, violations of the freedom of religion or belief with a devastating effect on individuals and communities are occasioned, including inhibition or arbitrary rejection of permits for the maintenance of places of worship or burial; their closure, desecration, or destruction; the forcible reallocation of contested religious sites to a dominant tradition; evictions, and denial of access to housing.³⁰

In this context, local government has a central role to play in any public policy aimed at eradicating xenophobia, including as it relates to religion or belief. Such a policy should recognise not only the diversity of religious or belief traditions, but the diversity within them.

²⁹ [A/78/207](#) paras 29-26.

³⁰ *ibid*, paras 27-32.

It should mandate the participation of religious or belief minorities, including migrant workers, their families, and racial, ethnic, or national minorities and non-citizens in matters which may affect them. It must involve such groups and their representatives, as desired, in activities aimed at promoting mutual understanding, and dismantling stereotypes and prejudices at the local level, including among functionaries and law-enforcement operators. It must also provide for the prohibition of incitement to national, racial, or religious hatred, discrimination or violence in line with the Rabat Plan of Action, and access to effective remedy for victims of xenophobic and religious or belief-based discrimination.