



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

SUBMISSION TO THE SPECIAL RAPPORTEUR ON FREEDOM OF
RELIGION OR BELIEF

**Response to the Call for Input: Advocacy of Hatred Based
on Religion or Belief - Transformative Responses**

October 2023, Geneva, Switzerland

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Introduction

1. ADF International (ECOSOC registered name 'Alliance Defending Freedom') is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.
2. In response to the call for inputs on the issue of 'advocacy of hatred based on religion or belief,' this written contribution underscores how the inherent ambiguity within this concept leads to a fragmented and ultimately detrimental implementation of relevant laws and other measures limiting freedom of expression as well as freedom of religion or belief.
3. Furthermore, it argues that restrictive approaches to combatting advocacy of hatred based on religion or belief do not address the root causes of intolerance and may instead exacerbate discrimination and other human rights violations experienced by persons belonging to religious or belief minorities.
4. Lastly, this submission advocates for an increased emphasis on 'enabling measures' designed to empower religious minority communities to counter and dismantle prejudicial narratives, including negative stereotypes as well as false accusations against them, on the basis that such measures foster the effective enjoyment of both freedom of religion or belief and freedom of expression.

(a) Definition of Advocacy of Hatred Based on Religion or Belief

5. Although the term is widely used in both national and international legal and policy frameworks, there is no universally accepted definition of 'advocacy of hatred' in international human rights law, including within the sphere of religion or belief.
6. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hereinafter, the 'Rabat Plan of Action'), launched in 2012 by the United Nations Office of the High Commissioner for Human Rights and considered to be one of the most influential documents in this field, does not provide a specific definition of 'advocacy of hatred.' Instead, it acknowledges that such expression may be subject to restrictions to the extent that they align with the criteria outlined in Articles 18, 19 and 20(2) of the International Covenant on Civil and Political Rights (ICCPR).¹
7. With specific regard to the advocacy of hatred governed by Article 20(2) of the ICCPR, the Rabat Plan of Action underscores that 'the terminology relating to offences on incitement to national, racial or religious hatred varies from country to country and is increasingly vague.' Additionally, it cautions that 'the broader the definition of incitement to hatred is in domestic legislation, the more it opens the door for arbitrary application of the laws.'² In this regard, the Rabat Plan of Action calls for 'robust definitions of key terms such as hatred, discrimination, violence, hostility, among others.'³

¹ UN Office of the High Commissioner for Human Rights, 'Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (October 2012) UN Docs A/HRC/22/17/Add.4, Appendix, para 14.

² Id., para 15.

³ Id., para 21.

8. Notwithstanding the potential value of the guidance contained in the Rabat Plan of Action, as well as other sources such as the so-called Camden Principles drafted by the civil society organization Article 19,⁴ these documents neither bear the status of intergovernmentally accepted standards, nor do they offer the requisite clarity to address the ambiguity surrounding the concept of ‘advocacy of hatred.’
9. Within this context, it is crucial to emphasize that this ambiguity is *inherent* and not solely a result of the lack of a definition, no matter how robust. Regardless of the level of precision with which the concept may be defined, it remains susceptible to abuse owing to the fundamentally subjective nature of [what constitutes] ‘hatred.’ Similar concerns arise regarding the threshold for conduct to qualify as ‘advocacy.’ For example, these terms are often misused to justify the prosecution of alleged acts of blasphemy and other offenses against religion.
10. Although they may be intended to prevent human rights violations, including of persons belonging to religious or belief minorities, laws or other measures prohibiting or otherwise imposing restrictions on advocacy of hatred based on religion or belief inherently carry the risk of inconsistent and often discriminatory application, both within and among countries. Moreover, these laws often end up being abused to infringe on the right to freedom of religion or belief of minorities under the guise of ideological security concerns, thus exacerbating such persons’ vulnerability to violations in practice. The following examples, reflective of a wider, cross-regional trend, highlight such risks.

Country Examples

11. In Malaysia, Articles 298 and 298a of the Penal Code criminalize expression ‘with deliberate intention of wounding the religious feelings of any person,’ or which is likely to cause ‘disharmony, disunity, or feelings of enmity, hatred or ill will,’ or prejudices ‘the maintenance of harmony or unity, on grounds of religion, between persons or groups of persons professing the same or different religions.’⁵ In practice, these provisions have resulted in the deliberate suppression of expression deemed offensive to the state religion, even leading to the imprisonment of individuals for social media posts considered insulting to Islam.⁶ For instance, the Supreme Court of Malaysia only recently repealed a 1986 ban on the use of the term ‘Allah’ in non-Muslim publications, which had been intended to ‘ensure public order and avoid misunderstanding between Muslims and Christians’ despite no evidence of the term’s allegedly harmful nature.⁷
12. In the Russian Federation, Article 29 of the Constitution prohibits ‘propaganda or agitation instigating social, racial, national or religious hatred and strife.’⁸ This is operationalized *inter alia* in Penal Code Articles 282 and 282.1, which prohibit acts aimed at ‘incitement of hatred or enmity’ as well as membership in ‘extremist communities’ respectively.⁹ In

⁴ Article 19 ‘The Camden Principles on Freedom of Expression and Equality’ (April 2009)

<https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>, p.10.

⁵ Malaysia Penal Code (2018), arts. 289 & 289A.

⁶ For a comprehensive overview of the specific laws and cases in Malaysia, see ADF International’s submission to the 45th session of the Universal Periodic Review: <https://adfinternational.org/malaysia-45th-session/>.

⁷ I. Lim ‘Explainer: High Court’s 96-page judgment on why Malaysia’s 1986 ‘Allah’ ban was quashed in Jill Ireland’s case’ (24 March 2021) <https://www.malaymail.com/news/malaysia/2021/03/24/explainer-high-courts-96-page-judgment-on-why-malaysias-1986-allah-ban-was/1960449>.

⁸ The Constitution of the Russian Federation, art. 28.

⁹ The Criminal Code of the Russian Federation, arts. 282 & 282.1.

accordance with this vague terminology, stringent and often discriminatory restrictions on religious activity and expression have been implemented in the country, affecting unregistered minority groups in particular. One such example is the country's counter-extremism laws, whose misuse by authorities has resulted in the targeting of so-called 'undesirable organizations' and members of religious groups whose activities are regarded as disruptive.¹⁰

13. In Nigeria, 'insulting or seeking to incite contempt of any religion in such a manner as to be likely to lead to a breach of the peace' is a crime punished under Article 210 of the Penal Code.¹¹ Several of the country's northern States implement Sharia law in such a way that allows for the imposition of the death penalty for blasphemy. The constitutionality of such penalties is currently being challenged before the Supreme Court in relation to the case of Yahaya Sharif Aminu, a young Sufi musician, who was given a death sentence by a Sharia Court in Kano State for sharing allegedly blasphemous lyrics via social media.¹² Supporters of Sharif Aminu's execution have openly defended his conviction, arguing that it serves as a deterrent against future offenses against Islam.¹³

(b) Restrictive Measures Tackling Advocacy of Hatred Based on Religion or Belief

14. In light of the inherent ambiguity discussed above, questions arise as to the scope of permissible limitations on expression deemed to constitute 'advocacy of hatred based on religion or belief' under international human rights law.
15. It is important to underscore that, as observed by former Special Rapporteur on freedom of opinion and expression Frank La Rue, the prohibition of advocacy of, inter alia, religious hatred constituting incitement to discrimination, hostility or violence enshrined in Article 20(2) of the ICCPR does not equate to criminalization. In his opinion, only where such advocacy constitutes 'serious and extreme instances of incitement' should criminal measures be considered.¹⁴ In this regard, it is also important to highlight that La Rue identified 'real and imminent danger of violence resulting from the expression' as the foremost criterion for assessing the appropriate response to different types of expression.¹⁵
16. The imperative to limit criminalization to only the most serious instances of incitement, combined with the inherent ambiguity surrounding the concept of 'advocacy of religious hatred,' leads to the conclusion that only cases where a clear connection to real and imminent violence can be unequivocally established should be subject to criminal penalties. In any other circumstance, a universal mandate for criminalization would inevitably result in subjective, disproportionate, or discriminatory enforcement, ultimately impairing the enjoyment of a wide range of human rights and fundamental freedoms.

¹⁰ For a comprehensive overview of the specific laws and cases in Russia, see ADF International's submission to the 44th session of the Universal Periodic Review: <https://adfinternational.org/russian-federation-44th-session/>.

¹¹ Nigeria Penal Code (1998), art. 210.

¹² For a comprehensive overview of the specific laws and cases in Nigeria, see the joint submission to the 45th session of the Universal Periodic Review: <https://adfinternational.org/nigeria-45th-session/>.

¹³ Vanguard News 'Blasphemy: I'll not hesitate to sign death warrant — Ganduje' (August 2020) <https://www.vanguardngr.com/2020/08/blasphemy-ill-not-hesitate-to-sign-death-warrant-ganduje/>.

¹⁴ F. La Rue 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (7 September 2012) UN Docs A/67/357, para 47.

¹⁵ Id., para 46.

17. Turning to advocacy of hatred based on religion or belief that does not constitute incitement to violence nor falls within the broader parameters outlined in Article 20(2), international human rights law does not impose an obligation to limit such expression. Article 19 of the ICCPR merely provides that such expression ‘*may* be subject to certain restrictions,’ in accordance with the narrow criteria set forth in Article 19(3), with due respect for the principles of legality, necessity and proportionality.¹⁶
18. However, even where potentially permissible, practice shows that such restrictions consistently fall short of addressing the root causes that underlie religious hatred and often perpetuate or exacerbate societal hostility. Simultaneously, they contribute to a chilling effect on free expression, including religious expression. These challenges have been eloquently highlighted by former Special Rapporteur on freedom of religion or belief, Professor Heiner Bielefeldt, especially in regard to the peaceful propagation of religion. In particular, Professor Bielefeldt acknowledged that ‘often the mere existence of such legislation has a chilling effect on communicative outreach activities.’¹⁷ This is illustrated by the following examples.

Country Examples

19. In Pakistan, Article 153A of the Penal Code criminalizes the conduct of ‘promoting enmity between different groups,’ including the use of words to promote or incite ‘disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities.’ It also prohibits committing or inciting others to commit ‘any act which is prejudicial to the maintenance of harmony [...] and which disturbs or is likely to disturb public tranquility.’¹⁸ Chapter XV also outlines a wide range of ‘offenses relating to religion,’ including ‘outraging religious feelings of any class by insulting its religion or religious beliefs.’¹⁹
20. Since the introduction of more stringent blasphemy laws in 1987, the number of such accusations has been steadily increasing. In its first year of enforcement, only 20 blasphemy cases were reported. By 2020, this number had increased tenfold to 208 cases in one year.²⁰ This stands in blatant contrast with the purported aim of these laws to, inter alia, ‘prevent hate speech or hate crime towards religious minorities.’²¹
21. Far from leading to a decrease in religious hostility, there appears to be a clear and direct correlation between these laws and the frequent incidents of mob violence against religious minorities taking place across the country. Since 1990, over 85 persons have been murdered in connection with accusations of blasphemy and other religious offenses.²² In August 2023, thousands of Christian families in the Jaranwala area were forced to flee their homes due to a large mob that had gathered in response to an alleged blasphemous act. As a result of the violent attack, 21 churches and hundreds of homes

¹⁶ ICCPR, art. 19(3).

¹⁷ H. Bielefeldt ‘Elimination of all forms of religious intolerance’ (13 August 2012) UN Docs A/67/303, para 44.

¹⁸ Pakistan Penal Code (2012), art. 153A.

¹⁹ *Id.*, ch. XV.

²⁰ Centre for Social Justice ‘Human Rights Observer’ (March 2023), https://csjpak.org/pdf/Human_Rights_Observer_2023.pdf, p.10-11.

²¹ Government of Pakistan ‘Second periodic report submitted by Pakistan under article 40 of the Covenant, due in 2020’ (7 December 2022) UN Docs CCPR/C/PAK/2, para 100.

²² H. Janjua ‘How Pakistan’s blasphemy laws stir vigilante violence’ (August 2023) Deutsche Welle, <https://www.dw.com/en/how-pakistans-blasphemy-laws-stir-vigilante-violence/a-66589240>.

were destroyed. Police arrested two Christians based on scant evidence, while doing nothing to prevent the mob violence.²³

22. In Singapore, the 1990 Maintenance of Religious Harmony Act (MHRA) gives the Minister of Home Affairs the authority to issue restraining orders against religious leaders for, inter alia, 'causing feelings of enmity, hatred, ill will or hostility between different religious groups.' Such restraining orders can effectively remove a person's ability to address their congregation, publish religious materials or hold office in a religious institution.²⁴ Moreover, these powers can also be exercised against persons merely for having allegedly encouraged others to act in such a manner.²⁵ Despite often being praised as a pillar of inter-religious tolerance, Singapore's MHRA can effectively curtail the fundamental freedoms of those expressing views deemed by the State as undermining 'religious harmony.'
23. In Poland, Article 196 of the Criminal Code prohibits 'offending the religious feelings of other persons.'²⁶ Despite the low number of cases pursued under this provision, its continued existence has been criticized by national civil society actors, who argue that it has a chilling effect on expression which is deemed to be critical of the Polish Catholic Church.²⁷

(c) Enabling Measures Promoting Freedom of Religion or Belief and Freedom of Expression

24. While significant attention has been devoted to *restrictive* measures to combat advocacy of hatred based on religion or belief, there is a notable lack of attention to *enabling* measures undertaken by states and other actors to foster an open marketplace of ideas where religious or belief minorities are empowered to effectively respond to prejudicial narratives.
25. Article 18 of the ICCPR, particularly in conjunction with Articles 26 and 27, establishes a positive obligation of States to ensure that everyone enjoys their human right to freedom of religion or belief fully. It also requires that persons belonging to minorities are not denied the right to profess and practice their own religion without discrimination.
26. A purely restrictive approach to tackling advocacy of hatred based on religion or belief is akin to treating the symptoms, as it would only address the outward manifestations of the problem, notably by seeking to eliminate expression that may be deemed harmful. Even if restrictive measures were entirely successful in achieving this goal in an objective, impartial, and non-discriminatory manner (which, as articulated above, would be unviable), they would nevertheless fail to target the underlying causes of such hatred.
27. Consequently, a truly transformative approach to tackling 'advocacy of hatred based on religion or belief' requires implementing enabling measures that identify the root causes and promote a dynamic public forum where disputes can be freely and openly articulated,

²³ B. A. Tantray 'Another Example of the Misuse of Blasphemy Laws in Pakistan' (September 2023) The Diplomat, <https://thediplomat.com/2023/09/jaranwala-church-attacks-another-example-of-the-misuse-of-blasphemy-laws-in-pakistan/>.

²⁴ Singapore 2001 Rev. Maintenance of Religious Harmony Act (SGP), art. 8.

²⁵ Id., art. 9.

²⁶ Poland Penal Code (1997), art. 196.

²⁷ Article 19 'Poland : Responding to Hate Speech' (2018), <https://www.article19.org/wp-content/uploads/2018/04/Poland-Hate-Speech.pdf>, p.23.

debated and resolved peacefully. Importantly, this approach combines the protection needs of religious or belief minorities with the empowerment of all actors to express their views on an equal footing, free from undue state or societal restrictions.

28. As highlighted by Professor Heiner Bielefeldt, initiatives aimed at empowering leaders within religious or belief communities and other stakeholders, especially those from targeted groups, to have a voice and help develop societal resilience would be highly relevant in this context.²⁸
29. The latest Pew Research Center's report on global religious freedom highlights that out of 40 countries rating 'high' or 'very high' on its Social Hostilities Index, 26 (65%) criminalize offenses relating to religion. In contrast, only 35 (38%) of the 91 countries rated as having 'low' social hostilities have such provisions.²⁹ This pattern demonstrates at minimum the ineffectiveness of restrictive measures in tackling religious hatred. It may also indicate a positive effect of the absence of such restrictions on promoting religious tolerance.
30. Research further indicates that an increased commitment to guaranteeing freedom of religion or belief for all is the most effective way to combat religious intolerance and attaining authentic societal harmony. According to a comprehensive meta-analysis conducted across various regions in 2012, government-imposed restrictions on freedom of religion or belief were found to lead to increased radicalization and incitement to violence. Conversely, efforts to promote greater freedom of religion or belief are associated with a long-term reduction of violence as they provide, inter alia, peaceful avenues for conflict resolution through the enhanced inclusion of minority voices in social and political life.³⁰
31. In light of the above, ADF International encourages the Special Rapporteur on freedom of religion or belief to emphasize in her next annual report to the Human Rights Council the significance of harnessing the societal benefits of freedom of religion or belief and freedom of expression for everyone. The Special Rapporteur should in this regard call on States to promote authentic religious tolerance by eliminating any arbitrary or discriminatory limitations on the exercise of these fundamental freedoms set under the guise of combatting 'advocacy of hatred based on religion or belief.'

²⁸ Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, 26 December 2013, A/HRC/25/58, para 30.

²⁹ Pew Research Center 'How COVID-19 Restrictions Affected Religious Groups Around the World in 2020' (November 2022), p. 65-66.

³⁰ P. Henne, S. Hudgins, T. Shah 'Religious Freedom and Violent Religious Extremism: A Sourcebook of Modern Cases and Analysis' (December 2012) Berkeley Center: Religious Freedom Project, p. 7-11.



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