
**ADVOCACY AGAINST
HATRED BASED ON
RELIGION AND
BELIEFS -
TRANSFORMATIVE
RESPONSES**

**CONTRIBUTIONS FROM:
The Federal Public
Defenders' Office**

**INPUTS TO THE:
Special Rapporteur on
freedom of religion or
belief thematic report**

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FEDERAL PUBLIC DEFENDERS' GENERAL OFFICE

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Brasília, 29 September 2023.

Concerning the Call for Contributions from the OHCHR: "Advocacy against hatred based on religion and beliefs - transformative responses," the Working Group for the Assistance to Traditional Communities (GTCT) submits the following text as its contribution:

• **How, if at all, is advocacy of hatred defined in legal and policy frameworks, and how does it relate to intolerance, discrimination, and violence based on religion or belief?**

Hatred represents the non-acceptance of differences, i.e., intolerance. In this sense, incitement to hatred or advocacy of hatred can be defined as any form of communication that promotes violence, discrimination, hostility, or contempt against individuals or groups based on characteristics such as race, religion, ethnicity, gender, sexual orientation, disability, and nationality. Racism, xenophobia, and religious discrimination are examples of advocacy of hatred that constitute serious violations of human rights and deny the obvious truth that all human beings are born free and equal in dignity and rights.^[1]

Regarding religious discrimination, it should be noted that religion can be conceptualized as a set of beliefs related to the divine and the sacred, permeated by a series of rituals and moral codes derived from such convictions.

Indeed, it constitutes a criminal offense of religious racism to "**obstruct, prevent, or use violence** against any religious expressions or practices". On the other hand, religious insult occurs when there is an offense to the victim due to **the use of elements related to religion**.^[2]

It is noteworthy that religious racism is not limited to physical violence and can also be classified as a criminal offense when the violence is psychological, as is the case with threats.

The main objective of the legal provision of these crimes is to punish regrettable manifestations of religious intolerance against certain religions, especially African-derived religions, which suffer historical prejudice in Brazil.

Therefore, religions are cultural expressions that must be valued and protected by the State, in line with the cultural pluralism provided for in Article 215, head provision, and Paragraph 1, of the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988).^[3]

• **How are prejudicial attitudes among State actors, including law enforcement and justice operators, monitored, recognised and addressed? Please provide examples of the effectiveness, or otherwise, of such policies and practices.**

Prejudiced and discriminatory attitudes among State actors create inequalities in the justice system and the enforcement of the law and, above all, affect public trust in state institutions.

Thus, the National Council of Justice (CNJ) nationalized the monitoring of cases of violations of the right to religious belief that are investigated and tried via the judicial system.

The fight against religious intolerance, due to its thematic relevance, prompted the CNJ to create the National Policy for the Promotion of Religious Freedom and the Fight Against Intolerance within the Brazilian judiciary, as provided for in CNJ Resolution No. 440, created in January 2022.^[4]

The Implementation of this Policy is based on the fact that the Brazilian State is secular and ensures that all freedoms of conscience, belief, and religion are respected, as established in Article 5, Items VI, VII, and VIII, and Article 19, of the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988).^[5]

The Universal Declaration of Human Rights of 1948, in its Article 18, makes express provisions for religious freedom, including in its clauses, provisions addressing the right to change religion, the right to belief, and the freedom to express it.^[6]

The landmarks for religious freedom are outlined in Article 12 of the American Convention on Human Rights (Pact of San José, Costa Rica), which emphasizes that religious freedom cannot be subject to restrictive measures that limit it.^[7]

Thus, all states must adopt effective measures inherent to prevent and eliminate all forms of religious discrimination and its manifestations, which is in line with Article 4, Paragraph 1, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).^[8]

Monitoring of violence against religions and beliefs can also be carried out through the Dial Human Rights - Dial 100, which is a public utility service created by the Ministry of Human Rights and Citizenship to receive reports of human rights violations, especially those affecting socially vulnerable populations. The service is also responsible for disseminating information and guidance on actions, programmes, campaigns, rights, and human rights consultation, protection, defence, and accountability services available at the federal, state, and local levels, and in the Federal District.

Finally, it is undeniable that these religious groups require equitable treatment, which leads to the creation of affirmative public policies aimed at eradicating discrimination and intolerance, as provided for in Articles 5 and 6 of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. It should be noted that this Convention has the status of a Constitutional Amendment in the Brazilian legal system, under the terms of Article 5, Paragraph 3, of the Constitution of the Federative Republic of Brazil of 1988.^[9]

• **How does hatred based on religion or belief overlap with other grounds of discrimination? How does it complicate the challenge and required responses?**

Following the changes made over the past decades to [Law 7.716/89](#), which criminalizes racial or skin colour discrimination, the law now encompasses the act of discrimination based on religion. For instance, Article 3 prescribes imprisonment for a period of 2 to 5 years for those who "prevent or obstruct someone, duly qualified, from accessing any position in the government, or in public service companies."

The ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance reaffirmed the decision of the Brazilian State to repress racism more severely, in line, indeed, with our Federal Constitution, which inhibited granting bail and the application of the statute of limitations to crimes motivated by racial discrimination.

As a result of the provisions of Article 4 of the international text, Brazil has committed to preventing, eliminating, prohibiting, and punishing all acts and manifestations of racism, racial discrimination, and related forms of intolerance, in accordance with its constitutional norms and the provisions of the Convention.

Therefore, Article 10 of the aforementioned Convention requires Brazil to commit to ensuring victims (i) equitable and non-discriminatory treatment, (ii) equal access to the justice system, (iii) efficient and effective processes, and (iv) fair reparation within both civil and criminal proceedings, as appropriate to each specific case.^[10]

Concerning other forms of discrimination, the Federal Supreme Court^[11] and the Superior Court of Justice^[12] have the same understanding when it comes to the crime of racial insult, deeming it a subtype of racism, non-prescriptible, non-bailable, and subject to imprisonment. In response to various forms of discrimination, Law 14,532/2023 was enacted on 11 January 2023. It provides, in its Article 20-C, that the judge is to consider as discriminatory any conduct or treatment towards an individual or group that results in "...embarrassment, humiliation, shame, fear, or undue exposure, and which would not ordinarily be applied to other groups based on skin colour, ethnicity, religion, or origin."

- **How is hatred based on religion or belief countered at different levels, by State actors alone or in partnership with other actors, and to what effect? Have these resulted in prohibitions on expression and, if so, please detail how these measures are consistent with upholding international human rights obligations?**

Crimes that violate religious belief and freedom are investigated and reported via the Brazilian Cybercrime Reporting Centre, which is operated in partnership with the Public Prosecution Services and the Secretariat of Human Rights of the Republic (linked to the Ministry of Human Rights and Citizenship) as a means to combat cybercrimes that violate Human Rights.^[13]

Thus, regarding indicators, it is noteworthy that:

In 17 years, the Reporting Center has received and processed 276,784 anonymous reports of Religious Intolerance involving 23,798 distinct web pages (URLs) (of which 18,999 were removed), written in 9 languages and hosted on 1,928 different domains, from 51 different top-level domains, and connected to the Internet through 3,573 distinct IP numbers assigned to 38 countries on 5 continents. Reports were registered by the population through the three Brazilian hotlines that make up the Brazilian Cybercrime Reporting Centre.

As a result, Brazil is currently the 5th country in the world with the most reports and lawsuits involving cases of religious intolerance. The three most reported domains are: 1) uol.com.br; 2) globo.com; 3) terra.com.br.^[14]

Religious intolerance has become a common practice, extending even beyond the religious environment. The reports received indicate that the crimes occurred at home (36%), no information in this regard (16%), within the religious community (11%), and on the Internet (10%).^[15]

The majority of the victims of this discrimination are affiliated to: 1) no information in this regard (35%); 2) African-derived religions (27%); 3) Protestantism (16%); 4) Catholicism (8%); and 5) Spiritism. Among the types of religiously motivated violence, psychological violence is the most common (66%), followed by moral (9%), institutional (7%), physical (7%), and patrimonial (5%), with acts (2%), negligence (3%), and sexual (1%) accounting for the remaining cases.^[16]

Brazil has sought to facilitate access to information about the rights of victims and promote essential communication channels for providing humane care to victims, ensuring greater effectiveness in protecting their rights.

Provide details of legislative initiatives and case law, public policies, programmes, and projects aimed at countering hatred, intolerance and discrimination.

Law No. 14,532/2023 brought about more severe changes regarding the punishment of perpetrators, addressing the notion of *novatio legis in pejus*, and prescribing penalties for religious and recreational racism, as well as intolerance committed by government officials.^[18]

Law No. 14,532/2023 also inserted Paragraph 2-B in Article 20, making provisions for an equivalence to racism:

Article 20 (...)

Paragraph 2-B Without prejudice to the penalty corresponding to violence, those who obstruct, prevent, or use violence against any religious expressions or practices shall incur the same penalties provided for in the head provision of this Article.

This is referred to as religious racism. This main objective of this equivalence is to punish unfortunate manifestations of religious intolerance against certain religions, especially African-derived religions, which have historically faced prejudice in our country.

It is worth noting that the violence referred to in the new Paragraph 2-B of Article 20 is not limited to physical violence; it includes psychological violence, such as threats.

Religious insult, on the other hand, carries a penalty of 1 to 3 years and a fine, when the offense committed against the victim uses elements related to religion.

The Superior Court of Justice (STJ) has an understanding that the principle of insignificance does not apply to discrimination or prejudice based on religion. This is because its application would render the conduct atypical, due to the absence of *tipicidade material*, i.e., when there is no harm or threat of harm to a legally protected interest per the criminal law. This relates to the seriousness of the offense, which must be significant according to criminal law, representing a behavior deemed socially inappropriate.^[19]

Furthermore, it should be noted that the offense outlined in Article 20, Paragraph 2, of Law No. 7,716/1989, consists of expressing superiority in contrast to the inferiority of human collectivities. The Inter-American Convention on Human Rights, in addressing freedom of expression, explicitly states in its Article 13.5 a command for the punishment of hate speech, in accordance with the Brazilian legal system.

Thus, the application of this principle is inadmissible, as the dignity of the human person, equality, cultural pluralism, and public peace do not allow for flexibility to render the conduct atypical in this context of violence related to religious intolerance or discrimination.

Please provide information on the extent to which existing UN tools to counter hatred are used by the various stakeholders with a mandate to uphold human rights.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Declaration), adopted on 8 September 2001, recognising concerns regarding these forms of discrimination, affirmed that Human Dignity establishes that human rights can be enjoyed by all without any sort of discrimination.^[20]

It is believed that the most effective way to combat them is through education, development, the inclusion of anti-hate speech regulations and international human rights obligations, through the enactment of laws and economic and social policy strategies.

Thus, the Action Plan introduced the following measures aimed at reducing these forms of violence^[21]:

1. Developing educational materials that teach young people the importance of tolerance and respect;
2. Combating prejudice before it manifests in violent criminal acts;
3. Establishing working groups consisting, amongst others, of local community leaders, local and national law enforcement officials, to improve coordination, community involvement, training, education and data collection, aiming at preventing violent criminal acts;
4. Ensuring that civil rights laws prohibiting violent criminal acts are strictly enforced;
5. Focusing on data collection regarding violence motivated by racism, racial discrimination, xenophobia, and related intolerance;
6. Providing adequate assistance to victims, and public education to prevent future incidents of violence motivated by racism, racial discrimination, xenophobia and related intolerance;

It is also pertinent to highlight the commitments made by States through the establishment of the UN's 2030 Agenda, which established Sustainable Development Goals (SDGs) to be achieved by 2030. Among the goals outlined by the agenda is Goal 16 "*Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels*" with a focus on the sub-item that proposes "*Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements*".

These measures are aimed at holding governments accountable for enforcing human rights legislation, prohibiting different forms of discrimination, and punishing those who perpetrate them against minorities.

Finally, they should develop public policies to promote access to information so that the public can differentiate facts and opinions, and encourage people to be aware of the causal link between hate speech and the harm caused to victims, as opinions can cross the line of freedom of expression, resulting in hate speech, violating the legal interest protected by equality.

The State must take actions that include combating hate speech in its various forms; providing the necessary assistance to victims of intolerance, seeking compensation for the harm caused, through supervisory and punitive bodies (Public Prosecution Services); as well as guaranteeing access to justice, in a comprehensive and immediate manner. Furthermore, it must provide any necessary health assistance, as in many cases, victims suffer from psychological damage.

• Provide details where possible of civil society-led initiatives of the same.

The Constitution of the Federative Republic of Brazil, in its Article 5, Item VI, states that freedom of conscience and belief is inviolable, ensuring the free exercise of religious practices and the protection of places of worship and their rituals, in accordance with the law.

Thus, states should, in close cooperation, develop partnerships and regularly consult non-governmental organizations and all other sectors of civil society to harness their experience and expertise, contributing to the elaboration of laws, policies, and other initiatives, as well as involving them more closely in the elaboration and implementation of policies and programmes aimed at fighting racism, racial discrimination, xenophobia, and related intolerance.

In this sense, it is worth noting that SaferNet Brasil is a private not-for-profit association established under civil law, that operates nationwide, and has no political party, religious or racial affiliation. It was founded on 20 December 2005, focusing on promoting and defending Human Rights on the Internet in Brazil.^[22]

The Terreiro communities have strengthened their actions in fighting religious racism by developing projects and research that denounce how these practices have been exacerbated. The National Network of Afro-Brazilian Religions and Health (RENAFRO), in partnership with Terreiro Ilê Omolu Oxum and with the support of the International Institute on Race, Equality and Human Rights (Race and Equality), launched an important project called "Respect My Terreiro." The project is aimed at developing actions focused on institutionally strengthening African-derived religious organizations, networks and movements, and civil society organizations that work to fight racism, especially religious racism.

Civil society organizations also play an important role in carrying out research and collecting data in partnership with international and state bodies that guide the formulation of policies to combat religious discrimination and racism. The Observatory of Religious Freedoms of the Centre for Articulation of Marginalized Populations (CEAP), in partnership with other institutions, recently released the II Report on Religious Intolerance: Brazil, Latin America and the Caribbean.^[23]

[1] Available at: http://www.unfpa.org.br/Arquivos/declaracao_durban.pdf. Accessed on 29 Sept 2023

[2] Available at: https://www.buscadordizerodireito.com.br/novidades_legislativas/detalhes/d07e70efcfab08731a97e7b91be644de?categoria=11&critério-pesquisa=e. Accessed on 28 Sept 2023

[3] Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on 27 Sept 2023

[4] Available at: <https://www.cnj.jus.br/tabelas-do-cnj-permitem-monitorar-processos-judiciais-sobre-intolerancia-religiosa/>. Accessed on 27 Sept 2023

[5] Same as [3]

[6] Available at: <https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos>. Accessed on 27 Sept 2023

[7] Available at: https://www.cidh.oas.org/basicos/portugues/c.convencao_americana.htm. Accessed on 27 Sept 2023

[8] Available at: <https://atos.cnj.jus.br/atos/detalhar/4304#:~:text=Institui%20a>

%20Pol%C3%ADtica%20Nacional%20de,%C3%A2mbito%20do%20Poder%20Judici%C3%A1rio%20brasileiro.&tex Accessed on 27 Sept 2023

[9] Same as [8]

[10] Available at: <https://www.direitopenalbrasileiro.com.br/urgente-stf-entende-que-nao-e-possivel-anpp-em-crimes-de-racismo-e-injuria-racial/>. Accessed on 27 Sept 2023

[11] Federal Supreme Court. Full Court. HC 154248/DF, Rapporteur Justice Edson Fachin, ruled on 28 Oct 2021 (Info 1036).

[12] Superior Court of Justice. 6th Panel. AgRg in REsp 1849696/SP, Rapporteur Justice Sebastião Reis Júnior, ruled on 16 June 2020.

[13] Available at: <https://new.safernet.org.br/content/o-que-fazemos>. Accessed on 27 Sept 2023

[14] Available at: <https://indicadores.safernet.org.br/index.html>. Accessed on 27 Sept 2023

[15] Available at: <https://direito.mppr.mp.br/arquivos/File/RelatorioIntoleranciaViolenciaReligiosaBrasil.pdf>. Accessed on 27 Sept 2023

[16] Same as [11]

[17] Available at: <https://www.ufsm.br/midias/arco/intolerancia-religiosa-em-ambiente-escolar-provoca-silenciamento-exclusao-e-evasao-de-estudantes>. Accessed on 28 Sept 2023

[18] Available at: https://www.buscadordizerodireito.com.br/novidades_legislativas/detalhes/d07e70efcfab08731a97e7b91be644de?categoria=11&critério-pesquisa=e. Accessed on 28 Sept 2023

[19] (REsp No. 1,569,850/RN, Rapporteur Justice Sebastião Reis Júnior, Sixth Panel, ruled on 24 Apr 2018, DJe of 11 June 2018.)

[20] Available at: http://www.unfpa.org.br/Arquivos/declaracao_durban.pdf. Accessed on 28 Sept 2023

[21] Same as [14]

[22] Available at: <https://new.safernet.org.br/content/institucional#:~:text=A%20SaferNet%20Brasil%20%C3%A9%20uma,Humanos%20na%20Internet%20no%20Brasil.> Accessed on 28 Sept 2023

[23] https://direitoshumanos.dpu.def.br/wp-content/uploads/2023/06/relatorio_de_intolerancia_religiosa.pdf

