



EQUAL RIGHTS TRUST

The Equal Rights Trust

Response to the consultation by the Special Rapporteur on freedom of religion or belief on the report to the United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16)

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Introduction

1. The Equal Rights Trust is grateful for this opportunity to respond to the Special Rapporteur on the right to freedom of religion or belief in relation to his call for evidence on his upcoming report to the United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16).
2. The Equal Rights Trust is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders – civil society organisations (CSOs), lawyers, government representatives and others committed to using law to create an equal world – providing them with the technical, strategic and practical support they need to work for the adoption and implementation of comprehensive equality laws. In connection with this work, we engage with UN bodies and procedures in order to increase knowledge and understanding of equality law and its role in the realisation of other rights and development.
3. In this short submission, we respond to the Special Rapporteur’s request for evidence on laws, policies and practices which are both directly and indirectly discriminatory on the basis of religion or belief. In our submission, these patterns of discrimination – and their impact on the realisation of the commitment to “leave no one behind” in pursuit of the Sustainable Development Goals - reinforce the need for states to adopt an ***Equal Rights Approach to Sustainable Development***,¹ as developed by the Equal Rights Trust, as a critical means to achieving SDG 16 and the wider SDG agenda.

An equal rights approach to development and its application to SDG 16

4. SDG 16 requires states to “Promote just, peaceful and inclusive societies”. The creation of societies which are just, peaceful and inclusive necessitates the elimination of discrimination and the promotion of equality for groups exposed to discrimination or historic disadvantage. Indeed, this is clearly manifested in the targets within SDG 16: target 16.3, which requires states to “[p]romote the rule of law (...) and ensure equal access to justice for all”, underlines the importance of non-discrimination to effective justice, while 16.7, which requires states to “[e]nsure responsive, inclusive, participatory and representative decision-making at all levels” reflects the centrality of equality and non-discrimination to the achievement of an inclusive society. More directly, target 16B states explicitly that states must “[p]romote and enforce non-discriminatory laws and

¹ See, for example, Equal Rights Trust, “*No One Left Behind: An Equal Rights Approach to Sustainable Development*”, June 2018, available at:

<https://www.equalrightstrust.org/sites/default/files/ertdocs/Equal%20Rights%20Trust%20-%20Presentation%20for%20Consultation%20by%20Special%20Rapporteur%20on%20Right%20to%20Development%20FINAL.pdf>; Fitzgerald, J., “The Sustainable Development Goals: “Leaving No-One Behind” Means Recognising the Role of Equality Law”, *Oxford Human Rights Hub*, September 2019, available at: <https://ohrh.law.ox.ac.uk/the-sustainable-development-goals-leaving-no-one-behind-means-recognising-the-role-of-equality-law/>

policies for sustainable development”, thus recognising the need to adopt an equal rights approach to the development framework as a whole.

5. This recognition of the need to eliminate discrimination and promote equality of participation in order to achieve SDG 16 is itself aligned with the wider commitment to “leave no one behind” which runs throughout the whole SDG framework.² The clearest manifestation of this commitment is in Goal 10, which commits states to “reduce inequality within and between countries” and establishes seven targets aimed at reducing socio-economic and status-based inequalities. Target 10.3 explicitly calls on states to:

Ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard.

6. Taken together, SDGs 16b and 10.3 make the adoption of comprehensive equality laws a functional necessity within the SDG framework. Properly understood, the requirement to adopt “appropriate legislation” to “ensure equal opportunity and reduce inequalities of outcome” and to “enforce non-discriminatory laws (...) for sustainable development” necessitates the adoption of comprehensive equality legislation. Accordingly, to a significant extent, targets 10.3 and 16b reinforces states’ existing obligations under international human rights law: almost all states are party to one or more instruments under which they are required to adopt comprehensive equality law.³
7. Equally, the achievement of targets 16B and 10.3 is impossible if states do not eliminate discriminatory laws, policies and practices. This is underlined explicitly in the language of target 10.3 itself and is implicit within target 16B. Again, this is consistent with states’ existing obligations under international human rights law to ensure the enjoyment of human rights without discrimination.⁴ More broadly, as noted above, the achievement of SDGs 16 necessitates the elimination of discrimination, as a precondition for the creation of societies which are peaceful, just and inclusive.
8. In this submission, we present selected evidence of patterns of discrimination on the basis of religion and belief, which we have gathered through our work supporting equality defenders around the world. The examples provided are illustrative, not exhaustive; they do not reflect a comprehensive assessment of such patterns of discrimination either globally or within the countries cited. In our assessment, patterns of discrimination such as those we highlight here represent a continuing failure by states to meet their commitments under target 16B, and a critical obstacle to the achievement of the wider aims of SDG 16 and indeed of the wider SDG agenda.

² United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1, October 2015, available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

³ In total, 171 states are parties to the International Covenant on Civil and Political Rights (ICCPR) and 168 states are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see: UN Office of the High Commissioner for Human Rights, “Status of Ratification”, available at <http://indicators.ohchr.org/> (accessed 5 June 2018)); Article 26 ICCPR states that “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”, an obligation which the Human Rights Committee has noted requires the adoption of comprehensive equality legislation (see, for example: Human Rights Committee, *Concluding Observations: Iceland*, CCPR/C/ISL/CO/5, 31 August 2012, Para 6). The Committee on Economic, Social and Cultural Rights has stated that “adoption of legislation to address discrimination is indispensable” to comply with the right to non-discrimination under Article 2 ICESCR (Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc E/C.12/GC/20, 2009, Para 37).

⁴ *Ibid.* Under Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states guarantee the enjoyment of the rights provided in those Covenants without discrimination.

Moreover, these patterns of discrimination constitute an ongoing violation of their obligations to ensure non-discrimination under international human rights law. We call on the Special Rapporteur to recommend that states eliminate laws, policies and practices which discriminate against members of religious minorities in the ways which we evidence in this submission.

9. Beyond this, however, we urge the Special Rapporteur to adopt a comprehensive approach to analysing the need to eliminate religious discrimination as a means to the achievement of SDG 16. Such a comprehensive approach would entail: (1) addressing discrimination on the basis of religion or belief as one form of discrimination, but one which can only be effectively addressed through a comprehensive, intersectional approach; (2) addressing the relevance of eliminating discrimination to the whole SDG agenda, including in particular SDG 10; and (3) addressing the need for states to not only eliminate discriminatory laws and policies, but also to adopt specific, comprehensive equality laws.
10. In particular, we urge the Special Rapporteur to make a clear recommendation that states adopt specific, comprehensive equality laws as an integral element of their efforts to achieve SDG 16 and the wider agenda. While discrimination represents a significant barrier to development, equality laws provide the means of removing this barrier and driving sustainable development. Ultimately, states will only eliminate the discrimination which frustrates the achievement of the SDGs through the adoption and implementation of comprehensive equality law.

Laws, policies and practices which discriminate on the basis of religion or belief

11. In this section, we present selected evidence of discrimination on the basis of religion or belief. As noted above, the evidence presented here is not exhaustive and does not represent a comprehensive assessment of patterns of discrimination either between states or within those states which are referenced. Instead, these examples are presented as a means to illustrate three discriminatory patterns, well-documented across the Trust's work: (i) the discriminatory impacts of laws and policies which impose a uniform understanding of national identity around one religion; (ii) the discriminatory impacts of registration regimes for religious practices and institutions; (iii) the discriminatory impacts of laws, policies and practices which restrict the manifestation of religion or belief by members of minority communities; and (iv) discrimination against members of minority religious communities in other areas of life.

(i) Laws and policies imposing a uniform understanding of national identity around one dominant religion

12. Constitutional and other legal provisions which impose a uniform understanding of national identity around a dominant religion inevitably have a directly discriminatory impact on those who hold alternative beliefs. Our research has found that a number of states maintain such legal regimes, despite the fact that such laws contravene their obligations under international human rights law to ensure non-discrimination in the enjoyment of rights, including the right to freedom of religion or belief, and their commitments, within the SDGs, to repeal discriminatory laws.
13. In Egypt, for example, Islam is afforded legal primacy and the Constitution limits the "freedom of practicing religious rituals and establishing worship places" to the "revealed religions" of Islam, Christianity and Judaism.⁵ In Pakistan, Articles 41 and 62 of the Constitution restrict eligibility to the office of the President and membership of the Parliament to Muslims.⁶ The Penal Code contains a number of offences specifically associated with the manifestation of religious belief by the Ahmadiyya community: prohibiting Ahmadi persons from referring to themselves as Muslim, and from referring to Ahmadi places of worships as 'mosques' or 'masjids'.⁷

⁵ Constitution of the Arab Republic of Egypt 2014, Article 64.

⁶ Constitution of the Islamic Republic of Pakistan, Articles 41 and 62.

⁷ Pakistan Penal Code 1860, Section 298-B(2).

(ii) Registration regimes for the establishment and operation of religious organisations and institutions

14. Our work with civil society has identified a significant number of states which maintain strict registration requirements for the establishment and operation of religious organisations and institutions, and impose penalties for religious practice outside of registered religions. For example, our 2017 report *Legacies of Division: Discrimination on the Basis of Religion and Ethnicity in Central Asia* found that Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan “maintain notably similar legal frameworks which tightly regulate the practice of religion”.⁸ As we noted, in each of these states:

*Those wishing to practice religion are forced to register a religious association, or face administrative (or in some cases criminal) penalties. Registration requirements are onerous, indirectly discriminating against minority groups which lack the membership to meet threshold requirements, or the resources to comply with administrative requirements. In each case, registration involves a process of theological review, creating ample space for direct discrimination in application.*⁹

15. In many cases, these registration requirements are onerous or impracticable for smaller, less-well established, heterodox or stigmatised groups. As a result, the application of these requirements results in indirect discrimination against members of minority religious communities. In Kyrgyzstan, for example, the requirement for groups to identify 200 members to support an application in order to register is unattainable for some communities, given, inter alia, restrictions on the ability of non-registered groups to assemble,¹⁰ and the unwillingness of some religious communities, such as the Bahá’í, to be identified.¹¹ In Kazakhstan, the sheer number of small religious groups who have been forced to close due to difficulties meeting the registration requirements underlines the indirect discriminatory impact of the requirements: as of October 2012, the implementation of a 2011 law on religious practice had resulted in the closure of more than 1,400 religious associations.¹²
16. We also found evidence of discrimination as a result of the discretionary application of registration requirements, with examples of statutory bodies responsible for the registration of religious associations have refused registration even where the objective requirements have been met.¹³ A particularly problematic aspect of these processes permits statutory bodies to refuse registration on the basis of a theological review and scrutiny by “state confessional experts”.¹⁴ In

⁸ Equal Rights Trust, *Legacies of Division: Discrimination on the basis of religion and ethnicity in Central Asia*, 2017, p. 8, available at: <https://www.equalrightstrust.org/sites/default/files/ertdocs/Legacies%20of%20Division.pdf>.

⁹ *Ibid.*

¹⁰ Equal Rights Trust, *Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan*, 18 December 2016, pp. 125-126, available at: http://www.equalrightstrust.org/ertdocumentbank/Kyrgyzstan_EN_0.pdf.

¹¹ Forum 18, “Kyrgyzstan UPR submission”, UPR Info, June 2014, Para 12, available at: http://www.upr-info.org/sites/default/files/document/kyrgyzstan/session_21_-_january_2015/forum_18_-_forum_18.pdf; Bayram, M., “Kyrgyzstan: “Don’t meet for worship””, Forum 18 News Service, 13 August 2009, available at: http://www.forum18.org/archive.php?article_id=1336.

¹² The News, “The number of religious organisations in Kazakhstan decreased by 32%”, The News, 25 October 2012, available at: <https://thenews.kz/2012/10/25/1241977.html>; Agency for Religious Affairs of the Republic of Kazakhstan, Report on the situation with religious freedom in the Republic of Kazakhstan, 2014, p. 3, available at: <https://www.kazembassy.ge/REPORT.pdf>.

¹³ See above, note 9.

¹⁴ *Ibid.*, pp.49.

2013 in Kazakhstan, the government issued a non-binding manual for the use of religious experts which provides for, among other things, an evaluation of “specific beliefs (...) which are deemed socially undesirable though not prohibited by law”.¹⁵ Theological reviews are particularly problematic in contexts like Kazakhstan, where a majority religion enjoys significant support from the state.

(iii) Laws and practices restricting the right to manifest freedom of religion or belief of minority religious communities

17. The Trust is further concerned by laws and practices which restrict the manifestation of religious belief – or lack thereof – of minority religious communities, atheists, and members of heterodox sects. In a study on religious discrimination of Kazakhstan, the Kyrgyz Republic, Tajikistan and Uzbekistan, we found that counterterrorism, and extremism laws are used to limit the manifestation of religious belief among groups engaged in peaceful religious observance. In Tajikistan, for example, the Law “on the Fight Against Extremism” has been used to prohibit peaceful, minority religious groups.¹⁶
18. In Uzbekistan, we found that provisions in the Criminal Code were used to penalise individuals pursuing religious belief which contradicted the state-endorsed interpretation of Islam.¹⁷ In Egypt, provisions in the Penal Code criminalise actual or perceived criticism of the “revealed religions”¹⁸ and have been used to arrest individuals expressing atheist views on Facebook: a clear denial of “the right not to profess any religion or belief”.¹⁹

(iv) Laws and practices discriminating against minority religious communities in other areas of life

19. Beyond the application of discriminatory legal and policy regimes, we have documented patterns of discrimination against religious minority communities in numerous areas of life, restricting their participation and representation in public life, access to education, goods, and services. These patterns include the multiple and intersecting discrimination faced by women and girls who are members of, or are perceived to be, members of minority religious communities.
20. In Pakistan, Ahmadis face barriers in registering to vote, applying for national ID cards and passports.²⁰ In Egypt, consistent with the special constitutional status afforded to the “revealed religions”, national identity cards have historically only recognised Islam, Christianity and Judaism when recording an individual’s identity. In 2009, a decree issued by the Ministry of the Interior recognised the right of adherents of “non-recognised” religions to obtain a national

¹⁵ Research-and-Development Analytical Centre for the Matters of Religions, *Guidance Manual on the Matters of Conducting a Religious Expertise*, 2013, p. 14, available at: www.din.gov.kz/details/ndownload.php?fn=291&lang=rus.

¹⁶ See above, note 9, pp.61.

¹⁷ Ibid, pp.60.

¹⁸ Law No. 58 of 1937 “on the Penal Code”, Article 98(f), 161(1) and 161(2).

¹⁹ See: Samir, A., “Café destroyed in Abdeen to counter its ‘atheist’ patrons”, *The Cairo Post*, 14 December 2014, available at: <http://www.thecairopost.com/news/130812/news/cafe-destroyed-inabdeen-to-counter-its-atheist-patrons>, And: The Law Library of Congress, “Egypt: Parliament Discusses New Bills Criminalizing Atheism and Homosexuality”, 26 January 2018, available at: <http://www.loc.gov/law/foreign-news/article/egypt-parliament-discusses-new-bills-criminalizing-atheism-and-homosexuality>.

²⁰ See: Human Rights Watch, “Pakistan: Ensure Ahmadi Voting Rights”, *Human Rights Watch*, 28 June 2018, available at: <https://www.hrw.org/news/2018/06/28/pakistan-ensure-ahmadi-voting-rights>.

identity card, but specified that officials should instead place a dash (-) on the cards of members of “non-recognised” religions.²¹

21. In Egypt, women have reported discriminatory treatment on the basis of their sex and the perception of them as atheist or Christian because of their choosing not to wear the veil.²² One woman interviewed by the Trust’s researchers reported that: “Because I am a woman who doesn’t belong to the religious majority in Egypt (...) people say that I don’t have any rules or morals, and so I am harassed on this basis.”²³ In Kazakhstan, the Kyrgyz Republic, Tajikistan and Uzbekistan, women and girls have reported discriminatory treatment from state and non-state actors on the basis of their sex and the perception of them as Muslim because of their wearing of the veil.²⁴ In Uzbekistan, the Trust recorded testimony from women whose daughters had been told to stop wearing the veil or face expulsion school.²⁵
22. In both Pakistan and Egypt, family and personal laws are governed by separate legal regimes for separate religious communities, resulting in a fragmented framework of legal protection. In Egypt, marriages of religious minorities such as those of the Bahá’í faith are not legally recognised, creating a myriad of issues regarding access to services such as banking, real estate, inheritance, and, at times, school registration.²⁶ The former UN Special Rapporteur on freedom of religion or belief, described how state-enforced denominational family laws may give rise to discrimination “at the intersection of religious minority status and gender.”²⁷

Conclusion

23. In this brief submission, we have sought to exemplify some of the key patterns of discrimination on the basis of religion or belief which we have observed through our work supporting equality defenders around the world. As previously noted, the examples cited here are not intended to single out the states which are discussed; rather, they are presented as verified examples of the different types of laws, policies and practices which discriminate both directly and indirectly on the basis of religion or belief.
24. States’ maintenance of laws and policies which discriminate, either directly or indirectly, and states’ failures to establish legal regimes to prevent and prohibit discrimination, represent both a failure to meet their commitment under SDG 16b and an obstacle to the achievement of the peaceful, just and inclusive societies which are the aim of SDG 16 more broadly. They also represent an ongoing failure to meet their obligations under international human rights law.
25. As such, we urge the Special Rapporteur to use his forthcoming report to recommend the following, as necessary steps to ensure the elimination of discrimination on the basis of religion or belief and thus to the realisation of the SDGs and compliance with international human rights law:

²¹ Human Rights Watch, “Egypt: Decree Ends ID Bias Against Bahai’s”, Human Rights Watch, 15 April 2009, available at: <https://www.hrw.org/news/2009/04/15/egypt-decree-ends-id-bias-against-bahais>.

²² Equal Rights Trust, *A Past Still Present: Addressing Discrimination and Inequality in Egypt*, citing Equal Rights Trust Interview D45, 2018, pp.183, available at: https://www.equalrightstrust.org/ertdocumentbank/Egypt_EN_online.pdf.

²³ Ibid, pp.183.

²⁴ See above, note 9, pp.62-64.

²⁵ Equal Rights Trust, *After the Padishah Addressing Discrimination and Inequality in Uzbekistan*, citing Equal Rights Trust interview with G., a Muslim woman, Tashkent, November 2014, available at: http://www.equalrightstrust.org/ertdocumentbank/Uzbekistan_EN.pdf.

²⁶ Risley, D.E., “Freedom of Religion” in Ferrari, A., *Religions and Constitutional Transitions in the Muslim Mediterranean: The Pluralistic Moment*, Taylor & Francis, 2016, p. 174.

- a. The repeal of any constitutional or other legal provision which privileges one religion or provides it with legal primacy;
- b. The review and amendment of regimes for the registration of religious groups, associations or organisation, to ensure their consistency with the rights to non-discrimination and to freedom of religion;
- c. The review and amendment of national security and other laws whose application creates the risk of direct or indirect discrimination on the basis of religion or belief;
- d. The adoption of comprehensive anti-discrimination legislation, prohibiting direct and indirect discrimination, harassment and failure to make reasonable accommodation on the basis of religion and all other grounds recognised at international law and in all areas of life regulated by law.