

***Ensuring non-discrimination and security for persons belonging to religious minorities:
A brief commentary on the mandate practice of the
UN Special Rapporteur on freedom of religion or belief since 1986***

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- There is a close **relationship between minority issues and the mandate** of the UN Special Rapporteur on freedom of religion or belief, as evidenced by the sheer number of 3,205 references to the term “minorities” in the Special Rapporteurs’ various reports.
- This is not as self-evident as it may perhaps seem, because the Special Rapporteur was initially mandated, through resolution 1986/20 of the Commission on Human Rights, “to examine incidents and governmental actions that are incompatible with the provisions of the 1981 Declaration”, which notably contains no explicit mention of minorities at all.
- In my brief presentation I would like to explore the links between discrimination, insecurity and violence against religious minorities, through the prism of the Special Rapporteur’s mandate practice since its establishment in 1986.
- Already in his first annual report to the Commission on Human Rights, Special Rapporteur **Angelo Vidal d’Almeida Ribeiro** (mandate-holder from 1986 to 1993) criticized that some countries had undertaken campaigns for the forced assimilation of religious minorities, e.g. arbitrary changes to the names of places that have a particular religious connotation, confiscation or demolition of religious buildings, and attacks by officials against the houses of individuals belonging to a religion that is not recognized by the authorities. He also stressed that members of religious minorities are victims of persecution which is more or less tolerated by the authorities, referring to cases reported in several countries of “murders committed either collectively or by individuals against members of religious minorities, with no proper legal proceedings being instituted against the principals.”¹
- Special Rapporteur **Abdelfattah Amor** (1993-2004) noted that minorities are victims of the intolerance of non-State entities, especially religious communities, political and religious extremist organizations and the media, and he emphasized the particularly damaging role played by certain media outlets in helping to foment fear of Islam and Christianity, which creates insecurity and intolerance of Muslim and Christian minorities in societies throughout the world.²
- Special Rapporteur **Asma Jahangir** (2004-2010) pointed out that a certain religion may be a minority in one part of the world and suffer as a result; however, it may constitute the religion of the majority of the population in another part of the world. She also included a gender perspective by stressing that female members of minority religions tend to be prone to become victims of rape and violence stirred up by organized groups. She noted that religious minorities face various forms of discrimination, for example with regard to official registration procedures or undue limitations when disseminating materials and displaying religious symbols.³

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¹ See E/CN.4/1987/35, paras. 35 and 78.

² See E/CN.4/2001/63, para. 183.

³ See A/64/159, paras. 6, 29, 60 and 69.

- Similarly, Special Rapporteur **Heiner Bielefeldt** (since 2010) emphasized that non-recognized communities typically live in situations of increased legal, political, economic and social insecurity as well as structural vulnerability. In this context he referred to examples of de facto authorities prohibiting and disrupting meetings of members of religious minorities on the mistaken assumption that such activities could not be undertaken by unregistered communities, but also to the positive development that the initial administrative convictions was subsequently overturned by the de facto “courts”, including with reference to the Special Rapporteur’s observations that registration cannot be a precondition for holding peaceful religious meetings.⁴
- With regard to religious conversion and missionary activities, Special Rapporteur Bielefeldt stressed that vague and overly broad definitions of “proselytism”, “unethical conversion” and related “offences” may create an atmosphere of insecurity in which law enforcement agencies can restrict acts of religious communication in an arbitrary manner, often discriminating against members of religious minorities.⁵
- A brief case study finally illustrates how the various mandate-holders have highlighted the potential pitfalls of the **domestic implementation of prohibiting incitement to religious hatred**, in particular with regard to any adverse implications for religious minorities and dissenters:
 - In 2003 and 2004, Special Rapporteur Amor sent two communications, alleging that the police had interrupted a church service of a schismatic minority community, arresting the religious leader and charging him with dissemination of national, racial or religious hatred, disorder and segregation.⁶ The domestic courts of first and second instance sentenced him to 18 months of imprisonment, which was subsequently reduced to 8 months by the Constitutional Court.
 - In her 2009 country visit report, Special Rapporteur Jahangir flagged two related problems: (a) impunity in cases of incitement to religious hatred, which emboldens forces of bigotry, mob violence and extreme forms of pressure against members of religious minorities; and (b) the vague formulation of domestic legal provisions to combat incitement to hatred, which may be misused against schismatic religious leaders, obviously with a chilling effect on the willingness of individuals to exercise their freedom of expression and freedom of religion or belief.⁷
 - In this context, she reiterated concerns expressed by Prof. Malcolm D. Evans (as a member of the OSCE ODIHR’s Panel of Experts on Freedom of Religion or Belief) about the domestic judgement’s approach which seemed to suggest that any form of religious activity that has the effect of challenging the legitimacy and supremacy of the dominant religion was to be considered as causing religious hatred; consequently, the fact that the schismatic religious leader “had conducted religious services that prompted a hostile response by opposing believers could not amount to the commission of the criminal offence of incitement to religious hatred”.⁸

⁴ See A/HRC/22/51, paras. 42-43, referring to the allegation letter in A/HRC/16/53/Add.1, paras. 6-24.

⁵ See A/67/303, paras. 46-47.

⁶ See E/CN.4/2004/63, para. 48 and E/CN.4/2005/61/Add.1, paras. 241-257.

⁷ See A/HRC/13/40/Add.2, paras. 47-48 and 60.

⁸ Ibid., para. 47, referring to *Opinion-Nr.: FoRB -MK/035/2005 (Expert Panel on FoRB/IU)*, 27 July 2005, see www.legislationline.org/documents/id/1958.

- Special Rapporteur Bielefeldt included this example in the joint submission to the 2011 OHCHR workshop on the prohibition of incitement to national, racial or religious hatred in Europe.⁹ The above-mentioned dichotomy of non-prosecution of “real” incitement cases and persecution of minorities under the guise of domestic incitement laws was also taken up in the *Rabat Plan of Action*, which states the following: “It is of concern that perpetrators of incidents, which indeed reach the threshold of article 20 of the International Covenant on Civil and Political Rights, are not prosecuted and punished. At the same time members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies.”¹⁰
- In conclusion, it is of vital importance to address both the lack of prosecution when religious minorities are targeted by attacks or incitement to hatred, but also to prevent that domestic legal provisions prohibiting hate speech are interpreted loosely and applied selectively by the authorities against religious minorities.
- The Special Rapporteur’s mandate practice over the past 27 years has provided important recommendations with regard to the protection of religious minorities and also contributed to **pioneering initiatives** with a view to breaking the vicious circle of discrimination, hostility, insecurity and violence, e.g.:
 - To promote education for tolerance, respect and recognition of diversity (cf. 2001 *Madrid Final Document* and 2007 *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*);
 - To ensure an equitable allocation of resources, including broadcasting frequencies, among public service, commercial and community media, so that together they represent the full range of cultures, communities and opinions in society (cf. 2009 *Camden Principles on Freedom of Expression and Equality*); and
 - To give due attention to minorities and other vulnerable groups who constitute the majority of victims of incitement to hatred by providing legal and other types of assistance for their members (cf. 2012 *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*).
- Thank you very much for your attention.

⁹ See www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP3Joint_SRSubmission_for_Vienna.pdf.

¹⁰ A/HRC/22/17/Add.4, appendix, para. 11. See also the related reference in the Special Rapporteur’s report on religious minorities, A/HRC/22/51, para. 63.