

Submission to the United Nations Committee on the Elimination of Racial Discrimination.

Call for contributions on the draft general recommendation no °37 on racial
discrimination in the enjoyment of the right to health.

4 August 2023

INTRODUCTION TO AMAN

AMAN is dedicated to securing the psychological and physical wellbeing of Australian Muslims. We focus on preventing harm towards the Muslim community through contributions to policy development, law reform, and using complaints, parliamentary processes, and strategic litigation.

RECOMMENDATIONS

1. The obligations of states arising from the right to health should include taking all reasonable measures to prevent racism and dehumanisation of groups based on protected characteristics in their country's public information environment.
2. The Australian, UK, Canadian and New Zealand Governments should urgently reflect on the toxic psycho-social environment created by the official conflation of Islam and terrorism in their laws.
 - a. They can decouple Islam from public terrorism discourse by amending the terrorist act definition to remove the motive element, which provides that a terrorist act is intended to advance a political, ideological, or religious cause. This will also align with the UN Security Council's position that nation-states should avoid emphasis on ideology or religion in defining terrorism to avoid arbitrary implementation and stigmatisation.
3. The Australian Government should regulate social media companies in a way that treats online hate campaigns as public harm, not as a private complaint. Standards that prohibit systematic or serial publication of dehumanising material about groups on the basis of protected attributes must be enforced.ⁱ
4. Various governments, especially those committed to the Christchurch Call, should increase awareness about dehumanisationⁱⁱ as a specific category of clearly vilifying material.

DISCUSSION

1. LEGAL OBLIGATION OF STATES

The UN Committee on Economic, Social, and Cultural Rights has stated that health is a fundamental human right to exercise other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of physical and mental health, conducive to living a life of dignity.

Racism, in any form, poses a significant threat to this right, as it directly impacts the physical and mental health of targeted communities.

In General Comment No. 14 (2000), the Committee on Economic, Social and Cultural Rights interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the **environment** and the underlying **social determinants of health**:

[T]he reference in Article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. ⁱⁱⁱ

2. NULLIFICATION, IMPAIRMENT, AND RESTRICTION OF THE RIGHT TO HEALTH

Research links racial discrimination and racism as drivers and social determinants for poor psychological and physical health outcomes. ^{iv} Structural racial discrimination nullifies or restricts access of groups within the purview of the Convention to public health, healthcare facilities, services, and goods disproportionately. ^v The constant marginalization of these groups in public information environments leads to a toxic psycho-social atmosphere, where

1. harm is repeatedly experienced, and
2. barriers to seeking health care support emerge.

The harmful actions and discourse perpetrated by racist attitudes create feelings of inferiority, humiliation, and worthlessness among affected communities, causing immense psychological distress.

We provide examples of this in the Australian context below.

3. AUSTRALIAN EVIDENCE

The official conflation of Islam and terrorism

There needs to be an urgent reflection on the relationship between laws, definitions, public discourse and understanding, and social phenomena.

The Australian legal framework promotes categories of 'us and them' between 'white' and Muslim communities by

1. Centring the religious identity of actors such as ISIS and al-Qaeda;
2. Defining the scope of the ideological threat to an entire religion, ^{vi} effectively hijacking public discourse about that religion and its followers;
3. More accurately identifying the political, local and personal context of motivations of actors *beyond the Muslim community*, giving the impression that only Muslims act as a homogenous and hostile mass. ^{vii} Within public research, media and political discourse, terms such as 'global jihadist', 'radical Islam', 'Violent Jihad', and 'Islamist terror' reductively cover a diverse range of actors across the world, divorcing them from political or historical context in a way that is not seen across other groups.

The official description of 'religiously motivated' terrorism or violent extremism lends official authority to

1. Al-Qaeda and ISIS narratives ^{viii} about a religious war and the persecution of Muslims in the West.

2. Racist nationalist narratives that Islam is savage and incompatible with liberal democracy.^{ix}

Even more troubling is that research has shown that the repetition of terrorism media coverage creates a cognitive stronghold for anti-Muslim racism that cannot be overcome by relationship-building or education.^x With these laws in place, most community efforts to educate and displace harmful narratives are futile – like sandcastles on a beach, these efforts are wiped out by the constant tides of official and authoritative speech.

The former Australian High Court Chief Justice cautioned about this reality 15 years ago.^{xi} The Australian government has not yet considered the 2012 recommendation from the Independent National Security Legislation Monitor to remove the motive element “political, religious or ideological cause” from the terrorist act definition because it was inconsistent with international law and counterproductive.^{xii} Hate crime experts have called for decoupling Islam and terrorism in public discourse^{xiii}. The UN Security Council has urged states to disregard motive in their definition of terrorism to reduce the scope for arbitrary implementation and indiscriminate targeting of segments within the community.^{xiv}

Over time, the confluence of legal, cultural and political power to conflate Islam and terrorism has profoundly dehumanised Australian Muslims by suggesting that they

- are polluting, despoiling, or debilitating an ingroup or society as a whole;
- have a diminished capacity for human warmth and feeling or to make up their own mind, reason or form their own individual thoughts;
- homogeneously pose a powerful threat or menace to an in-group or society, posing overtly or deceptively;
- are to be held responsible for and deserving of collective punishment for the specific crimes, or alleged crimes of some of their “members”;
- are inherently criminal, dangerous, violent or evil by nature;
- prey upon children, the aged, and the vulnerable;
- are inherently primitive, coarse, savage, intellectually inferior or incapable of achievement on a par with other humans;
- must be excised or exiled from public space, neighbourhood or nation.^{xv}

This affects Australian Muslims, as shown in reported hate incidents^{xvi}. This is brought about by the mainstreaming of hostile political rhetoric,^{xvii} which has fuelled anti-Islam movements. Anti-Muslim sentiment continues to be prevalent^{xviii} and simultaneously non-remarkable to Australian political leaders.^{xix}

Australian women and innocent children trapped in Northeast Syria have not yet been repatriated to Australia, despite numerous United Nations reports showing the conditions to meet the standard of torture. The current Opposition Party characterised children as young as toddlers as ‘radicalised’, arguing it was too dangerous to bring them home.^{xx} Political messages like this contribute to dehumanisation in the public sphere by denying those children the qualities of children.

Role of dehumanisation in political discourse (official and unofficial)

Dehumanisation is a common feature of far-right movements. We are concerned about the role of various foreign ethno-nationalist movements in inciting hatred against Muslims online and perpetuating narratives based on dehumanising tropes, such as ‘love jihad’^{xxi} or “all Muslims are terrorists”^{xxii}.

It is not only the impact of foreign discourses on Australian audiences but Australian official pronouncements on foreign governments that contribute to a toxic psycho-social environment. Ministers routinely avoid apportioning responsibility for endemic and flagrant violence enacted on Muslim populations overseas. It appears politically possible because Muslims have been broadly dehumanised and are accordingly attributed lower standards of moral protection.^{xxiii} AMAN has written to the Australian Government about its pronouncements in relation to Israel’s bombing of Gaza, and Indian Prime Minister Modi, to request that foreign policy consider social justice, cohesion and inclusion in Australia.

In 2022, Palestinian-Australian, Mr Nasser Mashni, brought a Race Discrimination Act complaint against the Australian Government, arguing that the Australian Government had an obligation to progressively realise the human rights of Palestinian Australians, without discrimination. His complaint included claims that the Australian Government, through its misleading pronouncements, denial of the occupation, and pro-active advocacy on behalf of Israel, marginalised and dehumanised Palestinian Australians. One of the affected human rights in the complaint was the right to health. The Government tried, unsuccessfully, to dismiss the complaint in the Australian Human Rights Commission^{xxiv}.

Terrorism Laws only punish and protect some.

The disproportionate enforcement of terrorism laws has raised concerns over potential discrimination and unequal treatment towards the Muslim community.^{xxv}

Terrorism sentencing in Australia disregards age, the scope for rehabilitation, and the absence of harm as mitigating factors, making it inconsistent with other areas of criminal law.^{xxvi} It also leads to disparity in criminal treatment of racist nationalists not convicted under terrorism laws.^{xxvii} AMAN has also raised concerns about how persons with autism are treated differently depending on whether they are Muslim (and charged with terrorism) or non-Muslim (and charged with another non-terrorism offence).

Higher rates of psychological distress

Recent research has found that psychological distress levels in Australian Muslim adolescents were 34% higher than in adolescents in the general community. Specifically, the psychological wellbeing of Muslim female teenagers is at a substantially higher risk of developing clinically significant emotional and conduct problems related to their peers.^{xxviii} Racism and negative media stereotypes, such as conflating terrorism with the Muslim community, have contributed to this statistic. Muslim females aged 11-15 may report significant decreases in ethnic identity levels and cannot mitigate risks associated with their reported experience of vilification and discrimination. There is a clear need to address and combat the challenges Muslims face in accessing appropriate mental health assistance. "Therefore, developing and providing Islamic community-driven culturally and religiously congruent mental health resources and outreach services are critical for mitigating these risks among Muslim adolescents."^{xxix}

Mental Health problems in Muslims are viewed as a Terrorist Risk Factor.

Mental health issues experienced by Muslims are often viewed as a risk factor in the context of 'religiously motivated terrorism.' This is exemplified in the case of Mohamed Ikraam Bahram, a Muslim 24-year-old man diagnosed with schizophrenia who suffered a fatal encounter with the police in February 2020. The fact that police visited him to discuss his religious beliefs raises concerns about the potential biases and perceptions regarding Muslims with mental illnesses.^{xxx} It concerns us those Muslim boys and men with anti-social behaviours, psycho-social disabilities, PTSD or mental illness are seen through the prism of terrorism risk by public reporters to the national security hotline and police. This association is due to widespread confusion about 'violent radicalisation' and the positioning of religion as a cause. We know that young boys and men who adopt avoidance behaviours, such as refusing to give their name or property to police, are also construed as concealing a terrorism link.

Discriminatory approaches to persons expressing violent beliefs

From a pattern of publicly reported prosecutions, Non-Muslims who express violent beliefs and have Autism^{xxxii} or PTSD^{xxxii} are more likely to be convicted of minor non-terrorism offences and sentenced to lower penalties, including good behaviour bonds or home detention. At the same time, there is a tendency to view Muslim persons who express violent beliefs as being more intractable in those beliefs and more likely to produce violence.^{xxxiii}

Individuals Suspected of 'Radicalisation' pushed to limits and denied Mental Health Support.

The case of Raghe Abdi highlights a concerning trend where individuals' suspected' of radicalisation are denied mental health support. Raghe, a young Muslim man, first became known to counter-terrorism police in March 2018. The police seemed focused on the suspicions of terrorism, arresting Raghe for trying to fly to Somalia in 2019. The charges were eventually dropped, but Raghe faced imprisonment for a different offence. During this period, Raghe's father, Mohammed, made three attempts to seek mental health treatment for his son, but the officers declined all attempts. After Raghe's release, he was under police surveillance and wearing an electronic tracking device. Due to his criminal record and tracking bracelet, Raghe's inability to find a job and socially connect further impacted his mental health. Mohammed Abdi stated that his son was hearing voices and showing signs of distress. In December 2020, Raghe was shot dead by police on a motorway and later linked to a murder of an elderly couple in their home. Police stated that they were dealing with a terrorist incident at the time.^{xxxiv} The coronial inquest findings have not yet been released.

There is a clear perception in the community that police use coercive powers to push young people to the limits. Then, where there is an adverse mental health event, it is characterised as terrorism.

ⁱ For AMAN's latest working definition of dehumanising material: [Policy Brief – Dehumanisation – AMAN](#); see also AMAN's Submission to the Foreign Influence on Digital Platforms (2023) <http://www.aman.net.au/wp-content/uploads/2023/04/AMAN-Submission-to-SERC-for-Inquiry-into-the-Influence-of-International-Digital-Platforms.pdf>

ⁱⁱ Ibid; The Christchurch Call Advisory Network, comprised of many civil society organisations globally, has also published a Report on countering dehumanisation as an important intervention point to protecting societies from violence and harm: <https://christchurchcall.network/wp-content/uploads/CCAN-Report-on-Anti-Dehumanization-Policy.pdf>

ⁱⁱⁱ See also Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, 21 June – 9 July 2021, ‘Strategic Priorities of Work’: As a result of broader social and economic issues, individuals who are marginalized because of poverty, gender, ethnicity, social norms, or stigma and discrimination experience negative health outcomes. Medical interventions are not the main determinants of health. Health outcomes are rather determined by underlying and social factors, including nutrition, housing, work environment, education, discrimination, violence, and the presence or absence of war, among others.[95]

See also CERD/C/CZE/CO/12-13, para. 15 (c); CERD/C/USA/CO/7-9, para. 15; WHO, EB152/2, paras. 6-9. WHA Res. 74.16 (2021).

^{iv} Ben, J., Elias, A., Issaka, A. et al. Racism in Australia: a protocol for a systematic review and meta-analysis. *Syst Rev* 11, 47 (2022). <https://doi.org/10.1186/s13643-022-01919-2>; Tynes BM, English D, Del Toro J, Smith NA, Lovada FT, Williams DR. Trajectories of Online Racial Discrimination and Psychological Functioning Among African American and Latino Adolescents. *Child Dev.* 2020 Sep;91(5):1577-1593. doi: 10.1111/cdev.13350. Epub 2020 Jan 14. PMID: 31943164; PMCID: PMC8734456; Bassett, Mary T. MD, MPH. Tackling Structural Racism. *Journal of Public Health Management and Practice: January/February 2022 - Volume 28 - Issue Supplement 1 - p S1-S2* doi: 10.1097/PHH.0000000000001457; Berry, O.O., Londoño Tobón, A. & Njoroge, W.F.M. Social Determinants of Health: the Impact of Racism on Early Childhood Mental Health. *Curr Psychiatry Rep* 23, 23 (2021). <https://doi.org/10.1007/s11920-021-01240-0>; Yearby, R (2020). Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause. *Journal of Law, Medicine & Ethics*, 48(3), 518-526. Doi:10.1177/1073110520958876; Islam N, Ahmed N. Anti-Immigrant Rhetoric and Policy as Manifestations of Structural Racism—Implications for Advancing Health Equity. *JAMA Netw Open.* 2021;4(7):e2118299. doi:10.1001/jamanetworkopen.2021.18299.

^vCERD/C/SLV/CO/18-19, paras. 34-35

^{vi} Hardy K (2011) Hijacking public discourse: religious motive in the Australian definition of a terrorist act. *University of New South Wales Law Journal* 17(1): 333-350, p.349; Brennan G (2007) Liberty’s threat from executive power. *Sydney Morning Herald*, 6 July, <https://www.smh.com.au/national/libertys-threat-from-executive-power-20070706-gdqjxj.html>.

^{vii} Jabri Markwell, R. (2023) “Religion as a Motive – Does Australian Terrorism Law Serve Justice?”, *International Journal for Crime, Justice and Social Democracy*. doi: 10.5204/ijcsd.2686 p.3.

^{viii} Hardy, above n(vi).

^{ix} Jabri Markwell, above n (vii).

^x Matteo Vergani, Fethi Mansouri, Liliana Orellana (2022) Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Community and Applied Social Psychology*. Volume 32, Issue 6.

^{xi} [Liberty's threat from executive power \(smh.com.au\)](https://www.smh.com.au/national/libertys-threat-from-executive-power-20070706-gdqjxj.html)

^{xii} Bret Walker SC, Declassified Annual Report (Independent National Security Legislation Monitor, 20 December 2012) 110, 114.

^{xiii} Australian Human Rights Commission, National Anti-Racism Scoping Report p.154

^{xiv} United Nations Security Council Resolution 1566 (2004), adopted by the Security Council at its 5053rd meeting, on 8 October 2004; See also, Vaughan, Katy (2022) Interoperability of terrorism definitions between the law and tech platforms. Report to the Global Internet Forum to Counter Terrorism.

^{xv} [Policy Brief – Dehumanisation – AMAN](#)

^{xvi} Derya Iner, Islamophobia in Australia Report, 2023 (Charles Sturt University and ISRA)

^{xvii} Derya Iner and Sean McManus. “Islamophobia in Australia.” In *The Rise of Global Islamophobia in the War on Terror*, edited by Naved Bakali and Farid Hafiz. UK: Manchester University Press. See for eg: Conifer, D. (2015, December 5). Tony Abbot calls for ‘religious revolution’ inside Islam, defends controversial 2014 budget measures as ‘justifiable and right’. *ABC news*; Davey, M. (2018, November 12). Bourke Street attack: Morrison accused of ‘scapegoating’ Muslim Community. *The Guardian*; Henderson, A. and Conifer, D. (2015, December 9). Malcolm Turnbull warns against blanket statements after Tony Abbott calls for Islam to change. *ABC*; Humphries, D. (2006, February 25.) Live here and be Australian, Howard declares. *Sydney Morning Herald*; Karp, P. (2018, November 12). Morrison urges Muslim community to be more ‘proactive in tackling terrorism. *The Guardian*; Karp, P. (2020, April 20). Tony Abbott’s anti-Muslim rhetoric while PM ‘profoundly dangerous’, Malcolm Turnbull says. *The Guardian*; Medhora, S. (2015, February 24). Tony Abbott urges Muslim groups to ‘get with the program’ and condemn extremism. *The Guardian*.

^{xviii} Kevin Dunn et al, ‘Countering Islamophobia in the Victorian Population’ (Issue Paper No 3/2021, Centre for Resilient and Inclusive Societies, July 2021). It found: Just under a half of the respondents would accept living near a mosque (48.4%); One-third (33.7%) agreed that women should not be allowed to wear the hijab in Australia, this rose to 48.9% when asked about wearing the niqab or burqa; The survey also included disappointing data in relation to views on Muslim immigration and compatibility with Australia. Nine (9%) of respondents held blatantly supremacist and hostile views towards Muslims.

^{xix} Based on a review of the Ministerial responses to successive Scanlon Foundation Reports which have shown exceptionally high levels of distrust and negative sentiment towards Muslims among Australians.

^{xx} [PoliticsNow: Syria IS families rescue mission ‘very concerning’ | The Australian](#)

^{xxi} Ramachandran, Sudha. “Hindutva Violence in India: Trends and Implications.” *Counter Terrorist Trends and Analyses* 12, no. 4 (2020): 15–20. <https://www.jstor.org/stable/26918077>.

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- ^{xxii} Abdalla, M., Ally, M. & Jabri-Markwell, R. Dehumanisation of 'Outgroups' on Facebook and Twitter: towards a framework for assessing online hate organisations and actors. *SN Soc Sci* 1, 238 (2021). <https://doi.org/10.1007/s43545-021-00240-4>
- ^{xxiii} Jonathan Leader Maynard and Susan Benesch, "Dangerous Speech and Dangerous Ideology: An Integrated Model for Monitoring and Prevention," (2016) 9 (3) *Genocide Studies and Prevention: An International Journal* 70.
- ^{xxiv} [Palestinian-Australian files legal complaint over government's 'advocacy' of Israel | SBS News](#)
- ^{xxv} Eden Gillespie, 'Islamic leaders question why police didn't lay more serious charges after Brisbane Mosque threat', *The Guardian*, (online, 5 October 2022) < <https://www.theguardian.com/australia-news/2022/oct/05/islamic-leaders-question-severity-of-charge-after-mans-threat-to-brisbane-mosque>>.
- ^{xxvi} Hon. Mark Weinberg, 'Sentencing Terrorist Offenders – The General Principals' *The Australian Law Journal* 95 (10): 766, 770.
- ^{xxvii} Jabri Markwell, R. "The conflation of Islam and terrorism and the rise of far right extremism" in Iner, D (2022) *Islamophobia in Australia Report III*. (ISRA and Charles Sturt University: Sydney).
- ^{xxviii} R Kayrouz, E Karin, C Ghanem, N Chowdury & Ahmad Malas, 'Muslim Adolescent Mental Health in Australia: A CrossCultural Comparison of the Risk of Developing Clinically Significant Psychological problems' (2022) 31, *Journal of Child and Family Studies* 2837. <https://doi.org/10.1007/s10826-022-02257-6>.
- ^{xxix} Ibid.
- ^{xxx} Eden Gillespie, "We don't know how to survive': Queensland family seeks answers for death in police shooting', *The Guardian*, (online, 30 May 2022)< <https://www.theguardian.com/australia-news/2022/may/30/we-dont-know-how-to-survive-queensland-family-seeks-answers-for-death-in-police-shooting>>.
- ^{xxxi} See, for eg: R v Patrick Patmore [2023] SADC (unreported): an individual sentenced in the District Court of South Australia in February 2023 for a number of offences, including possession of extremist material. Expert evidence in that case adduced that Mr Patmore had ASD and developed a special fixation in extreme right-wing and terrorist material and that he had 'a history of being obsessed by topics. This has led to [him] being obsessed by the topics that formed the subject matter of [the] offending.'" Patmore was granted bail and ultimately sentenced to home detention: [Far-right group member Patrick Patmore sentenced to more than three years' home detention over extremist material - ABC News](#)
- ^{xxxii} See for eg: [Adelaide man who made 'Mother of Satan' explosives eligible for parole within months - ABC News](#)
- ^{xxxiii} See, for eg: [Adelaide teen overheard saying he 'would do something' at Anzac service, court hears - ABC News](#) It was reported that the judicial officer queried the relevance of autism to the teen's collection of ISIS material and desire to socially connect through the sharing of this material. This Muslim teen was denied bail and is on remand in high-security prison.
- ^{xxxiv} Eden Gillespie, 'Queensland police declined father's requests for help before son was shot dead, inquest told', *The Guardian*, (online, 18 July 2023) < <https://www.theguardian.com/australia-news/2023/jul/18/queensland-police-declined-fathers-requests-for-help-before-son-was-shot-dead-inquest-told>>