

Submission to the Committee on the Elimination of Racial Discrimination¹

“Recognising Muslims as an Ethnic Group”



In response to the 18th and 20th Periodic Reports by the United Kingdom

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¹ Authored by Murtaza Hassan Shaikh, Legal and Political Officer for the Initiative on Quiet Diplomacy, Human Rights Centre, University of Essex and member of the Human Rights Committee of the Law Society of England and Wales.

Research assistance was provided by Arnaud Mafille, holding Masters in public law from the University Montesquieu Bordeaux IV (France) and a LLM in International law from Bristol University (Dissertation on the compatibility of a general ban on full veil with the ECHR), currently working with Cageprisoners on issues of due process in the War on Terror.

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I. Introduction

1. The Averroes Institute (AI) is a legal and policy think tank working to improve Muslim-Government relations. AI believes in peaceful coexistence and inter-cultural dialogue between communities within the framework of British multiculturalism, international human rights law, democratic principles and fair representation. AI seeks to represent, convey and articulate the sentiments of the vast often unheard majority of British Muslims.

II. Context

2. Islamophobia continues to be a growing phenomenon across Western Europe as acknowledged by the present Committee on numerous occasions.² The problem is especially acute in the UK with far right groups like the English Defence League (EDL) and British National Party (BNP) gaining popularity and legitimacy amongst the politically disaffected. The EDL, who base their entire agenda on xenophobic and racist rhetoric against Islam and Muslims,³ are being provided yet more mainstream platforms to voice their concerns,⁴ while there is an unnerving paucity by mainstream politicians to condemn such hateful and violent ideologies emanating from the far right. Recent events in Norway have shown the potential for such ideologies to develop into violent and mindless acts of mass murder is all too real. Anders Breivik's inspiration and common ideology with the far right, especially the EDL, is by now well documented.⁵
3. Historically groups such as the EDL and BNP have been anti-immigration, racist, xenophobic and anti-Semitic. Their strategic shift in focusing principally on Muslims, indicates an opportunistic attempt to propagate the same hateful and racist ideology so as to take advantage of a clear lacuna in British law, which offers a higher level of protection from discrimination for 'racial groups' than 'religious groups' under the Race Relations Act 1976. Thus this provides more leeway for incendiary speech targeting religious groups rather than racial groups.
4. However omitting Muslims from the higher protection of discrimination as a 'racial group' may not be justified given that Muslims believe their identity to encompass more than just religion and closer to a 'way of life'. Intersectionality of racial and religious identity and the difficulties posed in delineating between these two aspects of identity also render the exclusion of Muslims problematic. Furthermore intersectionality is recognised with respect to some religious groups such as Jews and Sikhs but not for Muslims. The distinction advanced by the UK hinges on the racial heterogeneity of the Muslim minority as compared to the racial homogeneity of the Sikh and Jewish minorities. This, we argue, is not an objective, reasonable or justifiable grounds to exclude Muslims from the ambit of the Race Relations Act 1976, especially as the vast majority of Muslims are included within the scope of ICERD on the basis of their national origin resulting from post-1945 immigration.

² For example, Concluding Observations UK (2003), supra n 25 at paras 20-1.

³ <http://englishdefenceleague.org/> and <http://www.bnp.org.uk/>.

⁴ <http://news.bbc.co.uk/1/hi/programmes/newsnight/9548721.stm>.

⁵ <http://www.guardian.co.uk/world/2011/jul/25/anders-breivik-edl-political-violence>.

5. Regrettably such a position has in the past been endorsed by the Committee.⁶ However AI notes that General Recommendation 32 may provide a departure from that approach by acknowledging the possibility of indirect discrimination as well as taking account of the discriminatory ‘effect’ and ‘purpose’ or intent when deducing whether ‘racial discrimination’ has occurred.
6. The legal arguments advanced in this submission will be two-fold. The first will argue for the inclusion of Muslims within the scope of ICERD on the basis of their Muslim identity being best characterised as an ‘ethnicity’ of which religion is but one aspect. In other words arguing that discrimination against Muslims because of being Muslim should be considered *direct* ‘racial discrimination’. Secondly and without prejudice to the first argument that discrimination against Muslims constitutes *indirect* discrimination against minorities on the basis of national origin, race and colour. This can be in ‘purpose’ and in ‘effect’. Finally the issue of the need for homogeneity for intersectionality to exist will be challenged.

III. Considering Anti-Muslim Discrimination as Direct Racial Discrimination

i) The Muslim identity as an ‘ethnicity’ of which religion is one element

7. Article 1(1) of ICERD defines the scope of ‘racial discrimination’ as ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’
8. The Vienna Convention on the Law of Treaties (VCLT) requires due consideration to be given to the object and purpose and the ordinary meaning of ICERD. As such, religion seems to be consciously omitted from the enumerated grounds above.
9. However ICERD was clearly not drafted to understand ‘racial discrimination’ in narrow terms. The inclusion of other related grounds of discrimination is testament to this and is indicative of the difficulties posed in pinpointing which aspect of an individual’s identity provides the focal point for discrimination, prejudice and intolerance.
10. Additionally the Committee conceives ICERD as ‘a living instrument that must be interpreted and applied taking into account the circumstances of contemporary society. This approach makes it imperative to read its text in a context-sensitive manner.’⁷ The context and circumstances which gave rise to ICERD were the prevalent and deplorable forces of xenophobia, anti-Semitism and apartheid – all frameworks of discrimination aimed at those who were distinct in appearance *and* in their behaviour or culture. Thus even though discrimination manifested itself as being

⁶ *P.S.N. v Denmark* (36/2006), Admissibility, CERD/C/71/D/36/2006 (2007).

⁷ CERD, General Recommendation No 32: The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (2009), para 5.

based on the appearance or race of these marginalised sections of society, they were aimed at their identities as a whole, inclusive of culture.

11. Under the Committee, the notion of 'race' has evolved from being objectively imposed by the perpetrators of discrimination to a subjective notion conditioned on self-identification⁸. Thus allowing for accommodation of cultural, religious and historical content as opposed to being objectively assessed on the basis of visual observation. This is evident in the omission of any reference to 'race' in subsequent international and regional instruments on minority rights which identified three types of identity: 'ethnic, religious and linguistic'.⁹
12. While religious and linguistic minorities are entitled to rights related to religious practice and use of their language, ethnic minorities, in addition, to non-discrimination, more generally are entitled to the enjoyment of their culture.¹⁰ Furthermore an interpretation deduced from a macro-reading of minority rights instruments may be that minority rights protect the ethnic identity of groups and the enjoyment of the related culture, while religion and language are specific and most common types of culture.
13. Such an assertion is supported the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992): 'Persons who belong to groups defined as ethnic would have more extensive rights relating to the preservation and development of other aspects of their culture also, since ethnicity is generally defined by a broad conception of culture, including a way of life'.¹¹
14. Likewise the Declaration on the Rights of Indigenous Peoples (2007) gave special attention to their way of life by seeking to preserve culture and traditions.¹² As such indigenous peoples are included within the scope of ICERD. Therefore it may be possible to argue that religion when supplemented by a broader culture/way of life should be considered an ethnicity. The Declaration on the Rights of Indigenous Peoples goes even further by affirming 'all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.'
15. A number of commentators have corroborated the above view and pointed out the overlap of ethnic origin with cultural traits. For example Felice states that "[n]ational or ethnic origin" denotes linguistic, cultural, and historical roots. Thus, this broad concept of race clearly is not limited to objective, mainly physical elements, but also includes subjective and social

⁸ CERD, General Recommendation No 8: 'such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned'.

⁹ For example, Article 27 of International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

¹⁰ *Ibid.*

¹¹ Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2005/2, 4 April 2005, para 6.

¹² Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (2007).

components'.¹³ Alves has suggested that Islam could be one element of the Muslim ethnic identity: 'Religion has historically been one of the defining components of ethnicity, and ethnic origin is mentioned as one of the bases of racial discrimination, it is generally considered fitting that CERD should pay attention to the situation of religious minorities.'¹⁴

16. Hence Islamophobia and the discrimination targeting Muslims should be included within ICERD's scope. After all such an interpretation would be in line with a progressive and dynamic interpretation of the ICERD and an extension of the already elaborated notion of intersectionality.

ii) The Importance of self-identification in determining the Muslims are an 'ethnic' group

17. The case for including Muslims within the scope of ICERD as an 'ethnic' group is made yet more compellingly, because their claim, in addition to the above objective criteria, is reinforced by the subjective and decisive principle of self-identification.

18. Objectively it may be possible to reject the claim of Muslims to being included within the scope if they were seen as purely a religious minority. However religion only constitutes one aspect of the Muslim identity taking the form of rituals and acts of worship, whereas the Muslims identity pervades through all aspects of their life, from their relationship to others, to their clothing, outward appearance, etiquettes, greetings, financial transaction, sense of justice and civic duty as well as traditions and customs. As such it is closer to a way of life rather than purely a religion, though religious belief is one constituent of that amalgamated cultural or ethnic identity. Essentially even if Muslims' religious identity is deemed not to be within the scope of ICERD, then these other non-religious cultural traits qualify them as an ethnic group.

19. The contention is strengthened yet more by the subjective element of self-identification. The Committee itself has stated in General Recommendation 18 that ethnic identity must be decided in the first instance by way of self-identification of individuals themselves. As such, how Muslims self-identify must be the critical, if not decisive factor in determining the construing the Muslim identity. As such, the popular self-characterisation of the Muslim community is along the lines of '*ummah*' (nation) and '*deen*' (way of life) and not religion, which in Arabic is a separate word: '*millat*'. Clearly groups which are identified by their distinct 'way of life' or as a 'nation' fall within the meaning of ethnicity and thus 'racial discrimination' under ICERD. Furthermore religion being one element of that way of life should not prejudice the identity as a whole being deemed as an 'ethnicity'.

20. Sikhs self-identify along similar lines. Not content with their identification by others as 'religious minorities', they instead perceive themselves as a '*qaum*' (nation). Thus they prefer to be self-identified as an ethnicity, which includes their religious practices, but also entails historical, cultural and traditional aspects. Minority Rights Groups International relied on this reasoning to

¹³ Felice, 'The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights' (2002) 24 Human Rights Quarterly 205 at 205.

¹⁴ Alves, 'Race and Religion in the United Nations Committee on the Elimination of Racial Discrimination' (2007-2008) University of San Francisco Law Review 941 at 951.

argue for the recognition of American Sikhs as an 'ethnic' group rather than a religious group in a legal policy memo to the US Government.¹⁵ In the UK, this approach has been endorsed by the UK Courts, where the Sikh minority is now protected as a 'racial group'¹⁶ along with the Jewish minority, thus availing them the higher level of protection reserved for racial groups even though both these groups may be construed by many as religious minorities (discussed in detail below).

21. The Committee has taken a similar approach to including groups on the basis of their culture, traditions or way of life in the case of indigenous peoples¹⁷, minorities¹⁸ and descent-based discrimination including castes.¹⁹

IV. Indirect Discrimination against Muslims as Ethnic Minorities/national origin

i) The overwhelming majority of Muslims are included within the scope of ICERD on the basis of their 'national origin' and result from post-1945 immigration

22. Muslims are excluded from the scope of ICERD, because differentiation on the basis of religion is not included in the grounds said to constitute 'racial discrimination' under Article 1(1). Even as a religious group, the Committee has stated that they may be included by virtue of intersectionality between their racial and religious identities, but then conditioned such a finding on racial homogeneity, thus in effect, allowing the perpetrator to evade the law by discriminating against more than one racial group. In light of the specific context prevalent in the UK and much of Europe, that of anti-Muslim bigotry and Islamophobia, such an approach lends itself to being arbitrary and unreasonable.
23. Often minorities sit at an intersection of identities and it is not possible to delineate between the various aspects of the identity. The Muslim minority is no exception. In addition to having a distinct religious identity, as already stated, they more readily self-identify as a 'nation' with a distinct 'way of life', which encapsulates far more than just religious belief and acts of worship. In addition, the vast and overwhelming majority of Muslims fall directly within the scope of the ICERD on the basis of 'national origin'. Those of Indian, Pakistani and Bangladeshi origin account for 68% of British Muslims. Finally there is a small population of converts to Islam, some of whom are 'white' (4% 'White British Muslim' and 7.1% 'Other White Muslim').²⁰
24. The distinction between these elements of identity is seldom discernible. In fact in many situations marginalised and minority groups are discriminated against for their distinct identity as a whole, which itself is made of a number of elements including race, religion, culture and language. So what is essential is whether the said discriminatory treatment is aimed at a group,

¹⁵ <http://www.unitedsikhs.org/petitions/Memo%20re%20Sikh%20Ethnicity.pdf>

¹⁶ *Mandla v Dowell-Lee* [1983] 2 AC 548 (House of Lords).

¹⁷ CERD, General Recommendation No 23: Indigenous Peoples : . 08/18/1997.

¹⁸ CERD, General Recommendation No 24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1) : . 08/27/1999.

¹⁹ CERD, General Recommendation No 29: Article 1, paragraph 1 of the Convention (Descent) : . 11/01/2002.

²⁰ "Focus on Ethnicity and Religion" by Office of National Statistics (Palgrave Macmillan, 2006), 22.

<http://www.statistics.gov.uk/downloads/theme_compendia/foer2006/FoER_Main.pdf>

whose identity has a 'racial' element. This much has been recognised by the Committee through the concept of intersectionality and especially in relation to religious identity in its General Recommendation 32.

25. This contention is further reinforced by the blurred line between religion and national origin given that a number of the Muslims originate from Muslim-majority or Islamic States. So for them, the two are at times inseparable. For example being Muslim is inherently part of being Pakistani, Bangladeshi, Somali and Afghani.
26. In light of the above demographic snapshot of the British Muslim population, the case for their inclusion within the scope of ICERD should be an emphatic and unequivocal one, given any discriminatory treatment towards Muslims will indirectly discriminate on the basis of national origin, if not in 'purpose' in some cases, then certainly in 'effect' in every instance.

ii. Intersectionality conditioned on ethnic homogeneity

27. Intersectionality has allowed for the protection of Jewish²¹, Gypsy²² and Sikh²³ identities from racial discrimination in the UK. In *Mandla*, relating to Sikhs, the Court stated that two factors were *essential* in deciding whether a certain group could be considered 'ethnic': i) 'a long shared history'; and 'a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.' It then went on to list five further *relevant* shared characteristics: i) geographical origin, or descent from a small number of common ancestors; ii) language, not necessarily peculiar to the group; iii) literature peculiar to the group; iv) a religion different from that of neighbouring groups or from the general community surrounding it; and v) being a minority or being oppressed or a dominant group within a larger community, for example a conquered people.
28. Sikhs and Jews were included within the scope of 'racial group' under the Race Relations Act 1976. Thus if anyone discriminated against them on the basis of their religious identity they could resort to protection as a racial group. As such under non-discrimination law in the UK, no distinction is made between religious and ethnic identity for Jews and Sikhs. A case arguing for the inclusion of Muslims within the scope of the Race Relations Act 1976 failed on the basis that they include people of many nations and colours, who speak many languages and whose only common denominator is religion and religious culture. Thus their ethnic heterogeneity excluded them from the higher protection afforded to Sikhs and Jews.²⁴
29. In 2003, the Committee seemed to recommend to the UK to treat Muslims on the same footing as Jew and Sikhs in relation to protection from discrimination when it noted 'that the State party recognizes the "intersectionality" of racial and religious discrimination, as illustrated by the prohibition of discrimination on ethnic grounds against such communities as Jews and Sikhs, and

²¹ *Seide v Gillette Industries Ltd* [1980] IRLR 427 (Employment Appeal Tribunal).

²² *Commission for Racial Equality v Dutton* [1989] 2 WLR 17 (Court of Appeal)

²³ *Mandla v Dowell-Lee* [1983] 2 AC 548 (House of Lords).

²⁴ *Nyazi v Rymans Ltd* [1988] EAT/6/88 (unreported) (Employment Appeal Tribunal).

recommends that religious discrimination against other immigrant religious minorities be likewise prohibited.²⁵

30. However in the 2006 individual complaint by A.W.R.A.P.²⁶, the Committee seemed to have altered its position and relied on the same reasoning as the UK to reach a similar conclusion to exclude Muslims from the scope of ICERD by rejecting the claim of intersectionality on the basis of racial heterogeneity.
31. This, we suggest, is not the correct or coherent approach. Despite racial heterogeneity, British Muslims emanate from a *finite* group of national origins, the vast majority (96%) of whom are explicitly protected under ICERD and domestic legislation as racial groups.²⁷ Moreover within the racial groups that constitute the Muslim population, the majority (68%) are from the Indian Sub-continent (Pakistan, Bangladesh and India). Hence to condition intersectionality on the basis of racial homogeneity undermines the rationale and purpose of protecting individuals who are indirectly discriminated due to their national origin. Muslims may be racially heterogeneous, but they are also distinguished from the majority in relation to their national origin and the fact that they result from post-1945 immigration.
32. Furthermore in discrimination against Muslims, almost all of whom belong to immigrant communities, it is discernable that what is being expressed is a form of xenophobia and targeting those perceived to be 'foreign' or 'alien', where even other ethnic and religious minorities resembling Muslims are subjected to Islamophobic abuse because Muslims and Islam have come to symbolise the racial 'other'. Hence the Muslim population may be racially heterogeneous, but the discrete sets of national origins are homogeneously the result of immigration from the global South and are overwhelmingly non-white.
33. To limit intersectionality to racial homogeneity, as conceived by the Committee, is too narrow a test for indirect discrimination against Muslims and pays inadequate attention to the common racial identity shared by all Muslims regardless of their national origin, of belonging to a larger family of immigrant communities. Such a narrow construction of intersectionality renders the absurd outcome that perpetrators can easily repel charges of racism as long as they indirectly target more than one racial group. Targeting one racial group equates to racism, while targeting two or more racial groups equates to a legitimate difference in treatment.

iii) 'White' Muslim Converts

34. With regards to those who advance the case of converts as not fitting with the above trend it is critical to form a more detailed and nuanced picture of the situation in the UK of Muslim converts. As already stated, the number is small. In addition converts are not only from the 'white' majority but also from other racial groups such as the Afro-Caribbean community. Furthermore as we have already observed, the attacks on Muslims are not merely due to their religion or beliefs but more broadly aimed at the Muslim identity as a whole and the associated

²⁵ Concluding Observations UK (2003), supra n 25 at para. 20.

²⁶ *A.W.R.A.P. v Denmark* (37/2006), Admissibility, CERD/C/71/D/37/2006 (2007).

²⁷ 96% of all British Muslims are self-identified as non-White, non-British Muslims (cited above).

way of life which is perceived as alien and foreign, of which the religious element is but one aggravating aspect. This cultural element is all too evident in Muslim converts, in relation to their outward appearance especially in dress and etiquette. Thus converts can also suffer from discrimination due to this adopted 'foreign' Muslim ethnicity and at times suffer worse discrimination precisely as a result of their race, given that they are labelled 'traitors' for turning their back on their 'own' people.

V. Purpose and Effect

35. Even though Muslims constitute a varied mix of national origins, they share a common identity – that of being identified and labelled as 'immigrant' communities, despite in most cases being 2nd or 3rd generation. While overt racism has become taboo and even obsolete in public life, the same patterns of unjustifiable resentment, hatred and scapegoating towards culturally and religiously distinct, often marginalised and disadvantaged minorities is finding new and creative outlets. As such, the Ad Hoc Committee on the Elaboration of Complementary Standards has recognised that 'religious intolerance often constitutes an essential part of contemporary manifestations of racism' and also recommended the drafting of a of General Recommendation specifically focusing on race and religion.²⁸
36. Islamophobia and anti-Muslim hatred is a particularly insidious form of racism as the intention behind is clearly racist (targeting immigrant groups). However to evade the law, groups such as the BNP and EDL, tailor their messages to the lacuna in the law with regards to religious discrimination. As such even though they appear to be targeting the religious aspect of an individual's identity, their real motive is aimed at the racial and ethnic identity of Muslims. In other words at times discrimination against Muslims may provide an example of indirect yet purposeful racial discrimination.
37. The evidence of intent of far right xenophobic, anti-immigration and Islamophobic groups can be deduced through a survey of their past agendas and how their positions altered to coincide with changes in the law and then later post-9/11 and 7/7.
38. Previously the British National Party had been openly racist and until recently, despite remodelling itself as positioned against Islam and Muslims, limited its membership criteria to 'whites'.²⁹ They also continue to propagate and glorify the views of the overtly racist Enoch Powell, who in his notorious 1968 'Rivers of Blood' speech warned of the country being overrun by immigrants and used the derogatory term, 'pickaninnies', to refer to 'Black' children.³⁰ The party's leader, Nick Griffin, authored an anti-Semitic pamphlet in 1997 called '*Who are the*

²⁸ Human Rights Council, Complementary International Standards, Compilation of Conclusions and Recommendations of the Study by the Five Experts on the Content and Scope of Substantive Gaps in the Existing International Instruments to Combat Racism Racial Discrimination, Xenophobia and Related Intolerance, 18 February 2008, A/HRC/AC.1/1/ CRP.4 and 27 August 2007, A/HRC/4/WG.3/6.

²⁹ <<http://www.equalityhumanrights.com/news/2010/march/amended-bnp-constitution-ruled-indirectly-discriminatory/>>

³⁰ <<http://www.bnp.org.uk/news/enoch-powell-was-right>>

Mindbenders' on the Jewish control of the media.³¹ He was also convicted of inciting racial hatred for his book *'The Rune'*, in which he denied the holocaust referring to it as the 'Holohoax'.³²

39. Similarly the EDL have had to draft in token Sikh and black members to counter the perception that they are a racist organisation. Gurmit Singh, one of the EDL's handful of ethnic minority members, made a highly offensive speech against Muslims on 11 December 2010 where 'he described Prophet Muhammad (peace be upon him) as a "paedophilic pirate"; said "stick your Allah up your arse, you cunt"; and repeatedly said about Muslims, "fuck em"'.³³ Singh who is a Sikh, was released without charge due to the lack of protection UK law offers to Muslims. His statements prompted a coalition of major representative Sikh organisations to threaten him with excommunication from the Sikh community, not least because the Sikh community itself is under threat from the rhetoric and ideology of the EDL and BNP.³⁴
40. Given the shifting and evolving strategies employed by racist and xenophobic groups, it is surprising that the Committee would discount the strong inference of racial and anti-immigrant discrimination that is concealed behind Islamophobic declarations in cases such as A.W.R.A.P. purely based on the racial heterogeneity of Muslims, thus ruling out intersectionality. Without any due examination of the deduced 'purpose' given the nature of the organisation concerned and their previous statements and agendas. This is especially surprising when ICERD explicitly accounts for the 'purpose' or intention behind racial discrimination.
41. Notwithstanding the above, ICERD also clearly takes account of the 'effect' of discrimination, so in the above context even if 'purpose' or 'intent' to racially discriminate cannot be deduced, organisations such as the EDL and BNP cannot satisfy the 'effect' test, as the 'effect' of Islamophobia is clearly to discriminate against immigrant groups on the basis of their national origin. Thus the apparent absence of 'purpose' or intention should not be a valid defence to indirect discrimination. The focus should instead be on the consequences and whether those suffering are racial groups.
42. Numerous identities coincide in individuals belonging to different groups. Even if we do not accept the argument of non-delineability of identity, using arguments of 'effect', as long as 'race' is one aspect of the identity of a distinct group, there will always be racial discrimination in 'effect' regardless of the intent or which other aspect of that individual's identity appears to be targeted.

³¹ <http://news.bbc.co.uk/1/hi/uk/1412785.stm>

³² http://news.bbc.co.uk/1/hi/english/static/in_depth/programmes/2001/bnp_special/the_leader/beliefs.stm

³³ <http://www.iengage.org.uk/component/content/article/1-news/1261-edls-guramit-singh-will-not-face-charges-following-anti-muslim-tirade>

³⁴ <http://www.turbancampaign.com/updates/joint-statement-release/>

VI. Conclusion

43. The case for the inclusion of Muslim within the scope of ICERD is not premised only the extension of the grounds to religious discrimination, but rather that the specific phenomenon of Islamophobia and anti-Muslim bigotry should be included within its remit more comprehensively. The most compelling reason for this is that religion is but one element of the Muslim identity as a whole. There are in addition ethnic, racial and national origin elements, which are explicitly included in the potential heads of discrimination. The Committee should work towards a 'Context-sensitive interpretation [...] taking into account the particular circumstances of States parties'; those of the emerging and growing phenomenon of Islamophobia in the UK and Western Europe.
44. Moreover the 'literalist' interpretation of ICERD risks being an affront to the basic idea of human dignity and the protection of marginalised groups. It is essential that we use the 'effect' of discrimination on racial groups as the definitive test rather than just intention or 'purpose'. On the other hand, the Committee should also take account of the evolving nature of the racist and xenophobic far right and give more attention to the *deduced* intent even if the apparent statements do not convey this. This is the result of opportunism and strategy adapted to the lacuna in the law.
45. The issue of relying on racial heterogeneity to deny claims of intersectionality by Muslims is an unjustifiable approach that precludes millions of Muslims from protection against discrimination even though the vast majority of them constitute ethnic minorities based on their national origin. As such the heterogeneity is limited to immigrant communities. Put differently, Muslims homogeneously result from post-1945 immigration. The 'white' convert population is a small minority and they too are targeted due to their association with the foreign/immigrant culture and way of life. Furthermore their race may work as an aggravating factor, which leads to worse discrimination. Regardless, these intricacies simply mean that each case of discrimination against Muslims should be treated on a case by case basis to see which of the above or other scenario is relevant.
46. It undermines the object and purpose of ICERD to exclude its originally intended beneficiaries from its protections merely because another aspect of their identity is under attack. ICERD and human rights generally, are not to have an abstract existence detached from the reality and context for which they are needed. ICERD and other instruments are not to be theoretical in nature, there to protect only aspects of identity. Rather they protect *individuals*, whose identity as a whole is earmarked for protection to safeguard against the deprivation of their dignity.
47. ICERD at the time of its drafting was responding to its context by focusing on certain notions of racism. The notion has now evolved and poses new challenges to which this 'living instrument' now must rise to. Through this prism and the context of growing levels of irrational hatred and violence against Muslims, there is a strong case for the Muslim identity to be considered a 'way of life' (*deen*) that is more than just a religion. Hence the Muslim identity as a whole should be accepted as an ethnicity as is the case with the Sikh and Jewish minorities in the UK. Failing this, Muslims should be able to claim indirect discrimination in every instance of Islamophobia

regardless of 'purpose' or intent because there will always be an indirect discriminatory 'effect' on ethnic minorities who are Muslim.