



## UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

### LEGISLATION FACTSHEET

# ANTI-EXTREMISM LAWS

March 2019

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#### USCIRF's Mission

*To elevate and promote  
international religious  
freedom as a norm  
and practice.*

*By Kirsten Lavery, International Legal Specialist*

#### Overview of Anti-extremism Legislation

In response to the threats to peace and security that arise from violent extremism, many states have adopted legislation to counter extremism and/or terrorism. These laws aim to stem violence resulting from extremist beliefs and counter the underlying ideology.

- **Definition:** While universal definitions of extremism and terrorism do not exist, [USAID defines violent extremism](#) as “advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic, and political objectives.” Terrorism is defined in [Title 22 Chapter 38 U.S. Code § 2656f\(d\)](#), for purposes of the State Department’s annual country reports on terrorism, as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”
- **Obligation of states to combat extremism:** Violent extremism poses a direct threat to the entitlement of human rights, often with devastating consequences for victims. As noted by the [UN Security Council](#), states have an obligation under international human rights law to protect individuals from terrorist acts and incitement of such acts motivated by extremism and intolerance. At the same time, states must ensure that the measures taken to combat extremism adhere to obligations under international law, including international human rights standards.
- **Scope:** Anti-extremism legislation typically criminalizes violent and/or extremist activities, organizations, and materials.
- **Legal framework:** Laws penalizing extremism can be contained in a [variety of legal instruments](#), including criminal codes, national security legislation, and standalone anti-extremism laws. Some states create separate terrorism courts to prosecute these crimes.

In [Nigeria](#), Boko Haram has engaged in forced religious conversions and has targeted civilian sites protected under international law, including kidnapping schoolgirls and conducting bomb attacks against churches and mosques.

In [Iraq](#) and [Syria](#), the Islamic State of Iraq and Syria (ISIS) waged a [genocidal campaign](#) against Yazidis, Christians, and Shi’a Muslims in an attempt to eradicate their presence from ISIS territory.

## Human Rights Concerns

Counter-extremism measures taken by states must be consistent with international human rights standards. Anti-extremism laws should be grounded in relevant human rights, which include the freedom of religion or belief, freedom of opinion and expression, and the freedom of peaceful assembly and association. As described in the chart below, limitations on these fundamental freedoms are only permitted in narrow circumstances. Any limitations must be interpreted strictly, proportionate, and not imposed for discriminatory purposes.

- **Freedom of religion or belief:** Article 18 of the [Universal Declaration of Human Rights](#) (UDHR) safeguards freedom of thought, conscience, and religion. In the [International Covenant on Civil and Political Rights](#) (ICCPR), the freedom of religion or belief includes the right to manifest one's religion, in public or in private, alone or in community with others, including through worship, teaching, practice, and observance. This includes manifesting one's beliefs through expression intended to persuade another individual to change his or her religious beliefs or affiliation voluntarily. Importantly, freedom of religion or belief is subject to fewer restrictions than other fundamental rights. Only manifestations of this freedom can be limited, but not holding beliefs itself.
- **Freedom of expression and opinion:** The UDHR and the ICCPR also protect the right to freedom of opinion and expression, including the right to discuss and even criticize religion. Like the freedom of religion or belief, only manifestation of expression and opinion can be limited, but not holding the opinions on their own.
- **Freedom of peaceful assembly and association:** The UDHR and ICCPR also provide the rights to peaceful assembly and the freedom of association. Under international law, there is a presumption that a demonstration is peaceful unless it can be proven otherwise.

## Permissible Limitations of Human Rights under International Human Rights Law

Fundamental Freedom	Relevant ICCPR provision(s)	Relevant Standards for Limitations	
		Limitation(s) Allowed	Permissible Grounds
Freedom of religion or belief (manifestations)	Article 18(3)	Permitted when prescribed by law and necessary...	...to protect public safety, order, health, morals, or the fundamental rights and freedoms of others
Freedom of religion or belief (holding beliefs)	Article 18(3)	Limitations are not permitted	
Freedom of opinion and expression (manifestations)	Article 19(3)	Permitted when provided by law and necessary...	...to protect the rights or reputations of others, national security, public order ( <i>ordre public</i> ), public health, or public morals
	Article 20(1)	Required...	...to prohibit propaganda for war
	Article 20(2)	Required...	...to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence
Freedom of opinion and expression (holding opinions)	Article 19(1)	Limitations are not permitted	
Freedom of peaceful assembly and association	Articles 21 and 22	Permitted when necessary in a democratic society and in conformity with the law...	...to protect national security or public safety, public order ( <i>ordre public</i> ), the protection of public health or morals, or the protection of the rights and freedoms of others

## Standards for Laws Countering Extremism and Terrorism

Anti-extremism legislation has, on occasion, exceeded the bounds permitted under international law, particularly where terrorism has been used to justify the adoption of state of emergency regulations to void human rights. As anti-extremism laws have the potential to encroach on fundamental rights and freedoms, it is imperative that states develop laws that are compliant with international standards.

- **Anti-extremism laws must effectively balance human rights, particularly the freedom of religion or belief:** Counterterrorism measures and the protection of human rights, including religious rights, are mutually reinforcing obligations. *Where religious freedom and related rights are not protected, violent extremism is more likely to spread.* The prosecution of peaceful members of religious groups for extremism creates a climate of fear, which undermines efforts to combat radicalization to extremist beliefs. Respecting human rights, including the freedom of religion and belief, ultimately contributes to countering terrorism and minimizes the risk of radicalization.
- **Any restrictions on religious freedom must be particularly narrow:** Even in the context of anti-extremism legislation, states can only minimally limit the right to freedom of religion or belief. While narrow restrictions on some external manifestations of religion or belief may occasionally be necessary, limitations on the right to freedom of religion or belief can never be based on national security concerns alone, which distinguishes this right from other rights. Further, freedom of religion is the only fundamental right from which no derogation is permissible in situations of war or public emergency.
- **Anti-extremism laws must clearly and precisely define extremism and terrorism:** Anti-extremism legislation must contain precise definitions of relevant terms. Without clear limits, virtually any speech or religious activity can be prosecuted. Anti-extremism laws must be formulated with enough clarity to allow individuals to regulate their conduct, and cannot be vague and lead to unforeseeable application.
- **Anti-extremism laws must avoid blanket prohibitions:** Anti-extremism legislation should not be overly restrictive, which means these laws must not contain general bans. Instead, any limitation that restricts human rights should be targeted and require a case-by-case assessment that ensures the prohibited conduct, organization, or material can be limited under the relevant standard of the implicated right.
- **Anti-extremism laws must include the use or advocacy of violence as an essential element of any prohibition:** As defined in the legislation, violence or advocacy of violence must be an essential element of any prohibited activity, speech, or organization. The legislation must clearly link the regulation to preventing violence, and must do so in a way that avoids discriminating against any particular group. Without direct violence, incitement to violence, or preparation to commit violence, peaceful conduct or speech, even those that aim to convince other people to adhere to another religion, cannot be limited. Extremism laws cannot be used to criminalize the peaceful practice of religion or otherwise target peaceful religious groups.

Tajikistan's extremism law punishes extremist, terrorist, or revolutionary activities without requiring acts that involve violence or incitement of imminent violence. Trials under these charges lack due process and procedural safeguards. The Tajik government uses concerns over Islamist extremism to justify actions against participants in certain religious or political activities.

On the international level, no universally accepted definition of violent extremism or terrorism exists. Still, it is important that states define these key terms in light of the specific context of security threats faced. These definitions should be narrowly construed and identify specific requirements. Any activities, organizations, or materials prohibited as extremist must be similarly well defined, clear, and unambiguous.

- **In prohibiting speech, anti-extremism laws must maintain a high threshold that permits contextual analysis:** Clear and narrow definitions are especially important in ensuring that anti-extremism legislation does not overly criminalize speech. The boundaries between insult to religious feelings, hate speech, and incitement to violence are often blurred, and as such, the line for when expressions move from expressions of ideas to incitement to violence is often difficult to identify. Far reaching laws may silence permissible discourse, including discussions related to religion.

Even in the context of violent extremism, the threshold for incitement to violence that can be prohibited is quite high. Not all types of inflammatory, hateful, or offensive speech amounts to incitement. Limitations on expressions should only be permitted when these expressions constitute incitement to imminent acts of violence or discrimination against a specific individual or group.

In [Saudi Arabia](#), the 2014 counterterrorism law and related legislation criminalized as terrorism virtually all forms of peaceful dissent. Terrorism also included calling into question the fundamentals of Islam. In 2014, Waleed Abu al-Khair, legal counsel to blogger [Raif Badawi](#), became the first human rights defender to be sentenced under the counterterrorism law, receiving 15 years in jail on various spurious charges related to his advocacy. In March 2016, journalist Alaa Brinji was sentenced to five years in prison under the counterterrorism law for “insulting the rulers” and “ridiculing Islamic religious figures,” based in large part on his tweets in support of women’s rights and prisoners of conscience. While the counterterrorism law was amended in 2017 to address some of the human rights concerns by referencing the use of violence as one possible aspect of terrorism, the law still contains overly broad definitions and continues to be applied against activists.

Several factors are examined in deciding whether a statement amounts to incitement, including the context in which it is made, the public to which it is addressed, and whether the statement is made by a person in an official capacity or who is otherwise influential. Religious and non-religious groups must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. As art often intends to provoke strong emotions from the audience, artistic expressions must be evaluated with reference to the artistic value and context.

- **Anti-extremism laws cannot target specific religious groups:** Extremism laws cannot be used to target participants in certain religious groups, including those seen as subversive. Religious organizations, including non-traditional organizations, should not be banned outright as extremist organizations. States cannot equate one religion with extremism or otherwise a perceived threat to state security. Relatedly, anti-extremism legislation and measures must protect minority rights and ensure non-discrimination based on protected grounds, including religion.

In western [China](#), an estimated 800,000 to 2 million Uighur Muslims have been involuntarily detained in [internment camps](#), where authorities attempt to force individuals falsely and arbitrarily accused of extremism to abandon their faith. Regional legislation identifies 15 types of behavior the government views as extremist, such as wearing an “abnormal” beard, wearing a veil, or following halal practices (Muslim dietary laws).

- **Anti-extremism laws cannot be used as a guise to limit freedom of peaceful assembly and association:** Anti-extremism legislation cannot be used to impermissibly restrict freedom of peaceful assembly and association. Often, under the excuse of emergency, broad measures restrict gatherings as threats to public order. These restrictions have extended to prohibiting religious meetings, which is particularly problematic. Anti-extremism legislation overreaches when it places restrictions on the right to freedom of association and assembly beyond what is absolutely necessary to respond to legitimate security concerns.

- **Legislation must be clear in defining extremist material and ensure protection of religious texts:**

Legislation that aims to ban material as extremist must include clear and objective criteria to limit arbitrary determinations and abuse. Restrictions on extremist materials often implicate both the freedom of religion and expression, and must be prescribed by law, in furtherance of one of the legitimate aims, and necessary to achieve those aims. Statements that are merely offensive or insulting cannot be banned.

In addition, states cannot place blanket bans on sacred religious texts, even texts of religious groups viewed as subversive or passages that criticize other religions. Instead, materials can only be prohibited when they can be interpreted as promoting acts of violence or discrimination. The context in which the materials are distributed must be considered, including existing interreligious frictions. The fact that materials aim to convince readers to adopt different religious beliefs, without advocating for illegal or violent methods of achieving this goal, is insufficient to justify their banning.

- **Anti-extremism legislation must contain adequate oversight and ensure due process:** Legislation must include adequate safeguards against the illegal or abusive restriction of fundamental rights. Clarity is imperative to ensuring that anti-extremism legislation does not confer unfettered discretion on those enforcing the law.

Anti-extremism legislation must ensure that the rights to a fair trial and access to justice are respected during prosecutions for terrorism or extremism. This includes access to an independent judiciary or other body that can implement terrorism legislation. Some states create separate terrorism courts, but it important that these courts are not used as a tool against dissidents.

Trials should have procedural safeguards and appeal mechanisms that ensure due process of the accused. This is particularly important as unfair proceedings may serve to further disenfranchise defendants and other minority groups, and in turn, drive extremism.

In [Russia](#), any court may add texts to the Federal List of Extremist Materials. As of January 2019, there were over 4,000 items on this list, including many religious texts with no apparent connections to militancy. The list includes the translation of the Bible used by the Jehovah's Witnesses, which in 2017 was the first centralized religious organization to be banned as an extremist organization in the country.

In addition, the Qu'ranic commentary of Said Nursi, a Turkish Islamist revivalist theologian and ethnic Kurd, is banned, with his readers typically being charged with belonging to a terrorist movement. In August 2018, the [European Court of Human Rights](#) found that the Russian courts had not justified why the ban was necessary, failing to show that the books had ever caused, or risked causing, interreligious tensions or violence.



## UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

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