



Submission to the Royal Commission on Antisemitism and Social Cohesion

Defining antisemitism: a critique of the International Holocaust Remembrance Alliance's non-legally binding working definition of antisemitism and recommendations for reliable identification of antisemitism in Australia

2 May 2026

Jewish Voices of Inner Sydney

Formed in 2024 on Gadigal and Wangal lands, Jewish Voices of Inner Sydney (JVOIS) provides community and avenues for collective advocacy to local Jewish people who have not felt represented by the old Jewish organisations. We are committed to universal human rights and democratic freedoms.

Members of JVOIS range in age, background and Jewish religious observance. Many of us are the children and grandchildren of Holocaust survivors and refugees who were given shelter here, on unceded Aboriginal and Torres Strait Islander lands.

In solidarity with many other groups, Jewish and non-Jewish, members of JVOIS campaign for justice for the Palestinian people and call on the Australian Government to end its political support of, and trade with, Israel. As part of this effort, JVOIS members have attended numerous rallies and protests. We have not experienced antisemitism within the Palestine justice movement, where we have made many friends.

The struggle against racism in this country has always been led by First Nations peoples, resisting all forms of oppression. During the twentieth century, when antisemitism was much more prevalent in Australia, Aboriginal activists were among the fiercest voices against it. We acknowledge that in Australia, racism against Aboriginal and Torres Strait Islander peoples is structural and foundational. We strongly support their calls for truth telling, justice and treaty.

About this Submission

This submission draws on the findings of a collaborative research project which was convened by the Jewish Council of Australia in 2025, after Australia's Special Envoy to Combat Antisemitism's plan was released. The project brought together a small group of researchers and policymakers to analyse the International Holocaust Remembrance Alliance's non-legally binding working definition of antisemitism, appraise its utility as a policy instrument, and evaluate its impact on academic freedom and political speech in jurisdictions where it has been adopted.

As a result of our collaboration, elements of this JVOIS-authored submission may align with elements of the Jewish Council's submission. Ultimately, our two organisations developed the shared material into separate submissions.

The JVOIS team has been working on a small suite of submissions on key topics. In our opinion, the large body of valuable critique of the working definition, and the immediacy required for consideration of how antisemitism is to be defined in the work of the Royal Commission, warrant a dedicated submission.

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Cases cited

Husain v Solicitors Regulation Authority [2025] EWHC 1291 (Admin)

Jarrett v State of New South Wales [2026] NSWCA 62

Jones v Toben [2002] FCA 1150, affirmed *Toben v Jones* [2003] FCAFC 137.

Kaplan v State of Victoria (No 8) [2023] FCA 1092

Lattouf v Australian Broadcasting Corporation (Penalty) [2025] FCA 1174

Miller v University of Bristol [2023] ET/1401121/2021

Stand With Us Center for Legal Justice v Massachusetts Institute of Technology, No 24-1800 (1st Cir, 21 October 2025).

Wertheim v Haddad [2025] FCA 720; 311 FCR 263

1 Recommendations¹

Rescind the IHRA working definition

- 1.1 In the Commission's work, regard the IHRA working definition as a flawed tool, and avoid applying it to evaluate whether or not conduct is antisemitic.
- 1.2 Recommend that the Australian, state and territory governments rescind their adoption of the IHRA working definition.

Prioritise human rights

- 1.3 Recommend a major reform of Australia's anti-discrimination framework, consolidating federal, state and territory discrimination laws into a single federal instrument that expands and equalises protections to ensure all marginalised groups are afforded consistent protection.
- 1.4 Recommend that the Australian government enact a Human Rights Act or Charter of Human Rights, creating a positive duty to protect the human rights of all Australians, including the rights of political speech and protest.

Use the racism causation test

- 1.5 Recommend amendment to hate speech legislation to require reasonable proof of causation as a threshold condition for any finding of hate speech arising from political expression. That an act was done because of the identity of the targeted group not for some other reason.

¹ These recommendations relate only to the IHRA working definition. JVOIS makes a range of broader recommendations in our other submissions.

2 Introduction

- 2.1 Members of JVOIS hold deep concerns about antisemitism and the many issues undermining the connectedness and wellbeing of Australians, as well as confidence in our democratic institutions and processes, including; growing inequality; lack of adequate climate action; the prevalence of mis- and disinformation; and the recent surge in support for One Nation and far-right organisations such as the March for Australia.
- 2.2 We are appalled by Israel's genocide of Palestinians in Gaza, escalating human rights abuses and settler violence in the occupied West Bank, and the innocent civilians killed and injured across Lebanon and Iran. And we are all too aware that in Australia, as in the rest of the Jewish diaspora, increases in Israel's crimes tend to correlate with increases in antisemitic incidents against diaspora communities. The situation in Israel is grim and here in Australia, attitudes have polarised, leading to the fracturing of Jewish communities.
- 2.3 While we would have preferred for this Royal Commission to approach racism more broadly, we welcome the opportunity to make this submission, which addresses the Commission's first term of reference.²
- 2.4 This submission scrutinises the International Holocaust Remembrance Alliance's non-legally binding working definition of antisemitism,³ providing many highly credible opinions which concur that it is not fit for purpose, does not provide a better mechanism for identifying antisemitism than anti-discrimination frameworks and is associated with significant undesirable outcomes.
- 2.5 JVOIS suggests that the Commission should take care to avoid conferring legitimacy on the IHRA working definition. The Commission's methodology, as well as its findings, will set benchmarks for the analysis of antisemitism in Australia.

² Letters Patent – Royal Commission on Antisemitism and Social Cohesion (Cth, 2026) Term 1.

³ International Holocaust Remembrance Alliance, 'Working Definition of Antisemitism' <<https://holocaustremembrance.com/resources/working-definition-antisemitism>> accessed 24 April 2026.

3 Use of the IHRA working definition of antisemitism in the work of the Royal Commission

- 3.1 In her opening address to the Royal Commission, Commissioner Bell indicated that she intends to apply the International Holocaust Remembrance Alliance's non-legally binding working definition of antisemitism (IHRA working definition).
- 3.2 We acknowledge that the Commission's Letters Patent mentions the IHRA working definition, although it is not contained within the terms of reference,⁴ and that as an experienced jurist the Commissioner can bring interpretive rigour to an imprecise instrument.
- 3.3 However, we submit that the IHRA working definition's flaws cannot be resolved through careful application, and propose that the Commission's terms of reference do not preclude the use of other, more reliable, approaches for the evaluation of what does, and does not, constitute antisemitic conduct.
- 3.4 The Commissioner has expressed a preliminary view that critics of the definition pay insufficient regard to its terms and overlook the requirement to consider overall context. She also sought to clarify that criticism of Israeli government policy is not antisemitic.⁵
- 3.5 We note that the two sentences of the working definition itself contain no reference to context. The phrase, 'taking into account the overall context', appears in the bridging text between the working definition and the examples – a part of the IHRA full document that the Australian Government has not adopted.⁶
- 3.6 Moreover, the Commissioner's statement, that criticism of Israeli government policy is not antisemitic, is a useful starting point, but it does not go far enough. The handbook produced this month by Australia's Special Envoy to Combat Antisemitism (ASECA) states, without supporting evidence, that it is 'increasingly common for the word "Zionist" (or iterations of it) to be used as cover or proxy for "Jew"'.⁷ The handbook concludes with the extraordinary statement that 'Antisemitism and antizionism [sic] are both expressions of hatred towards Jews'.⁸
- 3.7 In other jurisdictions, the IHRA working definition has been systematically deployed to characterise political speech about Israel as antisemitic, with documented consequences for employment, academic and creative freedom, and the rights to assemble and to protest.⁹

⁴ The Letters Patent provides 'AND that the Australian Government has adopted the International Holocaust Remembrance Alliance's working definition of antisemitism'.

⁵ Royal Commission on Antisemitism and Social Cohesion, *Opening Hearing*, Sydney, 24 February 2026, transcript P-6 lines 1–21 (Commissioner Bell).

⁶ Discussed in detail in section 5.

⁷ Australia's Special Envoy to Combat Antisemitism (ASECA), *Understanding Antisemitism in Australia* (2026) 16, <<https://www.aseca.gov.au/sites/default/files/2026-04/understanding-antisemitism-in-australia.pdf>> accessed 27 April 2026, [16].

⁸ ASECA, *Understanding Antisemitism*, (n 7) [76].

⁹ Discussed in detail in sections 13-15.

- 3.8 The following is an extract of a letter written by Robin Margo,¹⁰ speaking against the 2021 Waverley Council motion to adopt the IHRA working definition.¹¹ Margo was inaugural president of the New Israel Fund Australia (NIF Australia) and a current member of the NIF Australia advisory council.¹² Margo's letter begins:

I am a graduate of a Yad Vashem educational course on antisemitism, and was Senior Counsel for Jeremy Jones, former president of the Executive Council of Australian Jewry, during the last two-plus years of the lengthy litigation in the Federal Court against Holocaust denier Frederick Toben.¹³ I am also a former president of the NSW Jewish Board of Deputies.

I believe that adopting the IHRA definition, or otherwise giving it special status, would undermine the moral clarity of the fight against genuine antisemitism. This is because the IHRA definition is vague and open to interpretation in crucial aspects that enable it to be misused to suppress criticism of Israel or advocacy for Palestinian rights that are not inherently antisemitic.

Another way the IHRA definition has been misused is to call criticism of Israeli government actions antisemitic if those voicing it do not level similar criticism against other countries. The Australia/Israel and Jewish Affairs Council recently used such reasoning to accuse a well-respected Israeli human rights organisation of antisemitism because it used the word "apartheid" in criticising policies and actions of the Israeli government. Such whataboutism is intellectually and morally indefensible. Why should critics of Israel's treatment of Palestinians – be they Palestinians, Israelis, Diaspora Jews, or anyone else – have to criticise other countries' treatment of other people or groups to avoid being labelled antisemitic?

[T]here is no need for Waverley Council, or any government, political party, university or other institution, to adopt any single working tool as the definition of antisemitism – and there are good reasons for them not to do so. If you only have a hammer in your toolbox, it will be difficult to untangle spaghetti.

¹⁰ R Margo, *submission to Waverley Council ordinary meeting, 26 October 2021*, recorded in Waverley Council, Council Meeting Recording (26 October 2021) [58.39] <<https://webcast.waverley.nsw.gov.au/archive/video21-1026.php>> accessed 29 April 2026.

¹¹ In 2021, a very short time after former prime minister Scott Morrison announced the adoption of the working definition, Sydney's Waverley Council put forward a motion proposing that the council follow suit. At the October council meeting, held online because of COVID restrictions, addresses from members of the public were delivered as videos, or as letters, read aloud. Organisations, such as the NSW Jewish Board of Deputies (NSWJBD) and B'nei Brith, sent videos of support. Several strong letters from Jewish residents of Waverley spoke against the motion.

¹² New Israel Fund Australia, Advisory Council (2025) <https://www.nif.org.au/advisory_council> accessed 29 April 2026.

¹³ *Jones v Toben* [2002] FCA 1150, affirmed on appeal in *Toben v Jones* [2003] FCAFC 137: this was a landmark case which established that Racial Discrimination Act 1975 s 18C complaints relating to antisemitic conduct did not need to meet the racial hatred threshold. As Allsop J held, racial hatred is one form or manifestation of the evil of racial discrimination, not its definition.

4 Which part is the working definition?

4.1 The full document containing the IHRA non-legally binding working definition of antisemitism¹⁴ has several components which are often not clearly distinguished in public discourse or policy documents.¹⁵

4.2 We identify these as follows:

- *the preamble*: the introductory paragraph and the first sentence in bold in the box
- *the working definition of antisemitism*: the remaining bold text in the box
- *the bridging text*: a sentence followed by two paragraphs
- *the examples*: eleven bullet points
- *the notes*: three sentences

4.3 Throughout this submission, to refer to these components as a whole, we use the phrase, *the full IHRA document*. We use the term, *working definition*,¹⁶ to refer to the second part.¹⁷

4.4 The *working definition* is two sentences, which read:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, towards Jewish community institutions and religious facilities.

4.5 The use of this terminology in our submission is important because the lack of clarity regarding precisely what the Australian Government has adopted is a key aspect of discussion.

4.6 The layout of the full IHRA document is confusing: the last line of the preamble is placed inside the box, with the working definition. There are no subheadings, or other textual signals, to explain the relationship of the text below the box, to the working definition within the box. This has the effect of preventing a clear understanding that the document is composed of different parts.

4.7 To provide a citation, many digital documents link to the IHRA website. Despite updates having been made to its graphic design, which changed the font and the shape of the bullet points; and though the working definition has now been in use for a decade, the confusing arrangement of the text remains.

¹⁴ International Holocaust Remembrance Alliance, *Adoption of the Working Definition of Antisemitism* (Press Release, 26 May 2016 at the time of adoption) <<https://www.osservatorioantisemitismo.it/wp-content/uploads/2016/05/Press-Release-Documents-Antisemitism.pdf>> accessed 27 April 2026.

¹⁵ Stern-Weiner documented, in interviews with attendees, that only the working definition in the box was adopted by the IHRA plenary session as the definition: Jamie Stern-Weiner, *The Politics of a Definition: How the IHRA Working Definition of Antisemitism Is Being Misrepresented* (Free Speech on Israel, April 2021), <<https://freespeechonisrael.org.uk/wp-content/uploads/2021/04/The-Politics-of-a-Definition.pdf>>

¹⁶ *Husain v Solicitors Regulation Authority* [2025] EWHC 838 (Admin), [94]-[95].

¹⁷ Some sources refer to this as the 'core definition' or the 'bold text in the box'.

- 4.8 On the IHRA website,¹⁸ the prefacing of the document with text instructing visitors to 'Read the full text of the IHRA's non-legally binding working definition of antisemitism and learn more about this important tool with the related resources and FAQs below' reinforces the perception that the whole document is to be understood as the definition.

¹⁸ International Holocaust Remembrance Alliance, 'Working Definition of Antisemitism' <<https://holocaustremembrance.com/resources/working-definition-antisemitism>> accessed 24 April 2026.

5 The Australian Government has adopted only the working definition

- 5.1 The lack of clarity around the IHRA working definition's structure and terminology contributes to confusion over what exactly the Australian Government has adopted.
- 5.2 At a Senate Estimates hearing of the Legal and Constitutional Affairs Legislation Committee on 9 February 2026, Senator David Shoebridge asked a series of questions related to the reference to the IHRA working definition in the Letters Patent establishing this Royal Commission.
- 5.3 Ms Katherine Jones PSM, Secretary of the Attorney-General's Department, and Ms Sarah Chidgey PSM, Deputy Secretary, Integrity and Security Group, responded to these questions on behalf of the government.
- 5.4 The following exchange is reproduced from the proof Hansard of that hearing.¹⁹

Senator SHOEBRIDGE: The great bulk of the concern about the IHRA definition is not the definition itself but that the multiple examples that are included alongside the definition include those which conflate criticism of Israel with antisemitism. What's the situation in relation to the letters patent concerning the examples outside of the definition?

Ms Jones: The reference is to the definition only.

Senator SHOEBRIDGE: Not the examples.

Ms Chidgey: And it's to the fact that the government has adopted it, but the royal commission obviously has the scope to make its own determinations and recommendations.

Senator SHOEBRIDGE: Indeed. Commissioner Bell can form her own view about it. But to be clear, Secretary – and I cut you off at the end there; I am sorry – the reference in the letters patent is to the definition only and doesn't pick up, on a plain reading, the examples. Is that your position?

Ms Jones: That is my position, yes.

Senator SHOEBRIDGE: And is that mindful of the Federal Court decision of *Wertheim v Haddad*, which was one of the legal lines of authority which clearly distinguishes between criticism of Israel and antisemitism? Is it mindful of at least that line of authority?

Ms Jones: We are aware of that decision, yes.

- 5.5 This position has been reinforced by the policy update in The Australian Public Service Commission's Circular 2026/01: *Working Together to Combat Antisemitism in the APS*, which quotes the IHRA working definition as adopted by the Australian Government:

Following the release of *Eliminating Antisemitism: Australian Government response to the Special Envoy's Plan to Combat*

¹⁹ *Senate Legal and Constitutional Affairs Legislation Committee, Proof Committee Hansard*, 9 February 2026, 38 (Senator David Shoebridge, Ms Katherine Jones PSM and Ms Sarah Chidgey PSM).

Antisemitism, the APS is implementing measures to combat antisemitism and strengthen social cohesion.

Staff are encouraged to familiarise themselves with the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism adopted by the Australian Government, which is applicable to APS workplaces. [1] That definition states: ‘Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, towards Jewish community institutions and religious facilities.’²⁰

- 5.6 The bracketed footnote [1] reproduced in the quote, links directly to the IHRA website, described above. The APS circular does not mention that there is other text and that the working definition is the only part that has been adopted by the Australian Government.
- 5.7 A public servant reading the circular and clicking the link to check the citation, would encounter the full IHRA document, bridging text and examples included. Even if the APS circular was to explain that the expanded text has no official status, the person encountering the full IHRA document on the IHRA website would likely have her interpretation of the working definition shaped by reading its bridging text that sounds like guidance, and the examples alongside the definition.

²⁰ Australian Public Service Commission, *Circular 2026/01: Working Together to Combat Antisemitism in the APS* (2026) [12]–[13] <<https://www.apsc.gov.au/resources/circulars-guidance-and-advice/circular-202601-working-together-combat-antisemitism-aps>> accessed 27 April 2026, note that the [1] within the quoted text is the circular's own internal footnote, which links to the IHRA website.

6 ASECA's approach: whole IHRA document, whole of society

- 6.1 In July 2025, Australia's Special Envoy to Combat Antisemitism (ASECA) released *The Plan to Combat Antisemitism*, containing 13 objectives. The first related to the IHRA definition:

The Australian Government, several state governments and dozens of international governments have endorsed the International Holocaust Remembrance Alliance's (IHRA) working definition of antisemitism, including its illustrative examples, as best practice for identifying antisemitism.

Having recognised its value and status, the Australian government should require consistent application and adoption of the IHRA definition across all levels of government, public institutions and regulatory bodies. This will provide a unified framework for identifying, educating on, monitoring and responding effectively to antisemitic incidents.²¹

- 6.2 Although this statement is at odds with the Australian Government's position of having adopted only the working definition, we are not aware of any public correction by a government minister or official since the plan was released. The Senate Estimates exchange serves as sole clarification, and was not reported by the Australian media.
- 6.3 In December 2025, five days after the Bondi terror attack, Prime Minister Albanese announced that he was accepting all 13 objectives, although the Government's report described several on narrower terms than they were proposed. The report stated, 'The Australian Government's official definition of antisemitism is the International Holocaust Remembrance Alliance's working definition.'²² There were no specifics about which part had been adopted, nor any indication of how ASECA or the government might achieve a consistent application of the working definition across all levels of Australian government.
- 6.4 More recently, the Envoy's office released *Defining Antisemitism in Australia: An Explainer*,²³ and a much longer document, *Understanding Antisemitism in Australia*,²⁴ which is modelled on the Canadian IHRA handbook.²⁵ The new ASECA documents are highly problematic, containing numerous unsubstantiated claims. Both documents contain misleading citations, present opinion as fact, and misrepresent evidence. *Understanding Antisemitism* reproduces content from the Canadian handbook which describes, and then purports to answer, four common criticisms about the IHRA

²¹ Australia's Special Envoy to Combat Antisemitism, *Plan to Combat Antisemitism* (2025) 6.

²² Australian Government, *Eliminating Antisemitism: Australian Government Response to the Special Envoy's Plan to Combat Antisemitism* (2025) 5, <<https://www.homeaffairs.gov.au/reports-and-pubs/files/eliminating-antisemitism.pdf>> accessed 27 April 2026.

²³ Australia's Special Envoy to Combat Antisemitism (ASECA), *Defining Antisemitism in Australia: An Explainer* (2026) <<https://www.aseca.gov.au/sites/default/files/2026-04/explainer-defining-antisemitism-in-australia.pdf>> accessed 27 April 2026.

²⁴ ASECA, *Understanding Antisemitism* (n 7).

²⁵ Canadian Government, *Canadian Handbook on the IHRA Working Definition of Antisemitism* (2024). <<https://www.canada.ca/en/canadian-heritage/services/canada-holocaust/antisemitism/handbook-definition-antisemitism.html>> accessed 27 April 2026.

working definition, presenting them as 'misconceptions' and then dismissing them without providing any supporting evidence.²⁶

- 6.5 The *Explainer* contains most of the IHRA document, including all eleven examples, although not the preamble, reproduced under the heading, 'The IHRA working definition of antisemitism (verbatim)'.²⁷ Most of the discussion of specific conduct that follows refers to the examples.
- 6.6 In *Understanding Antisemitism*, the presentation of the IHRA working definition has been reworked. It also lacks the preamble. In this document, the other components are numbered parts 1-4 and the reader is instructed, without citation nor explanation, that the parts 'must be read and interpreted together' and that parts 2, 3 and 4 'provide guidance for practical use' of the working definition (part 1 in their numbering).²⁸ And yet, there is no suggestion that the examples must be tested against the working definition, for a 'perception of hatred'.
- 6.7 The ASECA framing has evolved from: the government has adopted the full IHRA document and any of it **can be used**, to; each time the IHRA definition is applied to evaluate antisemitism, the full document **must be used**.
- 6.8 The scope of organisations for whom ASECA intends the IHRA to apply has also expanded: from all levels of government, public institutions and regulatory bodies; to the 'whole-of-society', 'best practice' approach described in *Understanding Antisemitism*, which seeks to bring the full IHRA document to bear on Australian educational and academic institutions, law enforcement agencies, the legal sector, public sector, government agencies and programs, workplaces, the arts, civil society and not-for-profit sector, health, sport, media and online spaces.²⁹
- 6.9 Much of the dense, 76 page manual is dedicated to detailing why and how the full IHRA document should be applied to each of these areas of Australian society, yet the quasi-legal nature of the instrument is minimised by extremely limited use of the term, 'non-legally binding', which, although part of the working definition's proper name, is omitted from the handbook's titles.³⁰

²⁶ ASECA, *Understanding Antisemitism* (n 7) 64–5.

²⁷ ASECA, *Defining Antisemitism* (n 22) [10].

²⁸ ASECA, *Understanding Antisemitism* (n 7) 30–1.

²⁹ ASECA, *Understanding Antisemitism* (n 7) 50–7.

³⁰ The effect of the working definition's quasi-legal status is discussed in detail in section 13.

7 ASECA's approach: cause for concern

- 7.1 The ASECA interpretation subverts genuine antisemitic and anti-racist work by instrumentalising the IHRA working definition, in the very way critics, including former United Nations Special Rapporteur, E Tendayi Achiume, warn that it can be misused.
- 7.2 A professor of human rights law at Stanford, Achiume was the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, from September 2017 to November 2022. In her 2022 report, *Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Achiume detailed her concerns about the rise of antisemitism around the world.
- 7.3 The third section of the report presents her analysis of the key trends. Five out of the seven sub-sections relate to the rise of far-right extremism: the 'Broadening of neo-Nazi groups to embrace white nationalists and right-wing populist movements'; the increased acceptance of neo-Nazi ideas in mainstream forums; the 'use of new technologies to further neo-Nazism and related racism, xenophobia and intolerance'; the 'recruitment of young people by neo-Nazi groups'; and the 'upsurge in antisemitism in Europe and North America'.³¹
- 7.4 From Achiume's analysis it is evident that far-right extremism is the largest driver of contemporary antisemitism. Her report documents how neo-Nazi groups have expanded their reach by forging alliances with white nationalist and right-wing populist movements, gaining mainstream acceptance, and their effective use of digital platforms to recruit. Jewish people are among the primary targets of the resulting upsurge in hate crime and violence.
- 7.5 The sixth sub-section does not relate to antisemitism – Achiume returns to discussing it in the final sub-section of that part:
- The Special Rapporteur has regrettably noted a trend whereby various actors have instrumentalized certain human rights standards and tools resulting in repression of human rights. The Special Rapporteur is deeply alarmed by this trend because it undermines serious attempts to address neo-Nazism and related racism, xenophobia and intolerance. Moreover, it can obscure the oppression of groups affected by human rights violations, often also rooted in neo-Nazism, racism, xenophobia and related intolerance. Universality is a foundational principle of international human rights law and the rights of one group cannot be instrumentalized to deny the human rights of others.³²
- 7.6 After mentioning Russia's use of the need to combat neo-Nazism as justification for the war in Ukraine, Achiume issues a warning, specifically, about 'the politically motivated instrumentalization of the fight against antisemitism, which is increasingly linked to the adoption, promotion and implementation by States of the International Holocaust Remembrance Alliance working definition of antisemitism'. She says that there is an

³¹ E Tendayi Achiume, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, UN Doc A/77/512 (7 October 2022) 9–13.

³² Ibid [69].

‘urgent need for Member States to remain committed to fighting antisemitism in all its manifestations’ and cautions that more care must be taken to ensure ‘that all measures taken and instruments relied upon are fully compliant with and supportive of broader international human rights law norms’.³³

- 7.7 The Runnymede Trust is the United Kingdom's leading independent racial justice think tank. Writing in a report commissioned by Runnymede, about contemporary antisemitism in the UK, Feldman, Gidley and McGeever of the Birkbeck Institute for the Study of Antisemitism state:

Many in the Jewish community have embraced the IHRA working definition and see it (and its adoption by institutions) as a vital line of defence in a time of insecurity. Some go further and argue that disregarding the working definition, when leading Jewish institutions have thrown their weight behind it, denies Jewish people their collective right to define their oppression.

The IHRA definition has been controversial not only because of its wording but also because of the ways it has been used. A range of actors – the State of Israel, advocacy groups and individuals – have abused the working definition by casting aside the stipulation that we should assess each case by ‘taking into account the overall context’.

By dismissing this important caveat, the working definition may be used to tar legitimate criticisms of Israel as antisemitic. Used in this way, it can suppress free speech and academic freedom directly and also indirectly, by creating a climate of uncertainty.³⁴

- 7.8 ASECA’s *Understanding Antisemitism* presents a maximalist interpretation of the full IHRA document. A sub-section titled ‘Misconception #2: The IHRA definition silences criticism of Israel’ concludes, says ‘claims that the leading global definition of antisemitism – which reflects the lived experience of Jewish people worldwide – is designed to intentionally silence criticism echoes [sic] antisemitic tropes of Jewish power and control’.³⁵
- 7.9 We suggest that the ASECA handbooks provide adequate evidence to support the need to recommend that the governments rescind use of the IHRA definition. However, many other organisations use the working definition in more subtle ways. Hence, it is important to discuss its key flaws in more detail. This submission also provides a list of documented examples of the use of the working definition to suppress speech, in other parts of the world.

³³ Ibid [71].

³⁴ David Feldman, Ben Gidley and Brendan McGeever, *Facing antisemitism: the struggle for safety and solidarity* (Runnymede Trust, 2025) 11.

³⁵ ASECA, *Understanding Antisemitism* (n 7) [64].

8 Antisemitism is racism directed at Jews

- 8.1 The IHRA working definition departs from the understanding of antisemitism embedded in Australian law and the international human rights law that provides its foundation. As Feldman, Gidley and McGeever write, 'the working definition treats antisemitism as a stand-alone problem, unrelated conceptually, politically or ethically to other types of racism'.³⁶ The theme of their report, which aims to bring a measured voice to a highly politicised landscape, is that the move away from framing antisemitism as racism and of seeing other racialised minorities as allies to instead characterise antisemitism as unique, makes reducing it harder.³⁷
- 8.2 In the Terms of Reference for ASECA, issued by the Department of Home Affairs, the government did just as Feldman et al recommend, and referred to antisemitism as a subset of racism, not a stand-alone category. The document describes one of the Envoy's functions as 'supporting efforts to address systemic and interpersonal racism (including antisemitism), hate speech, discrimination and divisive language'.³⁸
- 8.3 In Australia, complaints of antisemitic conduct have been brought under section 18C of the Racial Discrimination Act 1975 (Cth) (RD Act) since 2002, recognising Jewish Australians as an ethno-religious group protected against racial discrimination by the Act.³⁹
- 8.4 Section 18C(1)(b) makes it unlawful to do an act, otherwise than in private, that is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate a person or group, *where the act is done because of their race, colour or national or ethnic origin*. Meaning: *antisemitism is racism against Jews; negative acts against Jews because they are Jews*. In this submission referred to as the *causation test*.
- 8.5 This formulation is drawn directly from the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Australia is a signatory, and has been applied by Australian courts to differentiate antisemitism from criticism of Israel, recently in *Wertheim v Haddad*⁴⁰ and *Kaplan v State of Victoria*.⁴¹
- 8.6 If more specificity is needed for a general audience, the RD Act formulation could be explained as:
- Antisemitism is the stereotyping or dehumanisation of, or discrimination, prejudice, hostility or violence against Jews **because they are Jews**; or against Jewish institutions **because they are Jewish**.
- 8.7 This is very similar to the Jerusalem Declaration on Antisemitism's definition.⁴²

³⁶ Feldman, Gidley and McGeever, *Facing antisemitism*, (n 34) 11–12.

³⁷ Feldman, Gidley and McGeever, *Facing antisemitism*, (n 34) 33.

³⁸ ASECA *Terms of Reference*, <<https://www.aseca.gov.au/about/terms-reference>> accessed 28 April 2026.

³⁹ *Jones v Scully* [2002] FCA 1080.

⁴⁰ *Wertheim v Haddad* [2025] FCA 720; 311 FCR 263, [107] (Stewart J): 'The ordinary, reasonable listener would understand that not all Jews are Zionists or support the actions of Israel in Gaza and that disparagement of Zionism constitutes disparagement of a philosophy or ideology and not a race or ethnic group... political criticism of Israel, however inflammatory or adversarial, is not by its nature criticism of Jews in general or based on Jewish racial or ethnic identity.'

⁴¹ *Kaplan v State of Victoria* (No 8) [2023] FCA 1092.

⁴² *Jerusalem Declaration on Antisemitism*, 'Definition', <<https://jerusalemdeclaration.org/>> accessed 28 April 2026.

9 The IHRA working definition fails its function as a definition

9.1 The IHRA working definition reads:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.⁴³

9.2 Each authority we examine concludes that these two sentences fail to function as a definition: they do not identify what antisemitism is and do not establish how, or by whose standard, a perception is to be judged antisemitic.

9.3 Feldman, Gidley and McGeever write that the working definition 'does not perform the most basic function of a definition,' failing to demarcate the concept with sufficient clarity to permit consistent application.⁴⁴

9.4 In 2017, soon after the United Kingdom adopted the IHRA working definition, leading UK barrister Hugh Tomlinson KC published a legal opinion which did not support its use,⁴⁵ writing:

The use of language is unusual and therefore potentially confusing. The phrase 'a certain perception' is vague and unclear in the context of a definition. The use of the word 'may' is also confusing. If it is understood in its usual sense of 'possibility' then the definition is of little value: antisemitism 'may be expressed as hatred towards Jews but may also be expressed in other (unspecified) ways'. This does not work as a definition.⁴⁶

9.5 The following year, Geoffrey Robertson KC, an Australian-born human rights barrister based in London, agreed:⁴⁷

The use of the conditional word "may" lends vagueness and obviously it can be expressed as "hatred towards Jews," but how else "may" anti-Semitism be expressed and if there "may" be other definitions, why are they not identified? As a "working definition," it needs a lot more work before it attains the precision which Article 10 requires for a ban on speech which is "required by law."⁴⁸

9.6 Sociologist Dr Peter Ullrich is a Fellow at the Centre for Research on Antisemitism at Technische Universität Berlin and co-edited the 2024 Wallstein Verlag volume *Was ist*

⁴³ International Holocaust Remembrance Alliance, 'Working Definition of Antisemitism', <<https://holocaustremembrance.com/resources/working-definition-antisemitism>> accessed 27 April 2026.

⁴⁴ Feldman, Gidley and McGeever, *Facing Antisemitism*, (n 34) [11].

⁴⁵ Hugh Tomlinson KC, Opinion on the Adoption of the International Holocaust Remembrance Alliance Non-Legally Binding Working Definition of Antisemitism (2017) <<https://freespeechonisrael.org.uk/wp-content/uploads/2017/03/TomlinsonGuidanceIHRA.pdf>> accessed 27 April 2026.

⁴⁶ Tomlinson, *Opinion* (n 45) [7].

⁴⁷ Geoffrey Robertson KC, Opinion on the International Holocaust Remembrance Alliance Working Definition of Antisemitism (Palestinian Return Centre, 2018).

⁴⁸ Robertson, *Opinion* (n 47) [11].

Antisemitismus? Begriffe und Definitionen von Judenfeindschaft.⁴⁹ In his 2019 expert opinion, Ullrich describes the definition as characterised by 'immense vagueness', leaving three key questions unresolved: what antisemitism is at its core; which phenomena are antisemitic, and toward whom they are directed.⁵⁰

- 9.7 The conditional phrasing of the second sentence of the definition, which fails to establish that an act can only be antisemitic if its targets are attacked because they are Jewish, creates the impression that any negative act directed against Jewish institutions or property, for whatever reason, constitutes antisemitism.
- 9.8 Sir Stephen Sedley, a former judge of the High Court and the Court of Appeal of England and Wales, writing in the *London Review of Books (LRB)*, says that the working definition 'fails the first test of any definition: it is indefinite'.⁵¹ Sedley writes that the opening phrase 'invites a string of questions. Is anti-Semitism solely a matter of perception? What about discriminatory practices and policies? What about perceptions of Jews that are expressed otherwise than as hatred?'⁵²
- 9.9 Robertson's central critique of the definition concerns the use of hatred as the threshold for discerning antisemitic conduct. He writes that the definition 'falls short of capturing those who express only hostility or prejudice, or who practise discrimination', including people whose antisemitism takes the form of casual prejudice, social exclusion or discriminatory employment practices, rather than overt hatred. He concludes that the working definition is not fit for purpose.⁵³
- 9.10 The causation test of the RD Act is absent from the IHRA working definition. That is; the definition does not require hatred or negative perception, rhetorical or physical manifestations toward Jews to be *because they are Jews* in order to qualify as antisemitism.

⁴⁹ Ullrich P, Arnold S, Danilina A, Holz K, Jensen U, Seidel I and Weyand J, *Was ist Antisemitismus? Begriffe und Definitionen von Judenfeindschaft* [What is Antisemitism? Concepts and Definitions of Hostility toward Jews] (Wallstein Verlag, 2024).

⁵⁰ Ullrich P, Expert Opinion on the "Working Definition of Antisemitism" of the International Holocaust Remembrance Alliance, ROSA LUXEMBURG STIFTUNG, 2019, 10–12.

⁵¹ Stephen Sedley, 'Defining Anti-Semitism' *London Review of Books* (4 May 2017) <<https://www.lrb.co.uk/the-paper/v39/n09/stephen-sedley/defining-anti-semitism>> accessed 27 April 2026.

⁵² Ibid.

⁵³ Robertson, *Opinion* (n 47) [11].

10 The examples are used more than the adopted definition

- 10.1 As a consequence of the working definition's lack of clarity, a person trying to use it to evaluate whether conduct is antisemitic requires further explanation. Readers are nudged toward the examples. In an organisation that has officially adopted the IHRA working definition, even when the organisation stipulates that the part which has been adopted is the two sentence working definition, as the Australian government has – those readers are nudged toward the examples.
- 10.2 'Because the core definition is so nebulous, it is these examples which are most often cited,' write Feldman, Gidley and McGeever.⁵⁴
- 10.3 Ullrich writes that the examples do not merely illustrate the core definition but expand it, adding meaning the definition itself does not supply. He argues that instead of the examples being read in relation to the working definition, the definition is read in relation to the examples. In practice, this routinely leads to the examples being applied as if they were unambiguous instances of antisemitism in themselves, without consideration of context that their framing requires.⁵⁵
- 10.4 Effectively, when the examples are added, *the examples become the definition*.

⁵⁴ Feldman, Gidley and McGeever, *Facing antisemitism*, (n 34) 11.

⁵⁵ Ullrich, *Opinion*, (n 50) 12.

11 The contentious parts: the bridging text and examples 7, 8 & 10

11.1 The full IHRA document introduces the examples with a few sentences of bridging text.

To guide IHRA in its work, the following examples may serve as illustrations:

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

11.2 A jurist reading the text would understand to test every incident against the definition, and consider the broader context, but the text’s phrasing makes this insufficiently clear.

11.3 Robertson notes that:

What is not clear, (although it should have been made clear) is whether the core definition requirement of a perception of “hatred towards Jews” is a prerequisite before any example is deemed anti-Semitic. This is an important, but unaddressed, question.⁵⁶

11.4 In contradiction of the “could ... include” in the bridging text, the phrasing of the examples leaves the impression that they are presumptively antisemitic. It is on this basis that they are strongly criticised.

11.5 Of the eleven examples, seven concern Israel, although the primary sources of antisemitism, as Achiume warns, are neo-Nazi ideology, white nationalism, xenophobia and far right extremism.⁵⁷ This orients the use of the working definition toward political speech about Israel, rather than toward the forms of antisemitism that have been historically, and still are today, most responsible for documented harm to Jewish people.⁵⁸

⁵⁶ Robertson, *Opinion* (n 47) [19].

⁵⁷ As discussed in section 11.

⁵⁸ Ullrich, *Opinion*, (n 50) 12.

Example 7

Denying the Jewish people their right to self-determination [a Jewish state], e.g., by claiming that the existence of a State of Israel is a racist endeavor.

- 11.6 Discussing the seventh example about Israel, former Director of the Institute for Jewish Policy Research, Antony Lerman, says of the working definition example:

The state of Israel is not like an individual Jew. It is a category mistake to compare a state to a person. A state does not have a will of its own. It cannot think, feel or see. It has no agency that does not derive from human action. But based on this seductive mistake, a theory of antisemitism has been conceived that is an open invitation to attack freedom of speech.⁵⁹

- 11.7 Tomlinson, in his *Opinion* says:

A denial of a Jewish right to self-determination could be the result of a particular analysis of the nature of the Jewish people (motivated, for example, by religious considerations) which had nothing to do with the “hatred of Jews”. Furthermore, unless such a claim was informed by hatred to Jews, it would not be antisemitic to assert that as Israel defines itself as a Jewish state and thereby by race, and that because non-Jewish Israelis and non-Jews under its jurisdiction are discriminated against, the State of Israel is currently a racist endeavour.⁶⁰

- 11.8 Ullrich makes a further point about the seventh example. It creates a double standard in reverse: whereas recognising Israel's right to exist is treated as a prerequisite for a non-antisemitic speaking position, no equivalent requirement exists regarding recognition of Palestinian self-determination.⁶¹ The example is structurally one-sided in a way the IHRA working definition itself does not require.

- 11.9 Finally, the second part of the seventh example is used to discredit objective, fact-based discussions about apartheid in Israel.⁶²

- 11.10 Tomlinson adds that,

unless such a claim was informed by hatred to Jews, it would not be antisemitic to assert that as Israel defines itself as a Jewish state and thereby by race, and that because non-Jewish Israelis and non-Jews under its jurisdiction are discriminated against, the State of Israel is currently a racist endeavour.⁶³

⁵⁹ Lerman, *Whatever Happened to Antisemitism?*, 2022.

⁶⁰ Tomlinson, *Opinion* (n 45) [10].

⁶¹ Ullrich, *Opinion* (n 50) [13].

⁶² UNESCWA, Report on Israel's practices towards Palestinians including apartheid, <<https://archive.unescwa.org/news/escwa-launches-report-israeli-practices-towards-palestinian-people-and-question-apartheid>>; Amnesty, *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity* <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.

⁶³ Tomlinson, *Opinion* (n 45) 10, [2].

Example 8

Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.

- 11.11 Ullrich argues that Israel is not comparable to other democratic countries, which 'are not occupying powers [and] will not be criticized for a decades-old occupation policy'. Ullrich juxtaposes the bridging text's assertion that 'criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic' and the claim about double standards in the 8th example:

On the one hand, this sentence is an important clarification and indicates that there exists (possibly very harsh) criticism of Israel that is not antisemitic, as Israel—like any object of consideration—may per se be subject to justified criticism. On the other hand, the distinguishing criterion being offered is unclear and lacks an applicable standard.

The explanatory sentence is to be welcomed in its implicit moral demand to apply universal standards, as is Example 8, which reverses the argument. However, this demand is in fact not fulfilled universally (that is, also for conflicts without connection to antisemitism or Israel), as most political actors have restricted thematic, regional, and other areas of interest. Onesidedness, endorsing a certain perspective, double standards, and the like are not a sufficient criterion for identifying antisemitism.⁶⁴

- 11.12 Robertson's view is that Israel is like no other country, thus he refuted the logic of the 8th example, and the bridging text's statement that 'criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic'.⁶⁵ He says:

There is, in any event, a UN country-specific mandate on Palestine, partly because of the history of human rights abuse by Israel – another fact that makes its position different to that of other democratic countries and therefore open to particular scrutiny. Israel, unlike most democratic nations, has not ratified the Treaty for the International Criminal Court and does not accept the jurisdiction of the Human Rights Commission: this also sets it apart and makes criticism of its policies, unless attended by incitement to hatred, unexceptional.⁶⁶

- 11.13 In the subsequent paragraphs, Robertson enumerates further ways in which Israel is unique, finishing with an example of a misapplication by a complainant;

[T]he impression from the IHRA wording has led this commentator to think that criticism of Israel can be defined as anti-Semitic [sic] simply because it targets Israel and does not include other countries. This is just one example of how the loose words in the definition have been misunderstood and misapplied, in a way which could be used to besmirch legitimate political action as 'anti-Semitic'.⁶⁷

⁶⁴ Ullrich, *Opinion*, (n 50) [14], contracted for concision.

⁶⁵ Robertson, *Opinion* (n 47) [16].

⁶⁶ Ibid [28].

⁶⁷ Ibid [18].

Example 10

Drawing comparisons of contemporary Israeli policy to that of the Nazis.

11.14 Discussing the tenth example about Nazi comparisons, Ullrich says:

Comparing Israel, individual Israelis or Jews with National Socialism is part of the standard repertoire of the antisemitic reversal of the roles of perpetrators and victims, in particular in antisemitism motivated by a deflection of guilt (also known as “guilt-defensiveness antisemitism”). At the same time, comparisons with National Socialism are a near-universal means of expressing political outrage, vilifying political opponents or, especially at present, when radical right-wing movements, parties and state projects are experiencing a revival, making more or less accurate analytical comparisons. Such comparisons are also present in intra-Jewish discussions (e.g. Stern 2017: 10), and radical right-wing actors in Israeli politics do exist.⁶⁸

11.15 Summarising the problems across all examples, Ullrich says, ‘it is not so much the examples that are problematic, but above all their inappropriate and negligent use’:

If the examples are read bearing in mind the explanatory notes and taking into account the overall context, each individual assessment requires a precise analysis. In practice, the examples are often used as if they were unambiguous cases of antisemitism as such...

[T]his provides a gateway for using the “Working Definition” in a reductionist manner to morally discredit opposing positions with the accusation of antisemitism, which is highly sensitive, especially in Germany.⁶⁹

⁶⁸ Ullrich, *Opinion* (n 50) [14].

⁶⁹ Ibid [14–5].

12 ASECA's Handbook further problematises the IHRA working definition

- 12.1 Interpretation of the full IHRA document is now more problematic following the release of the ASECA *Understanding Antisemitism in Australia* handbook, which, among other things, provides guidance to interpreting the IHRA working definition and examples.
- 12.2 While the handbook is a government document, JVOIS contend that it must be understood as an ideological tool, aligned with the Envoy's personal beliefs, and that it positions ideas that are contested within Jewish communities as public policy and that in so doing it explicitly radically expands and cements the meaning of the examples. The contested ideas include:
- that the political ideology of Zionism is an inherent part of Judaism
 - that almost all Jewish Australians are Zionists – including a misrepresentation of survey data including implying that all Jews use the same understanding/definition of Zionism
 - presenting contentious contemporary Zionist concepts as fact:
 - Jewish indigeneity to Israel
 - that the constant presence of some Jews in Israel/Palestine over the last 2000 years and a feeling of connection by other Jews to Israel constitutes a valid claim to having a nation state on that land
 - that self-determination equates to the need for and right to an ethno-state
 - misrepresenting facts:
 - that a Jewish state/Jewish self-determination in Israel doesn't prevent Palestinian self-determination or a right to a state
 - that the UN resolution containing the partition plan for mandate Palestine included a recognition of the Jewish claim to the land
 - denying there can be any valid criticism of Zionism, because all anti-Zionism is antisemitism; while also insisting that legitimate criticism of Israel is valid.
- 12.3 The handbook provides this framing in diverse ways before it presents the examples.
- 12.4 The examples, including examples 7, 8 and 10 discussed above, are presented in a biased way – denying Jewish self-determination or describing Israel as a racist endeavour is treated as categorically antisemitic and 'disproportionate, sometimes obsessive focus on criticising Israel'⁷⁰ is treated as evidence of antisemitism.
- 12.5 For illustrative purposes, the following section reproduces parts of the handbook in relation to example 9. This example is normally thought to be uncontroversial however the handbook problematises it. Example nine says:

⁷⁰ ASECA, *Handbook* (n 7) [43].

Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis⁷¹

12.6 The following quotes are drawn from the handbook's explanation of example nine.

12.7 The handbook explicitly equates Jewish identity to Israel, Israelis and Zionists:

Today, antisemitic tropes are recycled to target Israel, Israelis, and Zionists. In many cases, this is as simple as applying the same forms of antisemitism as those described under IHRA Examples 1, 2, and 3, but replacing 'Jews' with 'Israel,' 'Israelis,' or 'Zionists.'⁷²

12.8 The handbook responds to criticism of Israel's conduct in Gaza where over 20,000 children have been killed⁷³, saying:

The application of antisemitism to Israel and Israelis has included claims that Israel is responsible for terrorist attacks and pandemics. It also involves the adaptation of the 'blood libel', such as accusing Israel or Israelis of being 'child murderers'⁷⁴

12.9 The handbook then turns to the criticism that the political ideology of Zionism originated in Europe and that early Zionists wrote baldly of colonisation of Palestine, which, at the turn of the last century, did not have the undesirable connotations that it has now. Additionally, it adds the term 'supremacist' which is used to describe the apartheid policies of contemporary Israel by the UN and leading human rights organisations. The handbook says:

[antisemitism] may take the form of characterising Israel or Israelis as 'white', 'white supremacists', or 'colonisers'.⁷⁵

12.10 The section on example nine concludes by repeating the conflation of Jew with Zionist:

The application of antisemitism to Zionists is generally achieved through replacing 'Jew' with 'Zionist' and 'Judaism' with 'Zionism'. Zionists and Zionism are then represented as 'privileged', 'oppressors', 'vermin', and 'colonisers'⁷⁶

12.11 The above is typical of the content of the handbook. The cumulative effect on a reader, who is unlikely to have specialised training in international law, the history of Zionism, or the diversity of Jewish political thought,⁷⁷ is to create a working assumption that criticism of Israel and Zionism and pro-Palestinian advocacy are indicators of antisemitism.

⁷¹ Ibid [44].

⁷² Ibid.

⁷³ Save the Children, Sept 2025, <<https://www.savethechildren.net/news/gaza-20000-children-killed-23-months-war-more-one-child-killed-every-hour>>.

⁷⁴ ASECA, *Handbook* (n 7) [44].

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ See for example, Dr. Leia Greenslade and Professor Linda Briskman, *Not in Our Name: Jewish Australians Speak Out*, Research Report, <<https://drive.google.com/file/d/15lpPgldlxjX9326fMkkhKGtD5XZEWPWo/view>> and Shaul Magid interview about the history of Zionism and Anti-Zionism <<https://jacobin.com/2024/01/shaul-magid-interview-zionism-anti-zionism-judaism-history>>.

- 12.12 While the handbook contains disclaimers about applying the full IHRA document through a 'nuanced, fact-driven, context-dependent process',⁷⁸ it does not provide any guidance about how this should be achieved or any examples where criticism may be appropriate and not antisemitic and so does not overcome the substantial pressure created by the biased framing.
- 12.13 The Handbook's publication substantially complicates use of the working definition and the full IHRA document.

⁷⁸ ASECA, *Handbook* (n 7) [8] and [28].

13 The working definition's quasi-legal, or soft law, status

- 13.1 As Ullrich observes, the working definition has acquired 'a binding quasi-legal character in various contexts without having the corresponding legitimacy'.⁷⁹
- 13.2 By remaining formally non-legal, the working definition avoids the scrutiny that a legal instrument would attract – judicial review, requirements of precision, parliamentary debate – while producing consequences indistinguishable from those a legal instrument would produce: employment terminations, withdrawals of funding and grants and disciplinary proceedings.
- 13.3 Tomlinson writes that because the working definition is titled a 'non-legally binding working definition', it 'cannot be construed in the same way as a statutory definition or one produced as part of statutory guidance' and that conduct contrary to it 'could not, of itself, render that conduct "illegal" in any sense'.⁸⁰ Robertson is equally direct: 'were it to become so, or to be adopted for any disciplinary or regulatory purpose, it would be seriously deficient'.⁸¹
- 13.4 The ASECA *Explainer* describes the working definition as 'not a legal instrument' while citing as its sole supporting authority a CAM advocacy document calling for greater integration of the definition into law.⁸² If the Australian Government and its institutions were to apply the working definition as the ASECA plan proposes, the consequences of deploying the definition would result *without* the definition itself being open to legal or parliamentary scrutiny.
- 13.5 Were the working definition proposed for incorporation into Australian law, it would need to satisfy the Attorney-General's Department's framework for permissible limitations on rights – requiring that any measure limiting freedom of expression pursue a legitimate objective, be rationally connected to it, and be no more restrictive than necessary.⁸³ A definition that cannot reliably distinguish antisemitism from protected political expression fails the rational connection requirement. Its breadth fails the proportionality requirement. These are the grounds on which the working definition would not survive scrutiny under the government's own framework. Given the proposed widespread use as a quasi-legal instrument assessment against the framework would be reasonable.
- 13.6 The working definition's examples fail each element of the permissible limitations test set out in the Australian Government's human rights guidance. The objective of identifying antisemitism is legitimate, but the means – a set of examples that Australian courts have found to capture protected political expression – are not rationally connected to that objective. A racism-based causation test already achieves the same objective without that breadth. And the examples are more restrictive than necessary: where the working definition, applied with the contextual approach Commissioner Bell

⁷⁹ Ullrich P, *Opinion* (n 50) 7.

⁸⁰ Tomlinson, *Opinion* (n 45) [6].

⁸¹ Robertson, *Opinion* (n 47) [11].

⁸² ASECA, *Explainer* (n 23) 7.

⁸³ Attorney-General's Department (Cth), 'Permissible Limitations' (Guidance Sheet, 2020)

<<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/permissible-limitations>>, Accessed 28 April 2026, also refers Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) s 3(a).

has described, would suffice, the examples go further by treating categories of political speech about Israel as presumptively antisemitic. On the government's own framework, a measure that fails the rational connection and proportionality requirements cannot be justified as a permissible limitation on the right to freedom of expression.

- 13.7 The working definition's failure as a definition has direct practical consequences. Tomlinson observes that its imprecision means there is likely to be 'lack of consistency in its application and a potential chilling effect on public bodies which, in the absence of definitional clarity, may seek to sanction or prohibit any conduct which has been labelled by third parties as antisemitic without applying any clear criterion of assessment.'⁸⁴ Robertson's conclusion is that the working definition 'is not fit for any purpose that seeks to use it as an adjudicative standard.'⁸⁵
- 13.8 In the *Understanding Antisemitism* document two snippets of caselaw, which have been selected to seem to endorse the working definition, sit on the page beside it.⁸⁶ The quotes chosen have been cherry-picked from judgements that do not favour the use of the working definition. The handbook quotes Mortimer CJ's observation, in *Kaplan v State of Victoria (No 8)* [2023] FCA 1092, that the IHRA working definition 'sits comfortably with the conduct the [Racial Discrimination Act] seeks to prohibit in s 9, and in s 18C subject to exceptions'.
- 13.9 Reading the full judgment, it's clear from Mortimer CJ's statements that the IHRA working definition was introduced into the proceedings by Professor Suzanne Rutland, an expert in 'antisemitic bullying' and an Australian delegate to the IHRA from whom the claimants commissioned a report. Mortimer writes at 34 that she did not use the working definition 'as a substitute for the terms of the [Racial Discrimination Act]', and that the term antisemitism may encompass much more than the analysis required by the RD Act. She notes at 31 that she rejected Professor Rutland's extension of the definition to 'anti-Zionism that seeks to delegitimise the State of Israel' as 'an opinion she holds that lies outside the accepted definition of antisemitism', and decided the case entirely on RD Act grounds, without reference to the IHRA working definition as an adjudicative standard.
- 13.10 The ASECA handbook cites Justice Chamberlain's observation in *Husain v Solicitors Regulation Authority* [2025] EWHC 1291 (Admin) that the IHRA working definition 'is very similar to those found in the major dictionaries', as authority for the definition's adequacy.⁸⁷ This is selective to the point of misrepresentation. The same judgment found that the Solicitors Regulation Authority's application of the definition to Husain's conduct was procedurally flawed, identified a real risk that use of the IHRA examples would chill legitimate speech, and warned that 'a court or tribunal using the IHRA working definition and examples must be alert to this and must avoid using them in a way which forecloses political debate on new events as they unfold.'⁸⁸

⁸⁴ Tomlinson, *Opinion* (n 45) [8].

⁸⁵ Robertson, *Opinion* (n 47) [42(1)].

⁸⁶ *Ibid* 31.

⁸⁷ *Husain v Solicitors Regulation Authority* [2025] EWHC 1291 (Admin), [494] (Chamberlain J).

⁸⁸ *ibid* [488], [510] (Chamberlain J).

- 13.11 In the Report to the UN of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Achiume, the Rapporteur, says:

Although the International Holocaust Remembrance Alliance working definition is promoted as being “non-legally binding”, its de facto influence on the policy and practice of governments and private actors has contributed to violations of the human rights of freedom of expression, assembly and political participation, among others.

The Special Rapporteur observes that it is precisely the “soft law” status of the working definition that effectively helps to undermine certain co-existent rights, without offering any remedy or means to legally challenge such violations. Indeed, even Kenneth Stern, the lead drafter of the working definition, has publicly denounced the instrumentalization of the working definition⁸⁹, including to the detriment of freedom of expression on university campuses.⁹⁰

- 13.12 Even ahead of the widespread adoption of the IHRA working definition into Australian governments and institutions, high profile attacks on legitimate political speech have occurred, such as the widely-reported collapses of the Bendigo Writers Festival and Adelaide Writers Week.
- 13.13 In December 2023, Lebanese journalist Antoinette Lattouf was hired on a short-term contract to present a radio show for the ABC. That week, after she shared a factual Human Rights Watch video report about starvation in Gaza on social media, a grassroots letter writing campaign organised by a group of pro-Israel Jewish lawyers lobbied the ABC to take her off the air. Management acted against her, and Lattouf brought an unfair dismissal case.
- 13.14 In his judgement, Justice Rangiah upheld Lattouf’s claim that her employment was terminated for reasons including that she held a political opinion opposing the Israeli military campaign in Gaza.⁹¹
- 13.15 While this case did not refer to the IHRA working definition, it is the kind of case that Achiume and Kenneth Stern warn about – the kind that in other jurisdictions, have multiplied after the adoption of the IHRA working definition. Although Lattouf’s win vindicated her, she has spoken publicly about the toll and expense of the case and the reputational damage she suffered.

⁸⁹ Kenneth Stern, 'I drafted the definition of antisemitism. Rightwing Jews are weaponizing it', *The Guardian* (13 December 2019), <<https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect>>, our footnote numbering.

⁹⁰ Achiume, *Report* (n31) [75].

⁹¹ *Lattouf v Australian Broadcasting Corporation (Penalty)* [2025] FCA 1174.

14 Palestinian rights in relation to the working definition

- 14.1 As Achuime warns, where the IHRA working definition is embedded in policy, there is an ongoing risk of its being applied in ways which are in tension with human rights.
- 14.2 Under its obligations as signatory to seven core international human rights treaties, including the ICERD and the International Covenant on Civil and Political Rights (ICCPR), Australia must ensure that it is protecting the human rights of all Australians.
- 14.3 The working definition can be used to mischaracterise legitimate political speech as antisemitic, and, as discussed above, despite its 'legally non-binding' status, has been invoked to cancel events, pursue disciplinary proceedings against staff and students, dismiss journalists, and to restrict access to public spaces and funding.⁹²
- 14.4 Of course, many advocates calling on governments to end violence by Israel, or sanction Israel, for example, or speaking publicly about the huge number of Palestinians killed since October 2023, are not Palestinian. When unfounded accusations of antisemitism are made against them, their rights to political speech, peaceful assembly and freedom of association are impeded.⁹³ These accusations can be made with or without the use of the IHRA working definition, but the definition, particularly when read with the ASECA handbook, bolsters efforts to characterise their political speech as antisemitic.
- 14.5 Accusations of antisemitism that are wielded to repress the speech, political campaigns and expressions of grief of Palestinians, in order to protect Jewish people from hurt or offence, are discriminatory against Palestinians. 'Whataboutism', mentioned in Margo's letter,⁹⁴ such as requiring critics of Israel to mention the number of Israelis killed in the Hamas attack before speaking about the Israeli military's alleged war crimes in Gaza, is also a form of discrimination against Palestinians.
- 14.6 By avoiding engagement with Palestinian rights, the full IHRA document, and in particular, the text of the 7th and 8th examples, privileges Jewish political speech and Jewish self-expression and determination over Palestinian political speech and Palestinian self-expression and determination. Applying these to Palestinian advocacy would have a disproportionate impact on Palestinian, Lebanese, Iranian, Syrian, and, more broadly, Arab and Muslim Australians, as well as on Jewish Australians who hold anti-Zionist views.
- 14.7 The ASECA handbook section 'What is Zionism?' frames Zionism as inherent to Judaism and does not mention that it is, and was at its conception, a political ideology.⁹⁵ The section states that 'Jewish self-determination does not exclude Palestinian self-determination or sovereignty' but does not provide evidence for this claim, nor acknowledge that in 2026, there is no part of Israel/Palestine where Palestinians are afforded their right to self-determination. Where example seven is discussed, the text goes further, claiming that:

⁹² Examples are documented in section 16.

⁹³ Speech is discussed in greater detail in the following section. Acknowledging that it is possible for speech to be both political and antisemitic, there is no need to discuss instances where the restriction of speech is legitimate, indeed, desirable.

⁹⁴ R Margo, *submission*, (n 10).

⁹⁵ ASECA, *Handbook* (n 7) 17.

The recognition of Jewish indigeneity and the right of Jewish people to self-determination in the land of Israel does not negate the right of self-determination for the Palestinians or others on that land. In contrast, it reinforces the right for self-determination of all peoples under international law.⁹⁶

- 14.8 In an invented scenario, described as a work group chat, the ASECA handbook presents the following as an antisemitic text from a pro-Palestinian colleague, who is inviting the others to attend a protest:

But what about the genocidal, racist Zionist project that has oppressed the Palestinians? Zionism is a supremacist ideology invented by Theodore Herzl. They've done this through apartheid and ethnic cleansing.⁹⁷

- 14.9 Putting aside the fact that this is an invented quote rather than an actual one, to appraise it, while it might be offensive, even hurtful, for Jewish people to read, there is not enough context in the example to evaluate whether or not it is antisemitic. The accusations that Israel is committing a genocide are made by highly credible authorities, and the remaining claims are supported by facts.

⁹⁶ ASECA, *Handbook* (n 7) 42. The handbook's footnote references the declaration of the state but does not reference Israel's Basic Law (somewhat equivalent to a constitution) that ascribes rights only to Jews 'C. The right to exercise national self-determination in the State of Israel is unique to the Jewish people.'

⁹⁷ ASECA, *Handbook* (n 7) 75.

15 Political speech and the working definition

- 15.1 The right to freedom of expression under Article 19 of the ICCPR is engaged whenever legislation regulates the content of speech or attaches criminal or civil liability to the publication of opinions or information. Any law that creates a limitation must satisfy the three-part test of legality, legitimate aim, and necessity and proportionality.⁹⁸
- 15.2 The ICCPR further protects the right of peaceful assembly under Article 21 and the right to freedom of association under Article 22, each subject only to restrictions that are prescribed by law, pursue a legitimate aim, and are necessary and proportionate. Article 25, which protects the right to take part in public affairs, has been interpreted by the Parliamentary Joint Committee on Human Rights to extend to political communication and advocacy broadly construed.⁹⁹
- 15.3 The constitutional protection of political communication extends to speech that is deliberately offensive. As the Court of Appeal confirmed in *Jarrett*, quoting Hayne J with approval, 'the elimination of communications giving offence, even serious offence, without more is not a legitimate object or end. Political debate and discourse is not, and cannot be, free from passion... Giving and taking offence are inevitable consequences of political debate and discourse.'¹⁰⁰
- 15.4 The Court confirmed further that some political communication is 'deliberately designed to offend' because its content is 'shocking and the maker... wishes to disseminate the information widely' – and that this too is protected. The giving of 'really serious offence', as Hayne J put it, is 'neither incidental nor accidental': it is the mechanism of political communication.
- 15.5 Pro-Palestinian political speech is frequently characterised as antisemitic on the basis that it is offensive to Jewish Australians. Moreover, the claim that a 'climate of hate speech' created by pro-Palestinian political expression leads to antisemitic violence has been advanced repeatedly by Premier Minns, the Special Envoy and others as the basis for restricting assemblies and criminalising political slogans.
- 15.6 In *Jarrett*, the Court rejected the proposition that the community can be protected from political expression 'because it might be upsetting, inflammatory and divisive for other members of the community', including 'protecting people... from the sense of distress or offence that they may feel about an assembly occurring, and about the potential social repercussions of the assembly'.¹⁰¹
- 15.7 The Court held further that even where a terrorist act had occurred, 'that does not make it any more constitutionally permissible to seek to address the social repercussions of the event by quelling all public assemblies in a particular area in the

⁹⁸ UN Human Rights Committee, General Comment No 34: Article 19 – Freedoms of Opinion and Expression, UN Doc CCPR/C/GC/34 (12 September 2011) [11], [24]–[25].

⁹⁹ UN Human Rights Committee, General Comment No 34, UN Doc CCPR/C/GC/34 (12 September 2011); Parliamentary Joint Committee on Human Rights, Guidance Note 1: Drafting Statements of Compatibility (December 2014) [1.5]–[1.6].

¹⁰⁰ *Jarrett v State of New South Wales* [2026] NSWCA 62, citing Hayne J in *Monis v The Queen* (2013) 249 CLR 92.

¹⁰¹ *Jarrett v State of New South Wales* [2026] NSWCA 62.

name of preserving social cohesion. That remains a constitutionally illegitimate purpose even if there may be a perceived need for special measures.¹⁰²

- 15.8 If the IHRA working definition and examples were embedded in legislation or used as the operative standard for civil or criminal liability, as ASECA's plan seems to propose, the resulting burden on political communication would engage the same constitutional analysis.
- 15.9 A law imposing liability for speech characterised as antisemitic under the IHRA framework, where that characterisation turns on the offensiveness of the speech to Jewish Australians rather than on the causation requirement of s 18C, would be a law directed at social cohesion, which *Jarrett* held to be constitutionally illegitimate. And, as the Court observed, even on the most generous reading of the State's argument, that the law was directed at restricting assemblies that made 'another targeted group in the community feel directly threatened', the PARD scheme remained a 'blunt tool' that was 'not reasonably appropriate and adapted to achieving that end.'¹⁰³
- 15.10 The IHRA framework, for the same reasons, would face the same conclusion.
- 15.11 The concerns raised by Achiume and Ullrich about the structural susceptibility of the IHRA working definition to political instrumentalisation are not theoretical in the Australian context. The Commission should be aware of the manner in which the definition is being deployed in submissions to this inquiry and in parallel legislative agendas.

¹⁰² Ibid.

¹⁰³ Ibid.

ASECA and ECAJ's legislative agenda

- 15.12 In a submission to the Parliamentary Joint Committee on Intelligence and Security dated 15 January 2026, made jointly by the Executive Council of Australian Jewry (ECAJ) and ASECA, the ECAJ called for the removal of several elements from the proposed racial vilification offence in the *Combating Antisemitism, Hate and Extremism Bill 202C* (Cth). These included the requirement that a prosecutor prove that conduct would cause a reasonable member of the targeted group to fear harassment or violence; the fault element of intention, which the ECAJ proposes replacing with recklessness; and the good faith defence for intentional promotion of hatred.
- 15.13 The practical effect of these proposed changes, if adopted, would be to create a criminal offence that could be established without proof of intent to harm and without reference to the likely effect on a reasonable person.
- 15.14 At a public webinar convened by The Jewish Independent in April 2026, a human rights law academic described the IHRA working definition as an instrument that would enable the Commission to 'move beyond the more rigid, formalistic approach in *Wertheim v Haddad*' and support recommendations 'much closer to the contextual reasoning in *Vorchheimer*' (Bracka 2026). The ECAJ's head of legal, appearing at the same webinar, did not dissent from this characterisation of the definition's intended function.¹⁰⁴
- 15.15 Without doubt, many of the ECAJ's proposals are motivated by a real commitment to protect Jewish Australians from antisemitic violence, vandalism and abuse. However, the measures they suggest in their submissions are weighted towards speech, despite the lack of significant evidence demonstrating that restricting speech reduces racism in general, or antisemitism specifically.¹⁰⁵

¹⁰⁴ The Jewish Independent Royal Commission webinar, 16 March 2026
<<https://thejewishindependent.com.au/events/understanding-the-royal-commission-on-antisemitism-and-social-cohesion>>.

¹⁰⁵ This theme is discussed in much greater detail in JVOIS's submission on the real drivers of antisemitism.

Australia's protection of political speech

- 15.16 As discussed above, in many parts of the world, including across North America, in Europe and in the UK, adoption of the IHRA working definition has created a significant risk that criticism of Israel or Zionism, including advocacy for Palestinian human rights, will be misclassified as antisemitism. For Australia, that risk's severity depends on how strongly Australian law protects political speech from sanction based on what it intends rather than how it is received.
- 15.17 Australia's protections are weaker than those in comparable democracies. For example, Australian laws do not provide comprehensive protection of speech that causes offence, regardless of the speaker's intention or the truth of the statements.
- 15.18 Recent amendments to Victorian legislation, and proposed federal laws, alter the test from a "reasonable person" to "a reasonable person who is the target, or a member of the target group." This increases the likelihood that criticism of Israel or Zionism will meet the threshold for a hate speech complaint.
- 15.19 For a variety of reasons Jewish people are particularly likely to be offended and/or intimidated by criticism of Israel and Zionism¹⁰⁶ despite clear evidence that Israel is committing serious human rights abuses and ethnic cleansing.¹⁰⁷
- 15.20 Most Australians would likely agree that political ideologies or identities that deny the human rights of other people should be open to criticism and potentially ostracisation and sanction. This is evidenced by government actions against countries involved in human rights abuses despite the feelings of Australians with ethnic ties to those countries who may share aspects of that state's policies as part of their identity.¹⁰⁸
- 15.21 Australia's current legal frameworks are not in step with community expectations and understanding of what speech is permitted in a democracy that supports universal human rights.
- 15.22 AHRC and organisations like the Human Rights Law Centre have consistently proposed that Australia's discrimination law framework should be reformed to protect the rights of all Australians to political speech. Such speech could include criticism, even in a way which is intended to offend, of political ideologies or identities that deny the human rights of other people.

¹⁰⁶ Sarah Anne Minkin, *Fear, Fantasy, and Family: Israel's Significance to American Jews*, see 'Chapter 4 Fear and Vulnerability: The Need and Source for Power', <<https://escholarship.org/content/qt3s57250z/qt3s57250z.pdf>> Also succinctly described by Fadi Quran as the 'triangle of fear' in 'Who's afraid of the Z-word', Jewish Currents <<https://jewishcurrents.org/whos-afraid-of-the-z-word>>.

¹⁰⁷ See for example: Amnesty <<https://www.amnesty.org/en/documents/mde15/8668/2024/en/>>; B'Tselem <https://www.btselem.org/publications/202507_our_genocide>; UN <<https://www.un.org/unispal/document/human-rights-situation-in-the-occupied-palestinian-territory-including-east-jerusalem-and-the-obligation-to-ensure-accountability-and-justice-a-hrc-61-26-advance-unedited-version/>>.

¹⁰⁸ Examples include: the social movement against apartheid in South Africa <<https://www.gevans.org/speeches/speech551.html>>, criticism of the CCP policies on Tibet <https://unnn.mission.gov.au/unnn/241022_UNGA79_Joint_statement_on_the_human_rights_situation_in_Xinjiang_and_Tibet.html>, and more recently: criticism of IS despite possible Islamophobia; and <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Completed_Inquiries_45th_Parliament/decofslamicState/Report/section?id=committees%2Freportjnt%2F024028%2F24202> and near universal condemnation of Russian expansionism (Russian irredentism) most recently relating to Ukraine <<https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-framework>>.

15.23 In the UK High Court, in *Husain v SRA*, Chamberlain J, dealing with an accusation of antisemitism in relation to the IHRA working definition illustrates the kind of protection that exists in comparable jurisdictions but is absent in Australia. Chamberlain noted that the protection of certain speech hinges on Article 10 of the European Convention on Human Rights:¹⁰⁹

particular care is required in the application of the seventh and eighth examples because they relate to speech which is critical of the historic or contemporary conduct of the State of Israel ... such speech in principle attracts the highest level of protection under Article 10 ECHR ...

In general, Article 10 accords broad protection to such judgments. Courts and tribunals should be wary of entering this difficult terrain, save where they are applying a legal framework that makes it impossible to avoid doing so.¹¹⁰

15.24 The RD Act and related state legislation protects speech that is made “reasonably and in good faith” for a “genuine purpose in the public interest”. This protection of political speech is not as strong as in the UK, US, Canada, New Zealand and the EU.

15.25 Unlike the US, Australia has limited protection of speech based on intent. Compare, for example the importance of intent-based protections in *Stand With Us v MIT* judgment (US First Circuit Court)¹¹¹ with the recent *Vorchheimer v Tayeh* VCAT judgement¹¹² which placed emphasis on received meaning rather than the speaker’s intent. The former case can be neatly summarised by the judge’s observation that:

plaintiffs must again rely on a theory that they can dictate the interpretation of the protestors’ speech in order to suppress it

15.26 In the absence of clear legal protection of political speech, protecting speech associated with democratic processes requires a legal requirement to consider a speaker’s intent. Without such a requirement, speakers who criticise Israel or Zionism for human rights reasons, with no antisemitic intent, may face legal sanctions based solely on how their speech is received.

15.27 Democratic processes and social cohesion are not served by the suppression of political speech – a point directly relevant to the Commission’s social cohesion mandate. Current legal frameworks, and the further restrictions sought by ASECA,¹¹³ are inconsistent with community understanding of permissible speech. Lowering the fault threshold will make this issue more acute.

¹⁰⁹ ECHR <https://www.echr.coe.int/documents/d/echr/convention_ENG>.

¹¹⁰ *Husain v SRA* 102–103. The judgment has important principles relating to IHRA working definition 94–110 <<https://www.judiciary.uk/wp-content/uploads/2025/05/Husain-v-SRA-Approved-Judgment.pdf>>.

¹¹¹ *Stand with Us v MIT*, ‘plaintiffs must again rely on a theory that they can dictate the interpretation of the protestors’ speech in order to suppress it [34]’ <<https://www.ca1.uscourts.gov/sites/ca1/files/opnfiles/24-1800P-01A.pdf>>.

¹¹² *Vorchheimer v Tayeh* <<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/134.html>>.

¹¹³ ASECA submission to the Australian Government’s antisemitism exposure bill <<https://www.aph.gov.au/DocumentStore.ashx?id=9483c256-7765-447f-a7b3-d8bbcb0d01e5&subId=784292>>.

16 Weaponisation of the IHRA working definition

- 16.1 The following list presents a selection of documented incidents, where the IHRA text was invoked to accuse people of antisemitism.
- 16.2 **University of Glasgow – academic event cancelled after IHRA-based complaint (UK, 2021)** Dr Somdeep Sen, Associate Professor at Roskilde University, was invited to deliver a lecture on his book about Hamas and decolonisation at the University of Glasgow. The university received a complaint from the Jewish student society claiming the topic was antisemitic, asked Dr Sen to confirm in advance he would not contravene the IHRA definition, and the event was cancelled when he declined because the request was discriminatory.¹¹⁴
- 16.3 **Anonymous complaint against a student for sharing a Human Rights Watch infographic (UK, 2021)** A university opened an investigation into alleged antisemitism against a student who had shared on social media a Human Rights Watch infographic about Israel's system of apartheid in the West Bank, describing it as 'reminiscent of South African apartheid'. The complaint cited the IHRA definition. After two months, the university dropped the investigation finding there was no case to answer.¹¹⁵
- 16.4 **Academic subjected to a six-month investigation for social media posts made years earlier (UK, 2020)** A Middle East academic received notification that a recent graduate, whom the academic had never taught, had submitted a complaint about more than 20 social media posts made between 2016 and 2020, including posts criticising Zionism as a political ideology and commenting on the Nakba. The complaint cited the IHRA definition. The academic was cleared after a lengthy disciplinary process that caused significant professional and personal harm.¹¹⁶
- 16.5 **Miller v University of Bristol – academic dismissed for anti-Zionist views (UK, 2021–2023)** Professor David Miller was dismissed by the University of Bristol following complaints about his public statements on Zionism and Israel, made by students who were not enrolled in his courses. The Employment Tribunal found that anti-Zionism constitutes a protected philosophical belief under the Equality Act 2010 and that Miller's dismissal was discriminatory. The IHRA definition was central to the complaints against him.¹¹⁷
- 16.6 **Deutsche Welle – seven Arab journalists dismissed following IHRA-based internal investigation (Germany, 2022)** German public broadcaster Deutsche Welle dismissed seven Arab journalists following an internal investigation into antisemitism that relied on the IHRA
- 16.7 **German citizenship law – support for Israel's right to exist made a naturalisation requirement (Germany, 2024)** Germany enacted legislation requiring naturalisation applicants to indicate support for Israel's right to exist, framing the measure as a response to antisemitism. The Interior Ministry's reliance on the IHRA working

¹¹⁴ European Legal Support Center / British Society for Middle Eastern Studies, *Freedom of Speech and Academic Freedom in UK Higher Education: The Adverse Impact of the IHRA Definition of Antisemitism*, 2023 [26].

¹¹⁵ Ibid [22].

¹¹⁶ Ibid [24].

¹¹⁷ *Miller v University of Bristol* [2023] ET/1401121/2021, <<https://www.judiciary.uk/wp-content/uploads/2024/02/Miller-judgment-1400780.2022-JDT.pdf>>.

definition, which Germany adopted in 2017, was identified as the basis for the measure.¹¹⁸

- 16.8 **Austrian cultural institutions – Palestinian academic disinvited based on IHRA definition (Austria, 2022)** A Palestinian academic was disinvited from a curatorial program at Austrian cultural institutions following accusations of antisemitism informed by the IHRA definition. The accusations were found to be false.¹¹⁹
- 16.9 **US State Department – attempted labelling of human rights organisations as antisemitic (USA, 2020)** Under the Trump administration, the US State Department sought to label leading human rights organisations – including Human Rights Watch and Amnesty International – as antisemitic based on the IHRA definition,¹²⁰ in an effort to restrict federal funding to them. The attempt was unsuccessful.¹²¹
- 16.10 **Barnet Council – BDS refused a meeting room (UK, 2018)** Robertson KC cites a proposal by Barnet Council to refuse the BDS movement a meeting place in the council hall, explicitly on the basis of the IHRA definition. Robertson found this would not survive court challenge under Article 10 of the ECHR.¹²²
- 16.11 **Tower Hamlets, London (UK, 2019)** – Tower Hamlets Council refused permission for the Big Ride for Palestine, a charity cycling event raising funds for Palestinian children, citing concerns that it could breach the IHRA definition.¹²³
- 16.12 **Munich City Council (Germany, 2017):** Munich's city council passed a resolution defining the BDS movement as antisemitic and prohibiting the use of city premises for events that support BDS or even address its topics. The resolution was explicitly based on the IHRA definition. Ullrich describes this as a particularly controversial case that led to the cancellation of many events under public pressure.¹²⁴

¹¹⁸ Combat Antisemitism Movement, *The IHRA Working Definition in the Post-October 7 World: Trends and Case Studies*, [8] <<https://combatantisemitism.org/wp-content/uploads/2024/09/2024-Mid-Year-IHRA-Report-09-26-2024.pdf>> accessed 1 May 2026.

¹¹⁹ European Legal Support Centre, 'Palestinian Academic Challenged Austrian Institutions' Censorship Based on the IHRA Definition of Antisemitism', <<https://elsc.support/case/palestinian-academic-challenged-austrian-institutions-censorship/>> accessed 1 May 2026.

¹²⁰ NBC, 'Trump admin considers branding Amnesty International, other human rights groups as 'anti-Semitic'', 24 Oct 2020, <<https://www.nbcnews.com/politics/national-security/trump-admin-considers-branding-amnesty-international-other-human-rights-groups-n1244335>> accessed 1 May 2026.

¹²¹ Mother Jones, 'A State Department Memo Suggests It's About to Accuse Prominent Human Rights Groups of "Anti-Semitism"', 21 Oct 2020, <<https://www.motherjones.com/politics/2020/10/state-departments-anti-semitism-human-rights-amnesty-oxfam/>> accessed 1 May 2026.

¹²² Robertson, *Opinion* (n47) [39], and reported in Middle East Monitor, <<https://www.middleeastmonitor.com/20180802-uk-controversial-anti-bds-motion-sent-for-legal-review/>> accessed 1 May 2026.

¹²³ ELSC/BSMES, *Freedom of Speech* (n 114) [7] and Damien Gayle, 'UK Council Refused to Host Palestinian Event over Antisemitism Fears', *The Guardian*, 3 August 2019, online at <<https://www.theguardian.com/uk-news/2019/aug/03/uk-council-refused-to-host-palestinian-event-over-antisemitism-fears>> accessed 1 May 2026.

¹²⁴ Ullrich, *Opinion* (n 50) fn.8 and reported at Middle East Monitor, <<https://www.middleeastmonitor.com/20220126-germany-federal-court-rules-anti-bds-policy-to-be-unconstitutional/>> accessed 1 May 2026.

17 Solutions

- 17.1 The most important solution to the problems outlined in this submission is not to use the IHRA non-legally binding working definition of antisemitism. It is important that it not only not be used in laws but also in 'soft law' settings such as disciplinary proceedings and the like.
- 17.2 Where testing for antisemitism is required, the simple solution is to use the racism causation test of the RD Act; that negative acts (like stereotyping or dehumanisation of, or discrimination, prejudice, hostility or violence) against Jews are done **because they are Jews**; or against Jewish institutions **because they are Jewish**. Where this is the case it is antisemitism.
- 17.3 This is conceptually a simple test but it has a significant consequence which is that it requires determination of why an act is done. This requires consideration of the context.
- 17.4 If the way that antisemitism is being dealt with is considered a problem, then rather than creating a separate and different process relating to antisemitism, laws relating to all forms of discrimination should be consolidated into a single well-functioning act and harmonised across all states and territories. Such an act could be similar to the reform undertaken in the UK's Equality Act 2010 that protects people on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.¹²⁵
- 17.5 This position has been advanced by other organisations including the Human Rights Law Centre and the Justice and Equity Centre.
- 17.6 Finally, protection from discrimination must be carefully balanced against the right to political communication. Presently, despite the public's understanding, Australians' rights are limited and not well protected making them somewhat precarious despite important judgements like *Jarrett v NSW*.¹²⁶
- 17.7 The clear solution is a Human Rights Act or Charter of Human Rights, creating a positive duty to protect the human rights of all Australians, including the rights of political speech and protest. The Australian Human Rights Commission has done substantial work and consultation to establish a pathway forward.¹²⁷
- 17.8 Fundamentally, as a nation, we need to be able to disagree well.

ENDS

¹²⁵ UK Equality Act 2010, s 4, <<https://www.legislation.gov.uk/ukpga/2010/15/section/4>>.

¹²⁶ *Elizabeth Ann Jarrett v State of New South Wales* [2026] NSWCA 62 (16 April 2026).

¹²⁷ AHRC, *Free and Equal*, <https://humanrights.gov.au/__data/assets/file/0029/46856/Free_equal_hra_2022_-_main_report_rgb.pdf>.

Appendix A

Robertson, *Opinion*

ANTI-SEMITISM: THE IHRA DEFINITION AND ITS CONSEQUENCES FOR FREEDOM OF EXPRESSION

1. I am asked to advise the *Palestinian Return Centre* as to the interpretation and impact on free speech, of the British Government's acceptance in 2016 of an extended definition of anti-Semitism promulgated by the International Holocaust Remembrance Alliance (IHRA).

Freedom of Expression

2. The English writer George Orwell, in his introduction to *Animal Farm* (which his left-wing publisher turned down because it was insulting to Stalin) remarked that "if liberty means anything at all, it means the right to tell people what they do not want to hear." That is an apt definition of free speech in the UK today, in terms of our common and statute law and the long-stop protection of speech in Article 10 of the European Convention of Human Rights. The Common Law in past centuries punished certain kinds of writing (libel) and speech (slander), namely blasphemy (now abolished) sedition (now a dead letter) and obscenity – that which "tends to deprave and corrupt" its potential audience, subject to a "public good" defence and (by judicial definition) some real prospect of harm. More recent criminal statutes have outlawed the stirring up of hatred against those identified by a personal characteristic: their race or religion or sexual orientation. But as the Crown Prosecution Service guidelines emphasize, "Hatred is a very strong emotion" and "stirring up racial tension, opposition, even hostility may not necessarily be enough to amount to an offence".¹ Anti-Semitic utterances, unless intended or likely to foment hatred against Jewish people, do not

¹ See CPS, Racist and religious crime – CPS prosecution policy, Legal Guidance, Hate crime, available at <https://bit.ly/2E6vxsk>; archived here. http://webarchive.nationalarchives.gov.uk/20111115164417/http://www.cps.gov.uk/publications/prosecution/violent_extremism.html.

amount to an offence under English law. But this discreditable and indeed contemptible behaviour may result in disciplinary action, expulsion from organisations, and a loss of the right to practice certain employments or professions. To accuse someone wrongly of anti-Semitism is defamatory and would incur damages in a civil action.

3. This position taken by British law differs from that in some European countries with historic experience of Nazi repression, which have stricter laws against racism and genocide denial. Even so, all European countries are subject to the Convention, Article 10 of which lays down:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

This principle may only be overcome a) by a precise law, which is b) necessary in a democratic society either in the interests of national security, the prevention of disorder or the protection of the reputation and rights of others, and c) counts as a proportionate measure to achieve these legitimate aims. But the need for restrictions must be established convincingly and they must be “clear, certain and predictable” – i.e. formulated with sufficient precision to enable citizens to regulate their conduct. The European Court of Human Rights has also held that they must also be a proportionate response to a pressing social need. The right may be availed of by those whose utterances “offend, shock or disturb.” The scope for criticism of states and statesmen is wider than for private individuals because of the need for free and open discussion of politics.

4. These principles were most recently applied by the European Court to strike down the conviction by the Swiss Courts of a rabid Turkish nationalist for proclaiming at a small and unreported conference that “the Armenian genocide was a lie.” The Swiss genocide

denial law, the Court declared, was too broad: it should not have permitted his conviction unless there was evidence of intention to arouse, or likelihood of, violence or disorder. The ‘idea’ that there had been no Armenian genocide, although it flew in the face of the facts, was nonetheless protected unless its utterance posed some danger to the public by encouraging or justifying violence, hatred or intolerance.²

5. Another case in the European Court was brought by CICAD (Inter-community Coordination against Anti-Semitism and Defamation) which had described an academic as “anti-Semitic:” for criticising the State of Israel, calling it Judaism with “the morality of dirty hands” because of its policies of “closure of territories, destruction of civilian homes and targeted assassination of alleged terrorist leaders.”³ CICAD had been convicted of defamation and fined, but the court ruled that this punishment did not infringe free speech: such criticisms of Israel did not make the academic “anti-Semitic”, and the accusation was false and libellous.
6. These cases demonstrate that Article 10 will serve to protect expression of hostile opinion about the conduct of the Government of Israel, however exaggerated or baseless, unless communicated for the purpose or with the result of stirring up disorder or hatred of Jews in general.
7. So, what is “anti-Semitism?” The Oxford English Dictionary gives as its meaning “hostility to or prejudice against Jews.” This is both simple and accurate, so long as it is understood that the hostility and prejudice must be against Jews as such, or in general, because of some sort of presumed racial characteristic – and not against an individual Jewish person or a particular organisation. Wikipedia, with reference to Encyclopaedia Britannica, Paul Johnson and Bernard Lewis, defines anti-Semitism as “hostility to,

² Perinçek v. Switzerland, (2016) 63 ECHR 6

³ CICAD v Switzerland, [2016] ECHR 495 (07 June 2016)

prejudice or discrimination against Jews.” The addition of “discrimination” is acceptable, (if unnecessary, because its motive will generally be a feeling of hostility or prejudice) but again, so long as the unfavourable treatment that constitutes discrimination is inflicted because the victims are Jewish.

8. The word seems to have been coined in German literature in the late nineteenth century, although it could be applied to the persecution of Jewish communities ever since the third century BC. It has taken various forms of negative stereotyping in ideologies and myths and of course reached its apotheosis in the Nazi genocide, although recent surveys show that it still manifests in the UK and may be increasing – often on social media or in the vandalism of Jewish tombstones and synagogues. It is a particularly vicious form of racism, criminal when it reaches the pitch of inciting hatred and unacceptable in public institutions, employment and most organisations. It is defamatory to wrongly accuse a person of being anti-Semitic. It might be thought that the word needs no further definition.
9. That is not the view of the UK Government, which in December 2016 “adopted” an extended definition which had previously featured in the “Hate Crime Manual” for police officers and had been recommended – with important changes to protect the freedom to criticise Israel – by the House of Commons Home Affairs Select Committee. It was never debated in Parliament and perhaps not even discussed in Cabinet: it was announced by the Prime Minister at a Conservative Party luncheon, and has no legal effect. It was a definition that had originated as a “working definition” in an obscure European Union agency, the European Monitoring Centre on Racism and Xenophobia, in 2005. This agency did not formally adopt it and in due course abandoned it, but it was picked up – again as a “working definition,” in 2016 by the International Holocaust Remembrance Alliance (IHRA), which as its name implies works on research into the

Holocaust. It is not part of the European Union, although it has 31 country affiliates, mainly from Europe. Its version attracted the attention of the Home Affairs Committee which recommended it but only with “caveats” i.e. necessary conditions, to protect free speech.

10. The IHRA, at its Bucharest Conference in 2016, issued this “non-legally binding working definition of anti-Semitism” which comprises what may be described as a core meaning, followed by eleven examples of how that meaning might be applied. That core meaning is:

Anti-Semitism is a certain perception of Jews, which may be expressed as hatred towards Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

11. The definition is avowedly “non-legally binding”: were it to become so, or to be adopted for any disciplinary or regulatory purpose, it would be seriously deficient. The second sentence seems surplusage: of course, manifestations of anti-Semitism are directed towards such persons and institutions (and notably, the “State of Israel” is not listed as a target at this point) but they need not be directed to anyone (e.g. anti-Semitic comments and cartoons on the internet). The first sentence is question begging: what perception, and in whose eyes – those of the Jewish community, of Zionists or anti-Zionists, or is this a reference (as it should be) to the objective impression of the reasonable bystander?⁴ The use of the conditional word “may” lends vagueness and

⁴ There is some confusion about the so called “MacPherson Principle” (a reference to Mr Justice MacPherson’s Report into the Stephen Lawrence murder) which is often thought to require that the victim’s perception of racism should prevail. But what Justice MacPherson was emphasising was that police should adopt the victim’s perception that he had suffered a racist attack when recording the crime, but not necessarily after further investigation.

imprecision: obviously it can be expressed as “hatred towards Jews,” but how else “may” anti-Semitism be expressed and if there “may” be other definitions, why are they not identified? As a “working definition,” it needs a lot more work before it attains the precision which Article 10 requires for a ban on speech which is “required by law.” It may be useful for purposes akin to the context in which it arose for the IHRA in Bucharest, where it was being used as a guide for the police in Romania (a country which had initially collaborated with the Nazis) to identify attitudes unacceptable to the job of law enforcement, but standing alone it lacks the precision required of a definition or rule. It is not clear whether it was adopted as a free-standing core definition by the IHRA at its Bucharest Conference, or whether the eleven “examples” were adopted at the same time. In the latter case, it would not serve as a “definition” at all, but rather as a discussion of whether certain conduct can be identified as anti-Semitic.

12. There is one aspect which I find remarkable, but which does not seem to have engaged the attention of critics or proponents. Despite its imprecision, it does pivot upon manifestations of “hatred towards Jews.” As I point out in paragraph 2 above, “hatred” is a very strong word. It is the emotion that can be deduced in those who daub abhorrent slogans on tombstones and Synagogues, but it falls short of capturing those who express only hostility or prejudice, or who practice discrimination. “I don’t like Jews and never employ them, but I don’t hate them” – this speaker is anti-Semitic, but it does not seem included in this definition. Similarly, “I am prejudiced against Jews because they are not “one of us” and their religious practices are ridiculous, but I don’t hate them.” Or “I think we should deport all Jews to Israel, because they would be happy there. It would be in their own interests – I certainly don’t hate them, I just think they don’t fit in here in England.” Under the IHRA definition, these anti-Semitic comments would not be deemed “anti-Semitic.” This consideration, above all others, convinces me that the

definition is not fit for purpose, or any purpose that relies upon it to identify anti-Semitism accurately. By pivoting upon racial hatred (a crime to stir up in this country) it fails to catch those who exhibit hostility and prejudice – or apply discrimination – against Jewish people for no reason other than that they are Jewish. It fails Jewish people, most of all, by its inability to detect many who harbour hostility towards them – for example, those who insinuate racial prejudice politely (remember Enoch Powell's “rivers of blood” speech, with its classical allusions).

13. There have been suggestions in the media that the definition and its examples were drafted with the “hidden agenda” that they could be used to chill or ban criticism of Israeli policy and to label the nascent BDS movement as “anti-Semitic”.⁵ While there have been attempts to use it in this way, this was not the original intention according to its lead draftsman, a US attorney named Kenneth Stern from the American Jewish Committee against Anti-Semitism, who worked with the European Monitoring Centre on Racism and Xenophobia to study an upsurge in race hate crimes in Northern Europe. It was discovered, in the course of collecting data from various countries that they had different definitions of anti-Semitism, or none at all. So, as Stern testified to the US Congress in 2017:

“The definition was drafted to make it easier for data collectors to know what to put in their reports and what to reject... because the definition was drafted with data collectors utmost in mind, it also gave examples of information to include regarding Israel... The definition was not drafted, and was never intended, as a tool to target or chill speech.”

⁵ E.g. “BDS: How a Controversial Non-Violent Movement has Transformed the Israeli-Palestinian Debate,” ‘The Guardian’ 16 August 2018.

14. Mr Stern's evidence to this effect is credible, especially as he has spoken out strongly against the misuse of "his" definition at British universities to ban an "Israel Apartheid Week" and in ways he describes as "McCarthy-like."⁶ The definition was never formally adopted by the EU Committee: it was placed on its website in 2005, from which it was later removed and was adopted (for want, it may be, of any alternative) by other bodies, and was taken down in 2013.⁷ However, in 2016 the core definition was picked up and promulgated in a press release by the IHRA after it was endorsed by representatives of 31 state members at its Bucharest Conference. It is not clear whether they endorsed the eleven examples as well as the core definition, although these examples have always been treated as an extension of that core definition. It is by reference to several of them that some Jewish activists have asserted that BDS activities are anti-Semitic, as well as the EU exercise of labelling Israeli products from the disputed West Bank and occupied Golan. This is not only wrong, as I shall explain, but a perversion of the original intention of the extended definition. Although one of the American drafting team had Israeli Government affiliations and this was at the time when Natan Sharansky identified "the new anti-Semitism" as "aimed at the Jewish State" through "double standards, demonization and delegitimation", I have found no real evidence that the definition was produced in 2005 with the secret intention of being used as a weapon against Israel's critics. That it has been, is a measure of the ineptitude of its drafting (or of the fact that it was drafted for the innocuous purpose of data collection) rather than as part of some alleged Zionist conspiracy. Although it may be odd that an EU instrumentality should ask Americans to write its definitions, Mr Stern

⁶ Written Testimony to US House of Representative Committee on Judiciary, 7 November 2017, p5-7, 14.

⁷ By this time, the EU Group was called The Fundamental Rights Agency.

(a self-declared Zionist) has made continual and credible criticisms of the subsequent misuse of his words.

The Examples

15. Having stated at the outset in bold type that the definition itself is a “**non-legally binding working definition**” the examples are prefaced by an assertion that they are “to guide IHRA in its work” – and its work of Holocaust research and commemoration does not include proposing laws or rules. It goes on “the following examples may serve as illustrations: ...anti-Semitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.” This is true and unexceptional. However, it adds (in the place denoted by the ellipsis above):

“Manifestations might include targeting the State of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic.”

The importance of this passage is that the British Government identified it as sufficient to ensure that the definition it adopted would not infringe free speech, after the House of Commons Committee had warned that the definition should only be adopted with additions (“caveats”) “to ensure that freedom of speech is maintained in the context of discourse about Israel and Palestine.”

16. The Government refused to “adopt” the suggested additional conditions, on the ground that the introductory passing comment – that “criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic” was “sufficient to ensure freedom of speech.” This is wrong, or at least naïve. The comment makes no reference

to freedom of speech, for a start, and Israel is unlike any other country. It was established by the United Nations in 1947, to compensate for the Holocaust, granting over half of Palestine – a country which at the time contained 1.3 million Arabs and a minority (31%) of Jewish settlers. It won independence from British rule partly as a result of a terrorist campaign; it turned hundreds of thousands of Palestinians into refugees; it acquired territory (the Gaza strip and the West Bank) through war and refused Security Council demands to withdraw its armed forces; it has persistently been criticised by Britain and by the Red Cross and respected Human Rights NGOs like Amnesty International and Human Rights Watch for policies which have had a “catastrophic” effect on the Palestinian economy and on the health, wealth and wellbeing of its people, for its Parliament (the Knesset) passing various laws that discriminate against Arab Israelis (20% of the population) and for military occupation which stifles political development and has involved frequent lethal attacks with disproportionate civilian casualties, and for encouraging “Settlements” on Palestinian land. As recently as last month, it’s “One Nation” Basic Law was widely condemned as consigning Palestinians to second-class citizenship, and many commentators described it as “a form of apartheid.” It points out, differentiating itself from other countries, that it has been at various times subject to terrorist atrocities – suicide bombing campaigns, routine rocket attacks and armed confrontations with a political (and military) organisation – HAMAS – which refuses to recognise its right to exist.

17. All member-states of the UN are bound to comply with international human rights law (notably the International Covenant on Civil and Political Rights) and criticism of Israel on that score could not be regarded as anti-Semitic. Unlike most countries, it is engaged in military operations in occupied territory, and so is subject to International Humanitarian Law (the laws of war) and may be open to legitimate criticism for

breaches. It has what fits the definition of a displaced indigenous minority (the Palestinians) and is under an obligation, which it may legitimately be criticised for disregarding, to protect them from discrimination and to respect their dignity. Therefore, criticism of Israel and its government of the kind mentioned in para 13 above is likely to be dissimilar to criticism levelled against other countries, but is not for that reason anti-Semitic.

18. To suggest that the IHRA definition is internally protective of free speech is mistaken: criticisms may be made of Israel that are not made of other countries, but this of itself does not constitute anti-Semitism. Moreover, the test (if it is used as a test) is confusing. For example, Dr Manfred Gerstenfeld, an anti-Semitism scholar, writes in Arutz Sheva of the “huge importance” of the IHRA definition: “Using the IHRA definition it becomes clear that BDS activities are anti-Semitic as they are only applied against Israel.”⁸ This is plainly wrong, not only because sanctions are applied to other countries (Russia, Iran, North Korea, and formerly apartheid-era South Africa) but because the impression from the IHRA wording has led this commentator to think that criticism of Israel can be defined as anti-Semitic simply because it targets Israel and does not include other countries. This is just one example of how the loose words in the definition have been misunderstood and misapplied, in a way which could be used to besmirch legitimate political action as “anti-Semitic.”

19. The eleven examples are prefaced by the statement:

“Contemporary examples of anti-Semitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:”

⁸ See Arutz Sheva, “The Huge Importance of the Recent IHRA Definition of Anti-Semitism” 7th June 2016.

This is an ambiguous way to introduce what are meant to be concrete examples: they “could” (but they presumably could not). This is discussion, not definition. What is not clear, (although it should have been made clear) is whether the core definition requirement of a perception of “hatred towards Jews” is a prerequisite before any example is deemed anti-Semitic. This is an important, but unaddressed, question.

Example 1

“Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.”

20. This is motivated by hatred and obviously anti-Semitic (and, as incitement to violence, is also a hate crime punishable under British law).

Example 2

“Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, Government or other societal institutions.”

21. Here, the need to find hatred, or at least hostility, towards Jews becomes important. “The power of Jews as a collective” – for example, the power of the American Israel Public Affairs Committee (AIPAC) – is often referred to in political discourse as “the Jewish lobby,” so described in books and newspapers by reporters and commentators who are not in any sense anti-Semitic. Similar descriptions could be used of the combined efforts of rabbis, Jewish newspapers and organisations who condemned the conduct of the Labour Party executive in altering some of the examples when Labour adopted most of the IHRA definition. There should be no constraint on describing some

Jewish organisations or organisers as working towards a shared aim, unless of course it is done with hostility towards Jews in general. If “the Jewish lobby” is used in promoting the longstanding conspiracy theory (promoted by many anti-Semites) that Jews control the government or media or economy, and the comment displays hatred or hostility to Jews generally, then in that context it would be anti-Semitic.

Example 3

“Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.”

22. This is unexceptional.

Example 4

“Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).”

23. Anti-Semitism is frequently manifested by Holocaust denial, which is not a crime in the UK but is outlawed in some European countries. Given the undeniable proof of the Holocaust, denials are usually intended to offend and denigrate the Jewish people, although it is possible that a few may be the product of stupidity rather than malice.

Example 5

“Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.”

24. This is similar to Example 4, although it slips in, as an illustration, the example of criticism of the State of Israel, whether or not it is a manifestation of hostility to Jews

generally. There are many grounds on which Israel is criticised – exaggerating the Holocaust (which is difficult to exaggerate, given proof that it took 6 million lives) is not one that is much heard.

Example 6

“Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.”

25. Israel, as in recent legislation, claims to be the true homeland of Jewish people wherever they are born. This does not make it acceptable to treat Jewish people as synonymous with Israel or assume all Jewish people are loyal to and have an affinity with Israel. Accusing Jewish people of being loyal to the priorities of Jews worldwide is likely to promote the anti-Semitic conspiracy theory described in para 21 above. Other countries (Australia, for example) treat dual citizenship as a disqualification for standing for Parliament, presumably for fear of divided loyalties. There may be rare individual cases where a Jewish citizen is in a situation of conflict of interest where their State of birth or nationality is at diplomatic odds with Israel (for example, where a Jewish citizen of Britain returns to Israel for military service and participates in military action in support of the occupation of Palestinian territory). Jewish MP's who oppose their party's or their governments policy on Israel may be made the subject of criticism on this score, which would be anti-Semitic if it expresses a hatred or insinuates suspicion of all Jews, or e.g. that they are “political traitors” because they are Jews. Anti-Semitic abuse of these MPs is notable for viciousness, an indication of hatred.

Example 7

“Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.”

26. This example plainly trespasses on political speech, or at least brands as anti-Semitic what may be statements, supportive of the Palestinian people’s right of self-determination, or a reasonably held view about the history of the Balfour declaration, which in 1917 offered to establish a “national home” (not a “nation state”) for Jewish people in a land of 400,000 Arabs and 30,000 Jewish settlers. “Nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine” the declaration added, but in 1947 those rights were certainly prejudiced by partitioning the country and giving more than half of it to Jewish settlers and immigrants and forcing hundreds of thousands of Arabs into exile. Whether the State of Israel is a “racist endeavour” is open to question given its racially discriminatory laws and its new nation state Basic Law which is frequently said to make Palestinians second class citizens and likened by some reputable commentators to a form of apartheid. The claim that Israel has no right to exist is often made by anti-Semites but can be argued dispassionately by historians and others who say that a portion of Germany should have been set aside for a Jewish homeland to compensate for the Holocaust.

27. For the record, the position in international law was pithily summarised by the British judge, Dame Rosalyn Higgins, in the International Court of Justice case about the Wall:

“Israel is entitled to exist, to be recognised and to security, and the Palestinian people are entitled to their territory, to exercise self-determination and to their own State.”

Unless made with the intention of arousing hostility against Jews in general, attacks on Israel for “racist endeavours” by denying Palestinians their territory and their right to

self-determination cannot be assumed to be anti-Semitic. The example is in any event liable to confuse. The “right of self-determination” is a complex question of international law, which is (in Article 1 of the Covenant on Civil and Political Rights) declared to be the right of “peoples” – the majority of whom were, at Israel’s inception, Palestinians. That was not a problem for advocates of Theodore Hetzel’s political ideology of creating a Jewish state in Palestine for Jews from anywhere in the world. However, it is not anti-Semitic to be critical of the ideology of Zionism unless this is part of a hate campaign or unless this criticism is expressed in a way that displays prejudice or hostility towards Jewish people generally. Nor is it anti-Semitic to identify some Jewish people who espouse this ideology as Zionists: the Home Affairs Committee notes that 57% of Jewish people in the UK support Zionism (the founding philosophy of the State of Israel) but many do not, here and in Israel itself. But it also noted that “Zionist” and the colloquial “Zio” are frequently used in anti-Semitic discourse as terms of abuse, so the word must be used accurately and in an appropriate context.

Example 8

“Applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation.”

28. This begs the question of what behaviour is being objected to, and why. It focuses on political and diplomatic argument, which often shows double standards (Soviet and US accusations against each other during the Cold War, for example) but it cannot logically be concluded, as this example does, that double standards in criticising Israel denote anti-Semitism. The example could be used against the UN Human Rights Council, which notoriously makes more criticisms of Israel than of other nations where

behaviour may be as bad, in moral or legal terms, but is nonetheless different. It would be wrong to accuse the Council members of anti-Semitism, unless their votes are dictated by hatred of Jews generally rather than distaste for the human rights violations allegedly perpetrated by Israel. There is, in any event, a UN country-specific mandate on Palestine, partly because of the history of human rights abuse by Israel – another fact that makes its position different to that of other democratic countries and therefore open to particular scrutiny. Israel, unlike most democratic nations, has not ratified the Treaty for the International Criminal Court and does not accept the jurisdiction of the Human Rights Commission: this also sets it apart and makes criticism of its policies, unless attended by incitement to hatred, unexceptional.

Example 9

“Using the symbols and images associated with classic anti-Semitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.”

29. This is unobjectionable, although these hateful symbols manifest anti-Semitism irrespective of whether they are applied to Israel or Israelis.

Example 10

“Drawing comparisons of contemporary Israeli policy to that of the Nazis.”

30. This is more complicated. The writer or speaker may have no hostility towards Jews in general but may intend merely to draw a dramatic comparison. It will usually be an exaggeration, or else inappropriate, and will invariably give offence to many Jewish people, but that does not necessarily make it anti-Semitic unless the Nazi comparison was intended to show contempt for Jews in general. In the early years of Hitler

governance, Nazi anti-Semitic policy took the form of discrimination which made it more difficult for Jews to find employment or enter the professions: it would not be anti-Semitic to liken current Israeli policy to these measures (however inappropriately) unless it displays hatred to all Jews or the intention was to manifest hostility to all Jews, and not just the present Government.

Example 11

“Holding Jews collectively responsible for actions of the state of Israel.”

31. Israel is a democracy and its government is by definition endorsed by a majority of voters. But it would be absurd to hold all Jews responsible for its policies and its military actions: they are contested by an opposition in Israel and by many in the diaspora. So the example will usually be evidence of anti-Semitism. However, where such policies have led to human rights violations to which a blind eye is turned by its courts and law enforcement in Israel and to which little opposition is offered by the opposition in the Knesset (other than by its Palestinian representatives) then it may not be anti-Semitic to criticise “Israelis” for turning a blind eye – unless, of course, the criticism is intended to arouse racial hatred.

General Observations

32. It must be said that all eleven examples are of conduct that “could” amount to anti-Semitism, so long as the core definition is applied, namely that they express hatred towards Jewish people as a race. One problem is that this is not made clear. If the extended definition (i.e. core definition plus examples) were ever put into a law, a court would doubtless find that the core definition must control each example. It would also emphasise the introductory paragraph which makes the examples contingent – they

“could” be examples of anti-Semitism, but “could not” if they did not express hatred of Jews as a race. The trouble is that this is not clear, and many commentators, both those concerned to emphasise its danger to free speech and those concerned to use it to endanger free speech, have interpreted the examples as if they were intended to protect the state of Israel from criticism. This is the problem with loose drafting, and it is a problem in the UK because the government promulgated the definition without adding the caveat:

“It is not anti-Semitic to criticise the Government of Israel, without evidence to suggest anti-Semitic intent.”

33. It must be remembered that the definition was drafted in 2005 for an EU exercise in data collection about anti-Semitism incidents, and was dropped by that organisation, then called the Fundamental Rights Agency, and removed from its website in 2013 because of its inutility. It was resurrected by the IHRA at its Conference in 2016, held in conjunction with the highly respected *Elie Wiesel National Institute for the Study of the Holocaust in Romania*, which was involved in teaching police officers about anti-Semitism and Holocaust denial. It cannot be doubted that the extended definition would be useful for such an exercise, and there could be no objection to its use for similar purposes by police forces in the UK (so long as it is made clear that anti-Semitism is not a criminal offence unless it stirs up racial hatred).
34. In relation to the examples which refer to Israel, special caution is required. The Home Affairs Committee report suggests most anti-Semitic utterances come from right-wingers and UKIP is the political party which is most infested. That said, there is no doubt that dyed-in-the-wool anti-Semites may exploit human rights concerns over Israeli policy to whip up anger against Jews generally. There is evidence however, that some politically involved people (in the Labour and Liberal Democrat parties in

particular) have allowed their anger at human rights violations by Israel to boil over into utterances and posts that reveal or can reasonably be interpreted as meaning a hatred towards Jews. There can be no objection to political parties, or other membership-based organisations, expelling or disciplining such persons by reference to the IHRA definition, so long as the offending statement does express hatred of Jewish people generally. As pointed out above, I consider this is too limited a definition: such organisations should consider adopting broader definitions that allow them to discipline members who express hostility or prejudice towards Jews in general.

35. UK Courts have not had occasion to consider the IHRA definition, although one very recent decision of the Court of Appeal (August 2018) in *Jewish Human Rights Watch Limited v Leicester City Council* does indicate the likely approach. The Council had passed a motion “to boycott any produce originating from illegal Israeli settlements in the West Bank until such time as it complies with International Law and withdraws from Palestinian occupied territories.” Jewish Human Rights Watch, an organisation formed to challenge anti-Semitism, claimed that condemnation of Israel was being used as a means to attack British Jews and that the BDS movement, which it claimed had the long-term aim of destroying Israel, only increased the level of hatred experienced by Jewish people in the UK. Reflecting Example 8 above, it was argued that by passing the resolution, the Council “singled out Israel for different treatment than that adopted in respect of other countries.” The Court rejected these arguments:

“The condemnation was in line with a respectable body of opinion, including the UK Government, the European Union and the International Court of Justice... there is a legitimate scope for criticism of Israel without that implying anti-Semitic attitudes. There was nothing in the context to suggest the resolution was in fact being proposed

as a cover for incitement or anti-Semitism. Calling for boycotts of goods is a well-known gesture of political solidarity with oppressed groups overseas...”

36. This is how I would expect UK Courts to approach the IHRA definition were it deployed by a University, say, or local council to ban protest meetings or to discipline students for criticising Israel. There would have to be evidence that the offending speech or action was a pretext or cover for inciting hatred of Jews generally before the core definition could be applied. Much of the concern about its “chilling” consequences seems misplaced, until it is realised that the very vagueness of the extended definition with its examples of anti-Israel conduct which “could” metamorphose into anti-Semitism, is likely to confuse decision-makers and encourage complaints that are intended to chill legitimate speech. There are already examples of Universities banning meetings because they associate discriminatory Israeli policies with apartheid. These decisions would be likely to be reversed if taken to court. anti-Semitismanti-Semitism
37. Where the definition most acutely threatens freedom of speech is that by Palestinians resident in or visiting the UK and supporters who may show their opposition and anger at the establishment of Israel against the wishes of its indigenous majority of Palestinians, or the expulsion of 750,000 of them in 1948 (albeit after an unsuccessful attack by Arab States). Such people are entitled, under international human rights law, to set out their case against the State that they perceive as their oppressor, so long as their expression does not conduce to actual violence against its Jewish citizens, or against Jewish people anywhere – in which case their speech would be contrary to UK law against stirring up racial hatred. If their speech did not go so far, it might nonetheless be characterised (although not under the IHRA core definition) as anti-Semitic, if for example it aroused hostility to Jewish people by praising Palestinian armed action against Israel. The Institute of Race Relations has argued that minority

communities “have a right to be heard, to make... information public, while others have the right to hear them, and the arguments based on these facts.” That right should be enjoyed by speakers who criticise Israel for being a racist endeavour, unless they step over the red line and encourage attacks on Jewish people by military action or terrorism. I should add that it is not anti-Semitic to criticise the Israeli security service for assassinating terrorist suspects without trial – this has incurred criticism from Human Rights bodies and from countries whose passports have been forged to assist the movements of assassins.

38. I have, necessarily in this opinion, concentrated on the definition of anti-Semitism in respect to critics of Israeli policy. I should add that by far the most common expression of it is in tweets, demonising Jewish MPs and public figures. To judge from those discussed in the Home Affairs Committee report and in newspapers, these are malevolent and vicious outbursts (in no more than 280 characters) evincing hatred or contempt for pro-Israeli commentators or (in particular) for critics of Jeremy Corbyn’s alleged pro-Palestinian sentiments. They do not warrant detailed analysis: any identifiable sender of such messages could justifiably be expelled (e.g. if a member of the Labour Party) under any definition of anti-Semitism it chose to adopt. If that part does revert to the full IHRA definition, it should also adopt the Home Affairs Committee recommendation of inserting a provision to protect freedom of speech.

Application of the IHRA Definition

39. As I have made clear, this extended definition might be useful for purposes of discussion but should not be adopted as a rule or standard to be applied in any qualitative or quasi-judicial decision-making by any public authority. Nonetheless, it

has been adopted by some universities and local councils and applied or threatened as a ban on public meetings – e.g. “Israeli apartheid week” at various universities, and a proposal to refuse the BDS a meeting place by Barnet Council Hall. Public bodies in the UK are all subject to the Human Rights Act, with its Article 10 freedom of expression protection, (as explained above), so I do not think that such unlawful actions would survive court challenge. They are not even anti-Semitic under the IHRA definition as properly interpreted. So is the adoption of this definition likely to chill free speech? The answer is “yes,” but in two non-legal senses. Firstly, the definition, by so often referring to certain criticisms of Israel, is likely to encourage pro-Israeli organisations to urge that they be applied to ban criticisms of Israel. And correspondingly likely to discourage human rights groups and others from organising such protests.

40. Secondly, while it is true that the European Convention protects free speech, that is a protection offered by the courts in what is termed “judicial review” of the actions of public authorities. Like all cases that end up in court, this can be very expensive even if you win – costs only cover part of your legal expenses. For cash-strapped NGOs and student organisations, this is obviously a deterrent when faced with threats of legal action which require an expensive legal defence to protect their fundamental right to criticise Israel when it is unjustifiably limited by the application of the IHRA definition and its examples. Universities and Councils which desire to avoid the costs of a legal quagmire would be well advised not to adopt this confusing and litigation-prone definition, and – if they need one – to use the Oxford Dictionary and add in all cases a provision protecting free speech of the kind recommended by the Home Affairs Committee.

41. In the case of Universities and polytechnics there is a special statutory duty in the Education Act “to ensure freedom of speech,” i.e.

“to take such steps as is reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees... and visiting speakers.”⁹

This duty is compulsory and binding and can be enforced by judicial review. There are also duties under “Prevent” legislation to avoid incitements to terrorism (which are not in any event “within the law”) so they would only be entitled to ban speakers or events likely to advocate violence against Jewish people, in Israel or outwith. Intelligent discussion of whether discrimination against Palestinians by the Israeli Government amounts to apartheid, or whether the settler movement is colonialist, or meetings which call for Universities and Councils to adopt BDS policies, cannot be considered anti-Semitic under the IHRA definition or any other, in the absence of evidence that the event is being organised for the purpose of inciting hostility to all Jews. It must be emphasised – as the Court of Appeal in *Jewish Human Rights Watch Limited v Leicester City Council* emphasised – that there must be evidence of anti-Semitic purpose. Despite Natan Sharansky’s fears that the hidden agenda of BDS is to cause anxiety in the Jewish community, evidence that goes no further than this will not be sufficient to show even a *prima facie* case.

⁹ See Education Act 1986, Section 43.

Conclusion

42. It is my opinion, for the reasons set out above, that:

1. The IHRA definition of anti-Semitism is not fit for any purpose that seeks to use it as an adjudicative standard. It is imprecise, confusing and open to misinterpretation and even manipulation. It does not cover some insidious forms of anti-Semitism.
2. It was originally drafted, in the absence of any other definition, as a tool for collecting data and is useful for purposes of discussion, but should not be used (or be used with great caution) as a measure for discipline or in ways which have consequences for political speech.
3. The UK Government was wrong to adopt it without the “caveat” recommended with reason by the Home Affairs Committee, namely:

“It is not anti-Semitic to criticise the Government of Israel, without additional evidence to suggest anti-Semitic intent.”

Any public body or other organisation (including the Labour Party) that is contemplating adoption of the IHRA definition in full should add this provision to it.

4. As a matter of internal construction, the examples appended to the IHRA core definition should be read as incorporating a) the fact that they “could not” amount to anti-Semitism and b) in particular, unless they exhibited to reasonable people a hatred of Jewish people.
5. The Governments “adoption” of the definition has no legal effect and does not oblige public bodies to take notice of it.
6. The definition should not be adopted, and certainly should not be applied, by public bodies unless they are clear about Article 10 of the EHCR which is binding upon

them, namely that they cannot ban speech or writing about Israel unless there is a real likelihood it will lead to violence or disorder or race hatred.

7. Universities and Colleges should be particularly careful about adopting or using the definition, as they have a statutory duty to protect freedom of expression.
8. A particular problem with the IHRA definition is that it is likely in practice to chill free speech, by raising expectations of pro-Israeli groups that they can successfully object to legitimate criticism and correspondingly arouse fears in NGOs and student bodies that they will have events banned or else have to incur considerable expense to protect themselves by legal action. Either way, they may not organise such events.
9. Whether under human rights law or the IHRA definition, political action against Israel is not properly characterised as anti-Semitic unless the action is intended to promote hatred or hostility against Jews in general.

Geoffrey Robertson AO QC

A handwritten signature in black ink, appearing to read 'G Robertson', with a stylized, cursive flourish at the end.

Doughty Street Chambers, 3rd of September* Several typographical and minor factual amendments have been made from the Opinion dated the 27th of August.

About the Author: Geoffrey Robertson AO QC is founder and head of Doughty Street Chambers. He has appeared in many ground-breaking cases in criminal, constitutional and international law, and served as First President of the UN War Crimes Court in Sierra Leone and as a “distinguished jurist member” of the UN’s Justice Council. His books include a text on Media Law, “Crimes Against Humanity – the Struggle for Global Justice” and an “Inconvenient Genocide – Who now Remembers the Armenians.” In December 2016 he lectured at the Hebrew University in Jerusalem on the connection between the Armenian Genocide and the Holocaust.

Appendix B

Tomlinson, *Opinion*

**IN THE MATTER OF THE ADOPTION AND POTENTIAL APPLICATION OF THE
INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE WORKING
DEFINITION OF ANTI-SEMITISM**

OPINION

INSTRUCTIONS

1. I am asked by Free Speech on Israel, Independent Jewish Voices, Jews for Justice for Palestinians and the Palestine Solidarity Campaign to provide an Opinion on the effect of the Government's decision to "adopt" the International Holocaust Remembrance Alliance ("IHRA") non-legally binding working definition of antisemitism ("the IHRA Definition"). I am also asked to consider the meaning and effect of the IHRA Definition and its compatibility with the obligations of public authorities under the Human Rights Act 1998 ("the HRA").

BACKGROUND

2. The IHRA is an intergovernmental body whose stated purpose is "to place political and social leaders' support behind the need for Holocaust education, remembrance and research both nationally and internationally". On 26 May 2016 the IHRA made a decision ("the IHRA Decision") to adopt what it described as a "non-legally binding working definition of antisemitism" in the following terms:

"Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

This definition is then followed by "examples" which serve as illustrations. A full copy of the IHRA Decision adopting the IHRA Definition is appended to this Opinion.¹

3. In 2016 the House of Commons Home Affairs Select Committee ("the Select Committee") conducted an investigation into "Antisemitism in the UK". In its Report, published in October 2016, it considered definitions of antisemitism and

¹ The IHRA Definition was broadly based on the working definition of the European Monitoring Centre on Racism and Xenophobia ("EUMC"). The EUMC Definition has proved controversial, see, for example, the report of Professor David Feldman: *Sub-report for the Parliamentary Committee Against Antisemitism* (1 January 2015). <http://www.antisemitism.org.uk/wp-content/themes/PCAA/images/DAVID-FELDMAN-SUBREPORT.pdf>

concluded that

“We broadly accept the IHRA definition, but propose two additional clarifications to ensure that freedom of speech is maintained in the context of discourse about Israel and Palestine, without allowing antisemitism to permeate any debate. The definition should include the following statements:

- It is not antisemitic to criticise the Government of Israel, without additional evidence to suggest antisemitic intent.
- It is not antisemitic to hold the Israeli Government to the same standards as other liberal democracies, or to take a particular interest in the Israeli Government’s policies or actions, without additional evidence to suggest antisemitic intent.²

4. The Select Committee went on to recommend that the IHRA Definition - with its “additional caveats” - be “formally adopted by the UK Government, law enforcement agencies and all political parties, to assist them in determining whether or not an incident or discourse can be regarded as anti-Semitic”.

5. The Government responded to the Select Committee Report in December 2016.³ In relation to the recommendation concerning the IHRA Definition, the Government agreed to “adopt” this. In relation to the suggested “additional caveats” the Government said

“We believe that references within the definition stating that “criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic” are sufficient to ensure freedom of speech.”

The Government went on to note that an earlier version of the definition⁴ is being used by the police and forms part of the National Police Chiefs Council Hate Crime Manual for officers and suggests that the IHRA Definition is a useful tool for criminal justice agencies and other public bodies to understand how antisemitism manifests itself in the 21st century.

THE IHRA DEFINITION

6. Three initial points can be made about the IHRA Definition. The first is that it is expressed to be a “non-legally binding working definition”. In other words, it cannot be construed in the same way as a statutory definition or one produced as part of statutory guidance. The IHRA Definition does not purport to provide a

² Antisemitism in the UK, para 24
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/13602.htm>

³ Government Response to Home Affairs Committee Report, “Anti-Semitism in the UK”, CM 9386

⁴ That is, the EUMC Definition, see note 1 above.

legal definition of antisemitism. It does not have the clarity which would be required from such a definition. It is perhaps worth pointing out that the fact that conduct is “contrary” to the IHRA Definition could not, of itself, render that conduct “illegal” in any sense.

7. Second, there is an obvious problem with the wording of the IHRA Definition. The use of language is unusual and therefore potentially confusing. The phrase “a certain perception” is vague and unclear in the context of a definition. The use of the word “may” is also confusing. If it is understood in its usual sense of “possibility” then the definition is of little value: antisemitism “may be expressed as hatred towards Jews but may also be expressed in other (unspecified) ways”. This does not work as a definition. In my view, the very least that is needed to clarify the IHRA Definition is to reformulate the first sentence so that it reads as follows:

“Antisemitism is a particular attitude towards Jews, which is expressed as hatred toward Jews”.

Even in these amended terms the definition is unsatisfactory. The apparent confining of antisemitism to an attitude which is “expressed” as a hatred of Jews seems too narrow and not to capture conduct which, though not expressed as hatred of Jews is a clearly a manifestation of antisemitism. It does not, for example, include discriminatory social and institutional practices.

8. These problems with the wording of the IHRA Definition mean that it is very difficult to use as “tool”. It is obviously most unsatisfactory for the Government to “adopt” a definition which lacks clarity and comprehensiveness in this way. It means that there is likely to be lack of consistency in its application and a potential chilling effect on public bodies which, in the absence of definitional clarity, may seek to sanction or prohibit any conduct which has been labelled by third parties as antisemitic without applying any clear criterion of assessment.
9. Third, it is important to note the structure of the IHRA Decision. The IHRA Definition is contained in the two sentences set out at paragraph 2 above. The remainder of the decision consists, as the IHRA Decision says, of “examples by way of illustration”. These examples must be read in the light of the definition itself and cannot either expand or restrict its scope. All of them must be regarded as examples of activity which can properly be regarded as manifesting “hatred towards Jews”.

10. In many of the examples which are given the “hatred towards Jews” is obvious and uncontroversial. For example, “charging Jews with conspiring to harm humanity”, or “justifying the killing or harming of Jews in the name of ideology or religion” obviously involve “hatred towards Jews”. However, in some cases, the examples do not explicitly refer to the “hatred” requirement and therefore need further elaboration.⁵ I will consider two of the examples given although the point is a general one:

- *“Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”.* This must be read in the light of the definition. Such an accusation would only be antisemitic if motivated by hatred of Jews. If, for example, the accusation was motivated by a reasonable belief that a particular Jewish citizen or a group of citizens had by their words or actions showed that their loyalty to Israel was greater than their loyalty to their own nation, the accusation could not be properly regarded as antisemitic.
- *“Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”.* This must, again, be read in the light of the definition. A denial of a Jewish right to self-determination could be the result of a particular analysis of the nature of the Jewish people (motivated, for example, by religious considerations) which had nothing to do with the “hatred of Jews”. Furthermore, unless such a claim was informed by hatred to Jews, it would not be antisemitic to assert that as Israel defines itself as a Jewish state and thereby by race, and that because non-Jewish Israelis and non-Jews under its jurisdiction are discriminated against, the State of Israel is currently a racist endeavour.

EFFECT OF THE GOVERNMENT’S “DECISION TO ADOPT”

11. The Government has decided to “adopt” the IHRA Definition. This is not a decision made in accordance with any statutory power but is a freestanding statement of policy. It cannot, and does not purport to, have any binding effect on any public body and no public body is under a resulting obligation to adopt or use this definition. It is simply a “suggestion” by the Government as to a “definition of antisemitism” which public bodies might wish to use. No public body could properly be criticized for refusing to adopt the IHRA Definition. On the

⁵ This requirement of evidence of subjective intent is appears to be the Select Committee was seeking to achieve through the additional caveats.

contrary, in view of the unsatisfactory nature of the IHRA Definition, it is my view that a public body should give very careful consideration to its suitability for use as a guide to decision making and should, if it is adopted, give careful guidance as to its application.

12. The Government has declined to adopt the “caveats” suggested by the Select Committee which it said were designed to “ensure that freedom of speech is maintained in the context of discourse about Israel and Palestine”. It has done so on what is, strictly speaking, a mistaken basis. It is said that

“references within the definition stating that “criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic are sufficient to ensure freedom of speech” (emphasis added).

In fact, the IHRA Definition does not contain this statement. It appears within the “illustrations” designed to guide the IHRA in its work. Nevertheless, the intention is clear: the Government takes the view that the Select Committee’s caveats are unnecessary because it is already clear from the IHRA Definition and the illustrations that it is not antisemitic to criticise the Government of Israel, or to hold that Government to the same standards as other democracies “without additional evidence to suggest antisemitic intent”. This view is reflected in the letter sent by the Minister of State for Universities, Science, Research and Innovation, Jo Johnson MP, to Universities UK on 13 February 2017 (“the Minister’s Letter”) in which, after referring to the IHRA Definition he points out that it “gives examples of the kind of behaviours, which depending on the circumstances, could constitute anti-Semitism” (my emphasis). In other words, the Minister accepts that the “examples” given may not, of themselves, be of antisemitic behaviour but that “antisemitic intent” also has to be demonstrated.

13. In short, the Government’s decision to “adopt” the IHRA Definition does not, of itself, have any immediate or direct legal consequences. It will only have such consequences if, following the Government, public bodies also decide to “adopt” the definition and then seek to apply it in practice. I will now turn to the question as to how the definition should be applied by public bodies.

APPLICATION OF THE IHRA DEFINITION

14. A public authority such as, for example, a university or a local authority is free to decide whether or not to adopt the IHRA Definition as part of its own anti-racism policies. It is noteworthy that, in the Minister’s Letter, it is not suggested that Universities are under any obligation to “adopt” the IHRA Definition. It is simply

suggested that the definition is “disseminated”. If a public authority does decide to “adopt” the definition then it must interpret it in a way which is consistent with its statutory obligations. I would draw attention to two such obligations, one general and one specific to “universities, polytechnics and colleges”.

15. First, there is the general obligation. Public authorities cannot lawfully act in a manner which is inconsistent with rights under the European Convention on Human Rights (“the Convention”).⁶ This means that, for example, a public authority cannot interfere with freedom of expression unless this is justified under Article 10(2) of the Convention or with freedom of assembly unless this is justified under Article 11(2). Such justifications must be “convincingly established”. It is, of course, fundamental that freedom of expression “is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb the State or any sector of the population.”⁷ However public authorities are likely to be justified in restricting or prohibiting statements or demonstrations which meet the strict test of being “a direct or indirect call for violence or as a justification of violence, hatred or intolerance”.⁸ Speech which is incompatible with Convention values, such as Holocaust denial or justification of pro-Nazi policies is outside the protection of Article 10.⁹
16. In addition to the “negative obligation” on public authorities not to interfere with freedom of expression unless such interference is justified under Article 10(2) of the Convention, they are also under a “positive obligation”
“to create a favourable environment for participation in public debates for all concerned, allowing them to express their opinions and ideas without fear, even if these opinions and ideas are contrary to those defended by the official authorities or by a large part of public opinion, or even if those opinions and ideas are irritating or offensive to the public”¹⁰.
17. The Court of Human Rights has not sought to provide a general definition of

⁶ See, HRA section 6(1).

⁷ This formulation first appears in *Handyside v United Kingdom* (1976) 1 EHRR 737 [49] and has been repeated in numerous subsequent judgments.

⁸ See, *Perinçek v Switzerland* (2016) 63 EHRR 6 [206] and the cases cited there.

⁹ As a result of Article 17 of the Convention, see *Ivanov v Russia*, Decision of 20 February 2007

¹⁰ *Dink v Turkey* Judgment of 14 September 2010 (in French only) [137]

antisemitism. However, the recent case of *CICAD v Switzerland*¹¹ provides an useful indication of its likely approach to the IHRA Definition. The applicant in that case, CICAD, was an NGO which campaigned against antisemitism. An article in its newsletter had condemned an academic for using antisemitic language. He had edited a book entitled *Israel et l'autre* and had written a Preface which contained the following passages:

"By becoming very consciously the Jewish state, Israel brings together on its shoulders the weight of all these questions which explicate the basic Jewish question. (...) The identification of Israel with Judaism means that all political, diplomatic, military activity is considered as an examination of Judaism: let us see how (...). Under these conditions, it is perfectly futile to consider that Israel is a State like any other: its hands are bound by the definition it has set itself. When Israel is exposed on the international scene, it is Judaism that is exposed at the same time.

"In the field of politics too, there are few such impressive examples of the active presence, at all levels, of a strong and interventionist state like the State of Israel, A state which assumes so completely the morality of "dirty hands" (in particular the policy of closure of territories, destruction of civilians' houses, targeted assassinations of alleged terrorist leaders) in the interests of the security of its citizens."

CICAD's newsletter condemned these arguments as antisemitic. The academic brought a successful civil action in the Swiss Courts. CICAD was ordered to remove the article, publish the court's judgment and pay costs. Its complaint that this ruling was a breach of its Article 10 rights was dismissed by the Court of Human Rights. The domestic court had rejected the argument of CICAD that the academic's comments were within the EUMC Working Definition of Antisemitism. The Court of Human Rights found no basis for disturbing that conclusion. Although it did not directly engage with the merits of the EUMC Working Definition it is plain from the Court's reasoning that it did not accept that comments of the type made by the academic could properly be characterized as antisemitic.

18. Secondly, in the case of universities, polytechnics and colleges there is a specific statutory "duty to ensure freedom of speech"¹² expressed in the widest terms. Such institutions are under a duty to

"take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members,

¹¹ Judgment of 6 June 2016 (in French only).

¹² See Education Act 1986, section 43

students and employees... and visiting speakers”.¹³

They must ensure, insofar as is reasonably practicable, that no individual is denied use of their premises on any ground connected with “the beliefs or views of that individual”. The only basis on which the duty to ensure freedom of expression can be overridden is if what a visiting speaker is likely to say is not “within the law” or it is not “reasonably practicable” to allow use of university premises.

19. The effect of the general obligation on a public authority to act compatibly with the Convention is that, if it adopts the IHRA Definition, it would have to take active steps to ensure that it was applied in a way which was consistent with Article 10. It would, for example, be lawfully entitled to prohibit conduct which incited hatred or intolerance against Jews. It would not be lawfully entitled to prohibit conduct on the sole basis that supporters of the State of Israel found it upsetting or offensive.
20. A number of the “contemporary examples” of antisemitism in public life included in the IHRA Decision might, if read literally, appear to condemn as antisemitic conduct which does not constitute or manifest hatred or intolerance against Jews. As I have already discussed, those examples must be read in the light of the definition itself and can only properly be regarded as antisemitic if they “manifest a hatred against Jews”. This was recognized by the Select Committee when it suggested that criticism of the Government of Israel, is not antisemitic “without additional evidence to suggest antisemitic intent”. The Government expressed the view that this qualification was already present in the IHRA Definition so that no express caveat was needed. The position is, however, unclear and public authorities should take steps to ensure that freedom of expression and assembly are properly protected by ensuring that unpopular but lawful views can be put forward at meetings or demonstrations.
21. In my view any public authority which sought to apply the IHRA Definition to decisions concerning the prohibition or sanctioning of activity which was critical of the State or Government of Israel would be acting unlawfully if it did not require such activity also to manifest or incite hatred or intolerance towards Jews. If an authority applied the IHRA Definition without such a requirement it would be in breach of Article 10 of the Convention and would, therefore, be

¹³ Ibid, section 43(1).

acting unlawfully under domestic law in the United Kingdom.

22. A number of examples of conduct which have been criticised as antisemitic have been suggested in various publications. These include:

- Describing Israel as a state enacting policies of apartheid.
- Describing Israel as a state practising settler colonialism.
- Describing the establishment of the State of Israel and the actions associated with its establishment, as illegal or illegitimate.
- Campaigning for policies of boycott divestment or sanctions against Israel, Israeli companies or international companies complicit in violation of Palestinians human rights (unless the campaigner was also calling for similar actions against other states).
- Stating that the State of Israel and its defenders “use” the Holocaust to chill debate on Israel's own behaviour towards Palestinians.

In my view, none of these statements or activities could, of themselves, be properly described as antisemitic. I do not think that any of them, without more (that is, without evidence of “hatred towards Jews”), fall within the terms of the IHRA Definition. If an event were to be banned by a university or other public authority on the grounds that such views were being expressed by the organisers or by speakers on a panel then, without more, such a ban would in my view be unlawful.

23. The position would, of course, be very different if the organisers or speakers at an event where such views were expressed were also inciting hatred or intolerance towards Jews by, for example, seeking to justify the killing of Jews in the name of radical Islam or claiming that the Holocaust had been invented or exaggerated by the State of Israel. Such statements would be the “additional evidence” referred to in the Select Committee’s suggested “caveats” and would then be likely to justify prohibition or sanction.

24. The starting point should be that events which seek to protest against the actions of the State of Israel or the treatment of Palestinians are lawful expressions of political opinion. There is no justification in law for treating such events any differently from any other political protests. Any policy which a public authority adopts for the regulation of political meetings or protests should be applied consistently to all events and protests. In particular, the organisers of events of the kind mentioned should not be required to justify them or prove that they are not motivated by antisemitism and should not be subject to special

restrictions or conditions. In the absence of positive evidence of antisemitism such restrictions or conditions would be unlawful.

CONCLUSION

25. In summary, therefore, it is my view that:

- (1) The IHRA “non-legally binding working definition” of antisemitism is unclear and confusing and should be used with caution.
- (2) The “examples” accompanying the IHRA Definition should be understood in the light of the definition and it should be understood that the conduct listed is only antisemitic if it manifests hatred towards Jews.
- (3) The Government’s “adoption” of the IHRA Definition has no legal status or effect and, in particular, does not require public authorities to adopt this definition as part of their anti-racism policies.
- (4) Any public authority which does adopt the IHRA Definition must interpret it in a way which is consistent with its own statutory obligations, particularly its obligation not to act in a matter inconsistent with the Article 10 right to freedom of expression. Article 10 does not permit the prohibition or sanctioning of speech unless it can be seen as a direct or indirect call for or justification of violence, hatred or intolerance. The fact that speech is offensive to particular group is not, of itself, a proper ground for prohibition or sanction. The IHRA Definition should not be adopted without careful additional guidance on these issues.
- (5) Public authorities are under a positive obligation to protect freedom of speech. In the case of universities and colleges this is an express statutory obligation but Article 10 requires other public authorities to take steps to ensure that everyone is permitted to participate in public debates, even if their opinions and ideas are offensive or irritating to the public or a section of it.
- (6) Properly understood in its own terms the IHRA Definition does not mean that activities such as describing Israel as a state enacting policies of apartheid, as practicing settler colonialism or calling for policies of boycott divestment or sanctions against Israel can properly be characterized as antisemitic. A public authority which sought to apply the IHRA Definition to prohibit or sanction such activities would be acting unlawfully.

HUGH TOMLINSON QC

Matrix Chambers

8 March 2017

Appendix C

Achiume, *Report*



General Assembly

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Seventy-seventh session

Agenda item 66 (a)

**Elimination of racism, racial discrimination, xenophobia
and related intolerance: elimination of racism, racial
discrimination, xenophobia and related intolerance**

Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, submitted in accordance with Assembly resolution [76/149](#).

* The present report was submitted after the deadline in order to reflect recent developments.



Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume

Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, summarizes information received from Member States with regard to the implementation of General Assembly resolution [76/149](#). The Special Rapporteur also summarizes the key trends in the glorification of Nazism and related racism, xenophobia and intolerance that she has observed and reported on during the five years of her mandate. The Special Rapporteur subsequently outlines the governing principles and obligations of racial equality and non-discrimination, highlighting their application in combating racism and xenophobia.

I. Introduction

1. The present report is submitted to the General Assembly pursuant to resolution [76/149](#), in which the Assembly requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to submit a report on the implementation of that resolution to the Assembly at its seventy-seventh session.
2. In the report, the Special Rapporteur summarizes information received from Member States with regard to the implementation of the above-mentioned resolution. She thanks the Member States that made submissions for their contributions.
3. The Special Rapporteur also summarizes the key trends in the glorification of Nazism and related racism, xenophobia and intolerance that she has observed and reported on during the five years of her mandate. Such trends include the broadening of neo-Nazi groups to embrace white nationalists and right-wing populist movements; the increased acceptance of neo-Nazi and related racism, xenophobia and intolerance within mainstream discourses and forums; the use of new technologies to further neo-Nazism and related racism, xenophobia and intolerance; the recruitment of young people by neo-Nazi groups; an upsurge in antisemitism in Europe and North America; anti-Asian and anti-black racism, Islamophobia and attacks on non-nationals in relation to the origin and propagation of the coronavirus disease (COVID-19); and the instrumentalization of the standards and tools designed to address neo-Nazism and related racism, xenophobia and intolerance.
4. The Special Rapporteur subsequently outlines the governing principles and obligations of racial equality and non-discrimination, highlighting their application in combating racism and xenophobia. As highlighted in previous reports, she reminds Member States of the strong commitment required to tackle the increase in hate crime and incitement to violence targeting ethnic, racial and religious minorities worldwide. She reminds States to consider the references in General Assembly resolution [76/149](#) to the horrors of the Second World War and the call to save future generations from the scourge of war. She calls upon States to redouble efforts to address all forms of ethnic, racial and religious hatred and to promote tolerance and understanding within and between countries.

II. Submissions by Member States

5. In the present section, the Special Rapporteur summarizes submissions received from Member States on laws and policies in place to combat Nazism and neo-Nazism, but she does not analyse or evaluate these laws or policies. She underscores that providing the summaries of the State submissions below does not constitute her endorsement of their content. Indeed, some of the laws and policies summarized below, and/or gaps and weaknesses in the relevant legislative and policy frameworks, may be, or have been, subject to review and condemnation by other actors in the United Nations human rights system for being in contravention of international human rights law.

A. Armenia

6. The Government of Armenia provided information indicating that there are no neo-Nazi or similar groups within the State. The Government also provided information about measures taken in law to prevent and address incidents and manifestations of discrimination, hate speech and hate crime, in accordance with its international human rights obligations. A new Criminal Code will come into force in

July 2022, the relevant provisions of which include article 329, which criminalizes incitement to violence and discrimination, and article 330, which makes it a crime to distribute materials or objects for such purposes.

7. According to the information provided, the Ministry of Justice, in partnership with the Council of Europe, compiled a study on the legal regulations in place to prevent and punish hate speech. Based upon this study, amendments have been made to the relevant legal framework to address protection gaps. The Government also provided information about legal provisions in place to prevent discrimination in the labour market and draft legislation to ensure equality before the law and the comprehensive protection of minority groups.

8. Information was also provided about the policy steps taken alongside the legal measures mentioned above. They included an assessment of the collection of disaggregated data on discrimination, hate crime and hate speech to identify and address gaps in that respect. The data currently available are compiled from crime statistics and were summarized within the information provided. According to those statistics, hate crimes increased between 2016 and 2021, but data for 2021 showed a decrease compared with 2020.

9. The Government described its collaboration with regional and international human rights mechanisms. In 2020, Armenia submitted its fifth country report under the Council of Europe Framework Convention for the Protection of National Minorities. In addition, the State has ratified a number of international human rights treaties, including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

10. The Government also provided information about alleged incidences of human rights abuses perpetrated by Azerbaijan.

B. Belarus

11. The Government of Belarus submitted a report entitled “The most resonant human rights violations in certain countries of the world”, which discusses alleged human rights violations in a range of Western countries, including Austria, Belgium, Bulgaria, Canada, Czechia, Estonia, Finland, France, Germany, Greece, Italy, Latvia, the Netherlands, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The themes covered include Islamophobic legislative provisions; discrimination and xenophobia against migrants, including refugees and asylum-seekers; discrimination against those from the Russian Federation and Belarus; antisemitic violence; other forms of antisemitism; hate speech by political officials; and the destruction of memorials to the Second World War.

C. Burundi

12. The Government of Burundi reported that there is no racism, xenophobia or related intolerance within the country. In the information provided, the Government highlights its ratification of the International Covenant on Civil and Political Rights in 1990 and subsequently describes national legislative provisions, including the Penal Code and the Constitution, which transpose international obligations into national law and criminalize racial discrimination.

13. Relevant policy documents are also outlined in the information provided, including Vision Burundi 2025; the national development plan of Burundi for 2018–2027; and the social protection and national health policy. The information describes

how measures outlined in these strategies address inequalities within the countries, including those that result from structural and systemic racism. Lastly, in its submission, the Government describes relevant institutions that contribute to the protection of human rights, including the Ombudsman, the National Independent Human Rights Commission, the Truth and Reconciliation Commission and the National Observatory for the Prevention and Eradication of Genocide, War Crimes and other Crimes against Humanity.

D. Chile

14. The Government of Chile provided information about the legal framework in place to prevent and combat discrimination, intolerance, racism and related violence. According to the information provided, Law No. 20.609 has been in place since 2012 and is designed to establish judicial redress in cases of discrimination. The law has been subjected to criticism based on issues with the definition of discrimination, the superiority of other rights over the rights to equality and non-discrimination within the national legal order and the low number of cases brought before the courts under the legislation. Bulletin No. 12.748-17 is being processed in order to address these criticisms and strengthen Law No. 20.609.

15. The Government also provided information about the public policies in place to prevent and combat discrimination and related intolerance. The national human rights plan is designed to mainstream human rights standards across the State. The first plan covered the period 2018–2021, and the second plan is currently being developed. There are a number of goals within the plans that address equality and non-discrimination, including manifestations of discrimination affecting migrants and refugees, older persons, women, LGBTIQ+ persons, persons with disabilities and indigenous and tribal peoples.

16. According to the information provided, the Human Rights Training and Education Unit has provided a range of training and awareness-raising activities for civil servants and the general public. For example, a training portal has been set up to provide courses to promote human rights awareness. These courses are tailored to different audiences and address varied topics.

E. Guatemala

17. The information provided by the Government of Guatemala was submitted by the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala. It provided information about the commitment of the Government to combating racism, racial discrimination, xenophobia and intolerance and described how its response to such phenomena is grounded in the Durban Declaration and Programme of Action and its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

18. According to the information provided, there are no known neo-Nazi, skinhead or extremist groups that promote, tolerate or exacerbate forms of racism, racial discrimination, xenophobia or other forms of related intolerance within the State's territory.

19. The Government provided information about the legislative provisions in place to prevent and combat manifestations of racism, racial discrimination, xenophobia and related intolerance. These provisions include article 4 of the Political Constitution of the Republic of Guatemala, which establishes the freedom and equality of all, and article 202 of the Penal Code, which criminalizes discrimination.

20. With regard to the institutional framework in place to promote political, social and cultural tolerance, the Presidential Commission on Discrimination and Racism against Indigenous Peoples was created pursuant to Governmental Agreement No. 390-2002 and is the public body responsible for the formulation and monitoring of public policies and programmes designed to address racism, racial discrimination, xenophobia and related intolerance. Details were supplied regarding the mandate of the technical committee for strengthening the strategic litigation of discrimination cases, which was set up to promote a space for dialogue and communication between civil servants and public officials to strengthen the investigation of discrimination cases. Efforts are also being made to promote linguistic plurality within the education system, to facilitate access to justice for indigenous peoples and train law enforcement officials on the prevention of discrimination and racism.

21. In addition, the Government provided disaggregated data on assistance provided by the Office for the Defence of Indigenous Women's Rights; cases handled by the judicial body; and the number of complaints of discrimination addressed by the legal component of the Presidential Commission on Discrimination and Racism against Indigenous Peoples. According to data on the complaints addressed by the Presidential Commission, in 2021, eight complaints were transferred to the Public Prosecutor's Office.

F. Iraq

22. The Government of Iraq provided information indicating that there are no neo-Nazi groups within the State's territory. In its submission, the Government describes the emergence of Da'esh in Iraq in 2014. According to the information provided, Da'esh has committed atrocities including killings, torture, kidnappings, rape, sexual enslavement, child recruitment and crimes against humanity. The Government describes its response to the emergence of Da'esh, including legal measures taken to protect human rights and promote the rule of law, as well as steps to liberate the areas that have fallen under Da'esh control and provide temporary shelter to internally displaced persons.

23. The Government highlights relevant legal provisions in place in the State party, including Law No. 32 of 2016 adopted to counter racist movements, ideologies and political movements and organizations; Law No. 36 of 2015, which governs political parties; and provisions that protect religious freedom and worship.

24. In addition, the Government provided information about the policy framework, including the national strategy for countering terrorism for 2021–2025. The Government also described a joint initiative within the United Nations Assistance Mission for Iraq to address violence; initiatives created by the Ministry of Education to promote a spirit of tolerance and acceptance; and measures taken by the Committee on Information and Communication to ban any kind of incitement to violence or hatred against individuals and groups on the basis of ethnicity, gender or religious affiliation.

G. Lithuania

25. The Government of Lithuania provided information about its position on General Assembly resolution [76/149](#). The Government stressed the importance that it places on the topics of racism, racial discrimination, xenophobia and related intolerance. The Government subsequently explained that, despite its commitment to addressing racism, racial discrimination, xenophobia and related intolerance, it had voted against General Assembly resolution [76/149](#) because of how it was being used by the Russian Federation, one of the main sponsors, to spread disinformation and weaponize sensitive issues.

26. The Government also provided information about the legislative steps that have been taken to address discrimination in the State. This includes the ratification of both the International Convention on the Elimination of All Forms of Racial Discrimination and regional standards on online hate speech and equality before the law. Information was also provided about the relevant national legal framework, including provisions in the recently amended Criminal Code, which apply criminal law to various forms and expressions of racism and xenophobia. Policies and programmes in place were also described, including the social inclusion development programme for 2021–2030 and participation in the implementation of the European Union anti-racism action plan entitled “A Union of equality: EU anti-racism action plan 2020–2025”.

27. The Government highlights that a number of steps have been taken in recent years to strengthen the response to hate crime and hate speech. For example, in 2020, a working group was established to promote an effective response to hate crime and hate speech. In addition, guidelines for the investigation of hate crime and hate speech were developed and approved by the Prosecutor General. Practical guidance for law enforcement officers on cooperation with communities vulnerable to hate crime have also been developed. Information was also included about a range of education and awareness-raising activities, including the establishment of tolerance education centres, materials to raise awareness about the Second World War and events to mark Roma Genocide Day.

H. Mauritius

28. The Government of Mauritius described the legal framework in place to ensure the equal treatment of minority groups, including constitutional provisions guaranteeing protection from discrimination and ensuring religious freedom and relevant sections of the Criminal Code criminalizing a range of acts against persons, events and property of a religious nature and offences involving incitement to hatred.

29. Information was also provided about amendments made to section 46 of the Information and Communication Technologies Act, in 2018, to address the malicious use of social media. The amendments were designed to protect individuals from being victims of racial discrimination by means of hate speech, impersonation or other types of harassment carried out through various information and communications technologies. The Government also provided information about relevant provisions in the Equal Opportunities Act; the Truth and Justice Commission Act; the Judicial and Legal Provisions Act; and the Protection of Human Rights Act.

30. The Government provided information about the role of the Independent Broadcasting Authority, which was created in 2001 to uphold and promote the pluralistic nature of Mauritian culture. The role of the Office of the Ombudsman, including in investigating complaints of discrimination, was also described.

31. The Government detailed measures taken to ensure equality and non-discrimination across a wide range of societal settings, including employment, housing, health, education, cultural activities and political participation.

32. The Government provided information about steps to preserve the cultural diversity of Mauritius within the education system through its formal curriculum and extracurricular activities, as well as measures to tackle bullying and hate speech within educational institutions. Programmes to promote equal participation in cultural activities were also described. These include the provision of infrastructure for all religions, as well as various funds for the preservation of cultural heritage and the promotion of linguistic pluralism. The Government described the opening of the

Intercontinental Slavery Museum in October 2020, with an inaugural exhibition entitled “Breaking the silence”.

33. Information was provided about the country’s political system, according to which, voting rights are available to all individuals aged over 18 years and governments are selected every five years, in accordance with the Constitution and other national legal provisions. Mauritius ranked among the top 21 countries in the Democracy Index 2020 of the Economist Intelligence Unit.

I. New Zealand

34. The Government of New Zealand provided information about the national action plan against racism. The Government has committed to developing a national action plan as part of its formal response to the recommendations accepted during the third cycle of the universal periodic review. According to information provided, the aim of the national action plan is to work in partnership with the National Iwi Chairs Forum and other communities to progressively eliminate racism at all levels of society within the country. A process for developing the action plan has been agreed and is now under way, drawing on a range of consultative activities with indigenous communities, organizations and community and thought leaders.

35. Information was also provided about combating incitement to hatred. The Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain in 2019 looked at hate speech. The Commission recommended amending the existing offence of inciting racial disharmony to extend the application of criminal sanctions for incitement against religious groups and increasing the corresponding penalties. Information was also provided about legal amendments that go beyond the scope of the recommendations of the Commission, which are currently the subject of public consultation.

J. Russian Federation

36. The Government of the Russian Federation submitted detailed information about allegations of ethnic discrimination against Russians in Western States since February 2022. According to the information provided, the most frequent violations include the refusal of services, including education, health care and banking, to those of Russian nationality; discriminatory measures targeting Russian businesses; the confiscation of and/or deliberate damage to Russian property; the coercion of individuals to repent for and/or condemn the actions of the Government of the Russian Federation; the banning of those of Russian nationality from sporting events, competitions and cultural events; threats and insults against Russians; the eviction of Russian individuals in violation of lease agreements; and the dismissal of Russians from employment.

37. The information provided by the Government also describes calls to exclude Russian cultural contributions from the global cultural heritage. In addition, schoolchildren who have Russian citizenship or who are of Russian origin have been subjected to humiliation and insults by their classmates and other manifestations of Russophobic attitudes.

38. The information submitted includes detailed examples of such allegations in Austria, Canada, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Norway, Romania, Spain, Sweden, Ukraine, the United States of America and the United Kingdom of Great Britain and Northern Ireland.

K. Spain

39. The Government of Spain provided information about the legislative measures taken to prevent and protect against racism, racial discrimination and related intolerance. According to this information, a law to combat racism, racial discrimination, xenophobia and related forms of intolerance is currently being drafted and was subject to public consultation.

40. In addition to measures taken to strengthen the national legal framework, the Government provided information about steps taken to prevent crimes and restore victims' rights in cases of racial and/or ethnic discrimination. According to this information, the Government has undertaken work to strengthen the Support Service for Victims of Racial or Ethnic Discrimination. The annual reports of the Service contain disaggregated statistical data on cases of discrimination. Those data inform national studies, such as the study in 2020 entitled "Perception of discrimination based on racial or ethnic origin". The Government also collaborates with the European Commission on the monitoring of online hate speech and has developed the Real Up project to improve monitoring of all forms of hate speech.

41. The Government also provided information about the policy framework in place and indicated that a strategic framework for citizenship and inclusion and against xenophobia and racism for 2021–2027 is currently being developed.

42. According to the information provided, the Government has also undertaken a range of awareness-raising activities, including events to mark the International Day for the Elimination of Racial Discrimination and the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade.

III. Review of relevant trends

43. In the present section, the Special Rapporteur presents an analysis of the key trends in the glorification of Nazism and related racism, xenophobia and intolerance that she has observed during the last five years of her mandate. These trends are based upon the reports of the Special Rapporteur to the General Assembly and the Human Rights Council. These reports include information provided by Member States and civil society organizations in submissions to the Special Rapporteur, which are available on her website.

44. These trends are perceived as being interlinked and mutually reinforcing. She reminds Member States of the complex, multifaceted and pervasive nature of neo-Nazism and related racism, xenophobia and intolerance. She urges that strong commitment and sustained political will are required for Member States to fulfil their obligations under international law to tackle the increase in hate crimes and incitement to violence targeting ethnic, racial and religious minorities worldwide.

A. Broadening of neo-Nazi groups to embrace white nationalists and right-wing populist movements

45. As was highlighted in the report of the Special Rapporteur to the thirty-eighth session of the Human Rights Council ([A/HRC/38/53](#)), neo-Nazism today is regularly combined with other ideologies of racial superiority or hatred as a means of widening acceptance and strengthening its support base. The Special Rapporteur notes with concern the success of this strategy as suggested by the growing support for and acceptance of neo-Nazi ideology in an increasing number of countries.

46. The resurgence of neo-Nazism in contemporary times has much to do with the broadening of this movement to include and contribute to various networks of white

supremacist, racist and xenophobic projects, especially the project of white nationalism, and other extreme right-wing ideologies. This broadening of neo-Nazism has made it more accessible, and by forging allegiances with other groups espousing ideologies of racial hatred and superiority – including ideologies of white nationalism – neo-Nazi groups have expanded their reach. As elucidated below, political leaders and even government officials at the highest level have regrettably been complicit in this expansion.

B. Increased acceptance of neo-Nazi and related racism, xenophobia and intolerance within mainstream discourses and forums

47. As was also highlighted in her report to the thirty-eighth session of the Human Rights Council (ibid.), the Special Rapporteur expresses her deep concerns at the growing presence of expressions of Nazism, neo-Nazism and fascism in politics worldwide, especially in several European and North American countries. Neo-Nazi groups today are emboldened by prominent populist leaders who share their beliefs and espouse the same rhetoric as they do. Indeed, the rise of populism and, especially, right-wing, nationalist populism has, in some countries, aided the popularity of neo-Nazi ideologies and related racism, xenophobia and intolerance. Although many nationalist populist leaders in Europe, North America and Australia formally disavow neo-Nazi ideology, they nonetheless express support for racist and xenophobic tenets that are premised on similar ideologies of racial superiority that are at the core of neo-Nazi ideology. All theories of racial superiority, and all efforts to scapegoat persons on the basis of their race, ethnicity, national origin, sexual orientation or related status make the work of neo-Nazis easier. Even where neo-Nazis are not formally included in Government, the presence therein of extreme right-wing ideologues can have the effect of injecting into governance and political discourse the very same ideologies that make neo-Nazism so dangerous.

48. Right-wing populism spreads and exploits antipathy towards ethnic, racial or religious minorities by accusing these groups of having co-opted political elites for their own advancement. Furthermore, as another Special Rapporteur has also noted, in times of great, and ever increasing, social, political and economic anxiety in the global North, it is among those who perceive themselves as the most marginalized (including among white majorities) that such antipathy can gain easy traction. To exploit the public's dissatisfaction with, and fear and resentment of, the conditions of the State and personal circumstances, right-wing populists adopt and advance opinions and trends that are likely to fuel populist mobilization.

49. In sum, white supremacist and neo-Nazi ideologies have a symbiotic relationship with right-wing populism, each strengthening the other. By adopting the language and core ideas of these extreme ideologies, right-wing populists gain political power by mobilizing these groups to vote for them. In turn, when populist politicians gain mainstream success, white nationalist and neo-Nazi ideas become more socially acceptable. Emboldened by seeing leaders sympathetic to their cause in Government, white supremacists and neo-Nazis increasingly occupy public platforms and recruit new members.

C. Use of new technologies to further neo-Nazism and related racism, xenophobia and intolerance

50. In her report to the thirty-eighth session of the Human Rights Council (ibid.), the Special Rapporteur presented analysis on the use of new technologies to further neo-Nazism and related racism, xenophobia and intolerance. She noted, with alarm,

that neo-Nazis and white supremacist groups have taken advantage of new digital technologies and social platforms to promote their ideologies and arguments. Indeed, the Internet has made it easier for people to communicate, express their views and engage in debate across vast distances. The Internet has also provided groups espousing racial superiority and hatred with effective platforms for spreading their messages, organizing events and raising money. The anonymity provided by the Internet and social media allows people to express views that they would deny in public. Moreover, the interactivity of new social media platforms allows for the easier creation of virtual communities in which extremists can easily disseminate information to their target audiences.

51. The Internet, and social media in particular, has become a growing means through which neo-Nazi groups recruit followers. It is documented that hate groups such as these usually direct their recruitment efforts at targeting susceptible individuals, such as loners and children. Groups espousing racial superiority – including neo-Nazis – have increasingly targeted children and youth as recruits because they are typically more impressionable, may feel alone and marginal, and desire a sense of identity and group belonging. Some neo-Nazi websites are specifically tailored towards children, with the aim of indoctrinating them. Neo-Nazi websites appeal to children through music, activities, games, “memes” and cartoon characters. Indeed, even video games exist that are devoted to propagating ideologies of racial superiority and racial hatred.

52. In addition to recruitment, neo-Nazis and other hate groups also use digital platforms to incite hatred and violence on racial, ethnic, religious and related grounds. The ease and rapidity with which information can now be shared online, especially through social media platforms, means these platforms have now become arguably the most frequent sites of hate speech, and even incitement to violence. These platforms have facilitated the global transmission of harmful stereotypes against stigmatized groups targeted by groups such as neo-Nazis. Such stereotypes and related propaganda make violence against targeted groups more acceptable and arguably more likely. In addition, neo-Nazi and related groups have also relied on online platforms to plan and circulate information about public events that range from demonstrations to acts of violence, including targeting groups and individuals on the basis of race, ethnicity, national origin, religion, gender, sexual orientation and related grounds. As outlined in the report of the Special Rapporteur to the seventy-fifth session of the General Assembly ([A/75/329](#)), the COVID-19 pandemic and its racialized harm, discussed further below, exacerbated these trends, as more of people’s everyday lives were played out online.

D. Recruitment of young people by neo-Nazi groups

53. As outlined in the reports of the Special Rapporteur to the thirty-eighth and forty-first sessions of the Human Rights Council ([A/HRC/38/53](#) and [A/HRC/41/55](#)), various forms of new technology are used to recruit individuals to neo-Nazi and associated ideologies. Such practices, as well as other recruitment techniques, can have a disproportionate impact on young people, particularly those in vulnerable social situations.

54. Research shows that the typical neo-Nazi or hate group follower is generally young, white and male. Religion, economic class, education and social status are also salient factors. It is important to note, however, that no meaningful psychological profile exists for predicting whether a person will have an inclination towards terrorism. Furthermore, research shows that no one is born with personality traits that define a person as inclined towards extremism or terrorism. Relevant socioenvironmental factors may include poverty; a lack of education and employment

opportunities, technical skills and family support; alienation; and dysfunctional family relationships.

55. In the literature on the psychology of extremism, a broad consensus has emerged that social situational factors – not personal traits – determine extremist behaviour. Factors such as social identity formation, acculturation, social influence and normative pressure from group membership strongly affect psychologically vulnerable individuals. Social networks can determine individual choices, including whether to engage in pro- or antisocial behaviour. Studies show that young people's motives to join hate groups are not primarily ideological or political. They were linked rather to social and emotional reasons and the search for affiliation, protection, acknowledgement and adventure.

56. In several studies examining non-ideological risk factors, former neo-Nazis or white supremacists who predominantly joined hate groups as children reported experiencing one or more of the following adverse environmental conditions: childhood physical abuse, childhood or adolescent sexual abuse, emotional and physical neglect, parental incarceration, parental abandonment, the witnessing of serious violence (domestic and/or neighbourhood) and/or family disruption (for example, divorced or deceased parents). Several psychological studies have shown that events of this sort may contribute to an increased likelihood of neo-Nazi and related extremist radicalization.

57. The above-mentioned factors help explain the circumstances of youth recruitment, but should by no means be understood to excuse or exonerate extremism and those who participate in neo-Nazi and related supremacist activities. Today, sociologists generally approach neo-Nazi and related movements as social movements that bring together those sharing a common ideology. Movements committed to racist and xenophobic ideology exploit the psychological and socioenvironmental factors described above to successfully target youth.

58. As elucidated in the report of the Special Rapporteur to the forty-first session of the Human Rights Council ([A/HRC/41/55](#)), information and data available about the implication of young people in violent extremism mainly focuses on Islamist extremism. Very little information is available about counter-extremism programmes focusing on far-right or neo-Nazi extremism. Despite the rise in neo-Nazi and white supremacist extremism, only a few States in the European region and North America have addressed radicalization and recruitment by hate groups in national strategies to counter terrorism, which are largely focused on Islamist extremism.

E. Upsurge in antisemitism in Europe and North America

59. The contemporary strengthening of neo-Nazism, as described above, has had grave social consequences, including violent acts by groups connected to this movement and who share related ideologies of racial superiority and hatred. In Europe and North America especially, there have been dramatic increases in antisemitic incidents tied to neo-Nazi groups and affiliated white supremacist and white nationalist groups. Incidents of violence were perpetrated in countries across Europe and beyond. Contemporary iterations of Nazi ideology have grown in their traditional strongholds and in some cases expanded beyond them, posing a threat to racial equality in different parts of the world.

60. The upsurge in antisemitism preceded the COVID-19 pandemic, but such disturbing patterns intersected with the general trend whereby discussion of the origin and propagation of COVID-19 became a vector for various forms of hatred. As highlighted in the report of the Special Rapporteur to the seventy-fifth session of the General Assembly ([A/75/329](#)), global antisemitic rhetoric online and offline falsely

identified Jews as having manufactured or spread COVID-19 to advance global control. Stigmatization and conspiracy theories exploit historical tropes of racialized fears of disease. For example, as far back as the fourteenth century, Jews were falsely accused of poisoning wells to spread bubonic plague. In a similar vein, one submission received by the Special Rapporteur described an explosion of antisemitic conspiracy theories that began to populate social media as soon as news emerged of a dangerous new virus spreading across the world.

61. News outlets and social media platforms worldwide reported variations of antisemitic conspiracy theories. Attacks on Jewish religious sites, assaults on Jewish individuals, attempts to deliberately infect Jewish individuals with COVID-19 and violent threats against Jewish individuals on social media were also reported, as described by the Special Rapporteur in her report (*ibid.*).

F. Anti-Asian and anti-black racism, Islamophobia and attacks on non-nationals in relation to the origin and propagation of COVID-19

62. In her report to the seventy-fifth session of the General Assembly, the Special Rapporteur also highlighted the impacts of the COVID-19 pandemic on other groups affected by racism and related intolerance (*ibid.*). The rise in antisemitism, linked to the COVID-19 pandemic, as described above, must be understood in the context of broad and rampant racism and other forms of hatred and intolerance affecting other groups as well. Extremists were ready and able to exploit the fear and confusion that accompanied the pandemic, particularly in its early stages.

63. The COVID-19 pandemic exposed interlinking crises that had been hiding in plain sight: a public health disaster, and ethnonationalist rhetoric and politics – the latter driving impacts of and responses to the former. It laid bare how dangerous climates of intolerance, racialized and religious suspicion and fear can be to the social fabric that sustains prosperous and safe communities. As populist regimes and extremists exploit and fuel anxieties about the pandemic, it has become increasingly clear how and why ethnonationalism is not just a fringe problem; it affects the very structures that are supposed to undergird liberal institutions.

64. Submissions for the previous report of the Special Rapporteur (*ibid.*) and countless news and human rights reports were rife with examples of the widespread discrimination, harassment and assault – online and physical – against persons of Chinese or Asian descent.

65. Politicians also exploited and fuelled anxieties about the COVID-19 pandemic. For example, in what was an all-too-familiar attempt to normalize xenophobia and racism as reasonable reactions to COVID-19, some dubbed it the “Wuhan flu” or the “China flu”.

66. As already noted, such racist tropes and disinformation feed into pre-existing and underlying biases or prejudices, and has not been limited to East Asians and Jews. As described in the previous report of the Special Rapporteur (*ibid.*), incidences of Islamophobia, anti-Roma sentiments and discrimination against Palestinians in the context of the COVID-19 pandemic were also reported.

67. The manifestations of racism, xenophobia and related intolerance during the pandemic undermined effective public health responses. The ubiquitous antisemitic conspiracy theories and neo-Nazi and other ethnonationalist fear-mongering and hatred had a grave impact on the ability to mitigate the spread of COVID-19. A study undertaken in 2020 showed that people who held COVID-19 conspiracy beliefs would be less likely to comply with social distancing guidelines or take up future vaccines.

68. The Special Rapporteur wishes to highlight that the COVID-19 pandemic has not ended and that the damage to the social fabric that it caused persists. She also stresses the need to learn lessons from the COVID-19 pandemic in order to prevent similar racism, Islamophobia, antisemitism and xenophobia in the context of future public health or other emergencies.

G. Instrumentalization of the standards and tools designed to address neo-Nazism, antisemitism and related racism, xenophobia and intolerance

69. The Special Rapporteur interprets resolution [76/149](#) and other relevant international standards and tools as seeking the genuine protection of groups and individuals subject to human rights violations rooted in neo-Nazism. The Special Rapporteur has regrettably noted a trend whereby various actors have instrumentalized certain human rights standards and tools resulting in repression of human rights. The Special Rapporteur is deeply alarmed by this trend because it undermines serious attempts to address neo-Nazism and related racism, xenophobia and intolerance. Moreover, it can obscure the oppression of groups affected by human rights violations, often also rooted in neo-Nazism, racism, xenophobia and related intolerance. Universality is a foundational principle of international human rights law and the rights of one group cannot be instrumentalized to deny the human rights of others.

70. As was underscored in the report of the Special Rapporteur to the fiftieth session of the Human Rights Council ([A/HRC/50/61](#)), she notes, with alarm, that the Russian Federation has sought to justify its military invasion and territorial aggression in Ukraine on the purported basis of eliminating neo-Nazism. This is a blatant instrumentalization of the serious human rights concerns raised by neo-Nazi mobilizations where they exist. The pretextual use of neo-Nazism to justify territorial aggression seriously undermines genuine attempts to combat neo-Nazism. The Special Rapporteur denounces and condemns in the strongest terms such pretextual use, including in relation to the unlawful breach of the sovereign territory of Ukraine and the humanitarian crisis that breach has caused.

71. The Special Rapporteur also calls attention to the politically motivated instrumentalization of the fight against antisemitism, which is increasingly linked to the adoption, promotion and implementation by States of the International Holocaust Remembrance Alliance working definition of antisemitism. While reiterating the urgent need for Member States to remain committed to fighting antisemitism in all its manifestations, she urges greater attention and care regarding the implications of tools used in that context. Specifically, she calls upon Member States to ensure that all measures taken and instruments relied upon are fully compliant with and supportive of broader international human rights law norms.

72. Notwithstanding the political endorsement of the International Holocaust Remembrance Alliance working definition across Europe and in North America, it has become highly controversial and divisive owing to its susceptibility to being politically instrumentalized and the harm done to human rights resulting from such instrumentalization.¹ As a result, the Special Rapporteur cautions against reliance on the working definition as a guiding instrument for and at the United Nations and its constituent entities.

¹ See, for example, Corey Balsam, "Who's against adopting the IHRA antisemitism definition?", *The Times of Israel*, 9 December 2020, which contains a list of some of the myriad groups and individuals that have publicly raised serious concerns about the definition or its instrumentalization, including Israel Prize laureates, academics, universities, civil liberties groups, Jewish and Israeli organizations, and Palestinian and Arab organizations.

73. Besides its adverse impact on the human rights of minorities and vulnerable groups, including Jews, the International Holocaust Remembrance Alliance working definition is highly contested among world-renowned scholars of antisemitism and related academic fields.² About 350 leading scholars support an alternative definition of antisemitism established in the Jerusalem Declaration on Antisemitism, warning that the International Holocaust Remembrance Alliance working definition is “unclear in key respects and widely open to different interpretations”, which “has caused confusion and generated controversy, hence weakening the fight against antisemitism”.³ Signatories of the Jerusalem Declaration on Antisemitism include international scholars of antisemitism, among them, pre-eminent Jewish scholars of antisemitism, as well as scholars in related fields such as Jewish, Holocaust, Israel, Palestine and Middle East studies.

74. The International Holocaust Remembrance Alliance working definition is largely instrumentalized on the basis of the 11 “contemporary examples of antisemitism” attached to it, 7 of which relate to the State of Israel. Some of the examples are being invoked and leveraged to suppress human rights and fundamental freedoms, such as freedom of expression, assembly and political participation and the right to equality and non-discrimination.⁴

75. Although the International Holocaust Remembrance Alliance working definition is promoted as being “non-legally binding”, its de facto influence on the policy and practice of governments and private actors has contributed to violations of the human rights of freedom of expression, assembly and political participation, among others.⁵ The Special Rapporteur observes that it is precisely the “soft law” status of the working definition that effectively helps to undermine certain co-existent rights, without offering any remedy or means to legally challenge such violations. Indeed, even Kenneth Stern, the lead drafter of the working definition, has publicly denounced the instrumentalization of the working definition, including to the detriment of freedom of expression on university campuses.⁶

76. The International Holocaust Remembrance Alliance working definition and the illustrative examples attached to it are wielded to prevent or suppress legitimate

² See, for example, Peter Ullrich, Brian Klug and Amos Goldberg, “Expert submission in the context of a public consultation launched by the European Commission for its upcoming ‘Strategy on combating antisemitism and fostering Jewish life in the EU’”, 5 July 2021, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13068-Strategy-on-combating-antisemitism-and-fostering-Jewish-life-in-the-EU/F2661357_en; and Taner Akçam and others, “Call by scholars on global leaders at Malmö Forum on Combating Antisemitism”, 11 October 2021, available at <https://s3.eu-central-1.amazonaws.com/euobs-media/b7602129dc4791bd47267b593f517caa.pdf>.

³ Jerusalem Declaration on Antisemitism, released on 25 March 2021.

⁴ Rebecca Ruth Gould, “Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism As a Case Study in Censored Speech”, *Law, Culture and the Humanities*, vol. 18, No. 1 (February 2022); Palestine Legal, “Backgrounder on efforts to redefine antisemitism as a means of censoring criticism of Israel”, January 2020; Rowan Gaudet, “IHRA Definition At Work”, Independent Jewish Voices Canada, updated 4 March 2022; and European Legal Support Center, “Berlin Court Finds Deutsche Welle Unlawfully Dismissed Journalist Farah Maraqa”, updated 11 September 2022. The political adoption and promotion of the International Holocaust Remembrance Alliance working definition of antisemitism across the European Union, for example, has facilitated human rights violations and incidents that are cause for alarm. See communications of the special procedures mandate holders AL DEU 3/2019 and AL AUT 2/2022, which can be found in the communications database of the Office of the United Nations High Commissioner for Human Rights, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁵ Ibid.

⁶ Kenneth Stern, “I drafted the definition of antisemitism. Rightwing Jews are weaponizing it”, *The Guardian*, 13 December 2019, available at www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect.

criticisms of the State of Israel, a State that must, like any other in the United Nations system, be accountable for human rights violations that it perpetrates. Those primarily harmed as a result are Palestinians, as well as human rights defenders advocating on their behalf. This harm is occurring in a period of heightened repression of Palestinians, including escalating, daily gross violations of their human rights.⁷

77. States Members of the United Nations and United Nations officials should firmly reject and act responsibly to end the political instrumentalization of the fight against antisemitism. Apart from preventing further harm to Palestinians and human rights defenders, they should do so in the interest of fighting antisemitism in an effective and inclusive way and to protect Jewish persons and groups harmed by such instrumentalization.⁸

78. In view of the controversial status and divisive effect of the International Holocaust Remembrance Alliance working definition and its negative impact on human rights, the Special Rapporteur respectfully calls upon States Members of the United Nations to suspend the adoption and promotion of the working definition and the examples attached to it. In this context, she reminds States that the urgency of combating antisemitism has been a cause that she has consistently championed during her tenure in both thematic and country reports.⁹

79. Precisely because the scourge of antisemitism remains an urgent issue of human rights concern, the Special Rapporteur urges the United Nations system and Member States urgently to launch an open and inclusive process to identify an enhanced response to antisemitism by the United Nations, consistently rooted in and supportive of human rights. The process should consider multiple instruments relevant to fighting antisemitism and involve, among others, the communities affected, experts and relevant stakeholders that have been excluded to date, as well as United Nations special procedures mandate holders. She stresses that the elimination of the scourge of antisemitism must be, as part of the fight against all forms of bigotry and discrimination, grounded in international law, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action.¹⁰

IV. Applicable legal framework

80. The Special Rapporteur recalls that international human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. Racial discrimination is defined in article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Rapporteur reiterates that the prohibition on racial

⁷ See, inter alia, [A/HRC/49/83](#), [A/HRC/49/85](#) and [A/HRC/49/87](#); and various communications of special procedures mandate holders, including UA ISR 9/2022, OL ISR 6/2022, AL ISR 3/2022 and AL ISR 2/2022, available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁸ Jewish Voice for Peace, “40+ Jewish groups worldwide oppose equating antisemitism with criticism of Israel”, 17 July 2018; Jüdische Stimme, “The Jewish voice does not need a kosher certificate”, 13 January 2019; Mairav Zonszein, “Berlin art college withdraws funding to Israelis seeking to unlearn Zionism”, 21 October 2020; and Jewish Voice for Labour, “How Labour’s claim of countering antisemitism has resulted in a purge of Jews: submission by Jewish Voice for Labour to the Equalities and Human Rights Commission and to the Forde Enquiry”, 5 August 2021, available at <https://drive.google.com/file/d/1nfnmySTnxuwTBVf4kIC0GtJ9ykcwhd/view>.

⁹ [A/HRC/41/54/Add.2](#), paras. 68–69; [A/HRC/41/54/Add.1](#), para. 62; [A/HRC/44/57/Add.2](#), para. 47; [A/HRC/38/52](#), para. 17; [A/HRC/44/57](#), para. 25; [A/76/434](#), para. 88 (g); [A/HRC/50/61](#); [A/76/369](#); [A/HRC/48/77](#); [A/75/329](#); [A/HRC/44/58](#); [A/74/253](#); [A/HRC/41/55](#); [A/73/312](#); and [A/HRC/38/53](#).

¹⁰ See the Durban Declaration and Programme of Action, including paras. 10 and 57–62 of the Declaration; and para. 150 of the Programme of Action.

discrimination is aimed at guaranteeing substantive equality, as well as formal provisions of equality. States must take action to combat intentional or purposeful racial discrimination, as well as de facto or unintentional racial discrimination. She reminds States that they cannot derogate from their obligations to uphold the jus cogens prohibition of racial discrimination in international law, even in times of public emergency.

81. The International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights both impose strong limitations on the propagation of racist and xenophobic ideas, and outlaw the advocacy of national, racial or religious prejudices that amount to incitement to discrimination, hostility or violence. Speech that constitutes advocacy of antisemitic racial and religious prejudices amounting to incitement to discrimination, hostility or violence is thus unlawful and prohibited under the applicable legal frameworks. The Special Rapporteur also recalls that, under article 20 of the International Covenant on Civil and Political Rights, any forms of propaganda for war must be prohibited by States parties.

82. The Special Rapporteur recalls that, in accordance with article 2 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties are not to sponsor, defend or support racial discrimination by any persons or organizations, including those espousing racial superiority and intolerance. Under article 4 of the Convention, States parties are required to condemn all propaganda and all organizations that are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. This means that States parties must take action to prohibit organizations that meet the conditions established in article 4 (b), including in contexts in which such organizations use antisemitic fervour to attempt to mainstream their extreme ideologies or racial, ethnic or religious hatred and intolerance. Legislation alone is not sufficient. As is made clear in article 6 of the Convention, effective protection from and remedies for racial discrimination are just as important as formal provisions.

83. Under article 4 of the Convention, States parties are also required to undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to make punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin. The Committee on the Elimination of Racial Discrimination has recommended concrete guidance for States parties on the adoption of legislation combating racist speech falling under article 4, and the Special Rapporteur encourages States to review general recommendation No. 35 (2013) on combating racist hate speech in order to benefit from that guidance. In the general recommendation, the Committee recalls that the proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary, and that the rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, policy and practice as mutually supportive human rights.

84. Article 19 of the International Covenant on Civil and Political Rights protects freedom of opinion and of expression. Any restriction on freedom of speech must not only be a matter of necessity, but must be proportionately tailored to achieve the legitimate end that warrants the restriction. It is specifically stated in article 20 of the Covenant that States parties must prohibit, by law, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Human Rights Committee and a number of other human rights mechanisms have interpreted this provision as creating a high threshold, because limitations on speech

must remain exceptional. When individuals or groups meet this high threshold, including in the context of antisemitic hate speech, States must hold these actors to account for their violations of international human rights law.

85. The Committee on the Elimination of Racial Discrimination has reiterated that freedom of expression is integrated into the Convention and that the Convention contributes to a fuller understanding of the parameters of freedom of expression under international human rights law. For determining what racist expression should be punishable by law, the Committee stresses the importance of context, which includes: (a) the content and form of the speech; (b) the economic, social and political climate; (c) the position or status of the speaker; (d) the reach of the speech; and (e) the objectives of the speech. Member States, and even private actors such as the technology companies that often directly interface with racist and xenophobic content online, must remain vigilant in their identification of racist expression in national climates in which certain groups, including neo-Nazis, are openly committed to spreading and enforcing intolerance. The Committee warns that racist speech may sometimes rely on indirect language to disguise its targets or objectives, and may rely on coded symbolic communication to achieve its ends. Even incitement may be express or implied, through actions such as displays of racist symbols or the distribution of materials as well as words.

86. Member States must take urgent action to ensure that racist expressions violating the standards set out in the International Convention on the Elimination of All Forms of Racial Discrimination are made punishable by law. The Committee on the Elimination of Racial Discrimination has recommended that the criminalization of forms of racist expression be reserved for serious cases, to be proven beyond reasonable doubt, that the application of criminal sanctions be governed by the principles of legality, proportionality and necessity, and that less serious cases should be dealt with using non-criminal sanctions.

87. The Special Rapporteur also recalls that in paragraph 84 of the Durban Declaration, States Members of the United Nations at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance condemned the persistence and resurgence of neo-Nazism, neo-fascism and violent nationalist ideologies based on racial or national prejudice. In paragraph 85 of the Declaration, they condemned political platforms and organizations based on, among other things, doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance, highlighting that they were incompatible with democracy and transparent and accountable governance. Member States also reaffirmed, in paragraph 94 of the Declaration, that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations was not only an act of racial discrimination but could also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle that reinforced racist attitudes and prejudices and required universal condemnation.

V. Conclusions and recommendations

88. **The Special Rapporteur urges States to comply fully with their obligations as enshrined in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and reiterates her encouragement to those States that have made reservations to article 4 of the Convention to withdraw those reservations and commit to the obligation to tackle hate speech and incitement to violence.**

89. The Special Rapporteur recommends that Member States draw on relevant guidance, including general recommendation No. 35 of the Committee on the Elimination of Racial Discrimination and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, to effectively balance the regulation of hate speech and the right of freedom of expression within relevant legislative and policy frameworks.
90. The Special Rapporteur also urges States to take concrete actions to ensure the full and effective implementation and dissemination of the Durban Declaration and Programme of Action.
91. She reiterates her recommendation that Member States should implement the concrete recommendations that other United Nations bodies, especially the Committee on the Elimination of Racial Discrimination, have made pertaining to combating racist and xenophobic expression.
92. The Special Rapporteur would like to stress the importance of reliable disaggregated data and statistics on racist and xenophobic crimes. The collection of data regarding the ideological affiliations of perpetrators, as well as the identity of victims, in cases involving suspected or alleged hate crimes is vital for understanding the prevalence of hate incidents and for designing measures to combat them. Data are also vital for monitoring racist crimes and assessing the impacts of measures taken to address such crimes. A lack of consistent and reliable reporting on antisemitic violence and other hate incidents is a widespread issue, and official statistics are often much lower than those reported by non-governmental organizations, which allow direct reporting on the Internet. The discrepancy between official data and unreported incidents reveals the need for more comprehensive, accessible, safe and dependable networks for reporting antisemitic violence. Civil society must continue and strengthen its role in collecting data and working with victims, who may not feel safe reporting incidents to authorities.
93. The Special Rapporteur highlights the need to develop and implement effective, inclusive and comprehensive frameworks complemented by other means to combat racism. In this regard, collaboration with civil society and international, regional and national human rights mechanisms can reinforce the efforts to counter antisemitism and extremist movements and groups, including neo-Nazis. In particular, civil society can play a vital role in collecting information on racist crimes, working with victims and raising awareness. The Special Rapporteur encourages robust coordination between governmental structures and civil society entities to amplify efforts to develop and implement relevant legislation and policies.
94. The Special Rapporteur calls upon Member States to suspend the adoption and promotion of the International Holocaust Remembrance Alliance working definition of antisemitism and the examples attached to it. In this context, she reminds States that the urgency of combating antisemitism has been a cause that she has consistently championed during her tenure in both thematic and country reports.
95. She urges the United Nations system and Member States urgently to launch an open and inclusive process to identify an enhanced response to antisemitism at and by the United Nations consistently rooted in and supportive of human rights. This process should consider multiple instruments relevant to fighting antisemitism and involve, among others, the communities affected, experts and relevant stakeholders excluded to date, as well as United Nations special procedures mandate holders. She stresses that the elimination of the scourge of

antisemitism must be, as part of the fight against all forms of bigotry and discrimination, grounded in international law, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action.

96. The Special Rapporteur stresses the complex, multifaceted and pervasive nature of neo-Nazism and related racism, xenophobia and intolerance. She urges that strong commitment and sustained political will are required to address the trends in neo-Nazism and related racism, xenophobia and intolerance that she has observed over the last five years. She urges Member States to fully recognize the danger posed by these trends and take comprehensive and effective action to address them. In this regard, she draws the attention of Member States to the recommendations that she has made to the General Assembly and the Human Rights Council over the last five years and urges them to take action to ensure the effective implementation of those recommendations.

97. Member States must take urgent and active measures to ensure that educational systems develop the content necessary to promote truthful accounts of the past, including the horrors of the Second World War, and to promote tolerance and understanding of international human rights principles.

Appendix D

Margo, *Letter*

R Margo, submission to Waverley Council ordinary meeting, 26 October 2021, recorded in Waverley Council, *Council Meeting Recording* (26 October 2021) [58.39]
<<https://webcast.waverley.nsw.gov.au/archive/video21-1026.php>> accessed 30 April 2026.

Letter from R Margo, read at the council meeting

I am a graduate of a Yad Vashem educational course on antisemitism, and was Senior Counsel for Jeremy Jones, former president of the Executive Council of Australian Jewry, during the last two-plus years of the lengthy litigation in the Federal Court against Holocaust denier Frederick Toben. I am also a former president of the NSW Jewish Board of Deputies.

I believe that adopting the IHRA definition, or otherwise giving it special status, would undermine the moral clarity of the fight against genuine antisemitism. This is because the IHRA definition is vague and open to interpretation in crucial aspects that enable it to be misused to suppress criticism of Israel or advocacy for Palestinian rights that are not inherently antisemitic.

Such misuse has already occurred. For example, the US State Department, then headed by Trump appointee Michael Pompeo, used the IHRA definition to equate any anti-Zionism with antisemitism. Anti-Zionism can be a cloak for antisemitism, but in many cases it is not. There have always been some Jews opposed to Zionism, or advocating political arrangements other than a Jewish state. And Palestinians, whose families became refugees, are entitled to claim rights of return and express views critical of Israel's founding without being labelled as antisemitic – even if their claims may be unrealistic or supporters of Israel may disagree with their opinions.

Kenneth Stern, the antisemitism expert who played a major role in drafting the original definition and examples that the IHRA later adopted, has written that it was never intended to be used as a sweeping all-purpose hate speech code, and that its use as such by the Trump administration and conservative Jewish groups is an attack on academic freedom and free speech.

Another way the IHRA definition has been misused is to call criticism of Israeli government actions antisemitic if those voicing it do not level similar criticism against other countries. The Australia/Israel and Jewish Affairs Council recently used such reasoning to accuse a well-respected Israeli human rights organisation of antisemitism because it used the word "apartheid" in criticising policies and actions of the Israeli government. Such whataboutism is intellectually and morally indefensible. Why should critics of Israel's treatment of Palestinians – be they Palestinians, Israelis, Diaspora Jews, or anyone else – have to criticise other countries' treatment of other people or groups to avoid being labelled antisemitic? People in the Australian Jewish community who boycotted the USSR because of its treatment of Soviet Jews could not have been called anti-Soviet simply because they did not also boycott other countries over their treatment of other minorities.

Those pushing for adoption of the IHRA definition say disarmingly that it is not legally binding, that it is merely a tool to be applied in particular contexts. But that begs the question: why, then, are Israel's minister for foreign affairs and conservative pro-Israel advocates so eager for it to be elevated to some special status?

There is no objection to the IHRA definition being used carefully, as one tool amongst others, in considering whether particular conduct is or is not antisemitic. But that should not be to the exclusion of other, often better, tools — such as the Jerusalem Declaration on Antisemitism, which was specifically developed by scholars in the fields of Holocaust history, Jewish studies and Middle East studies to provide clear guidance to identify and fight antisemitism

while, at the same time, protecting free expression. As the Jerusalem Declaration observes, the IHRA definition has weakened the fight against antisemitism because it is unclear in key respects and open to different interpretations, which has generated heated controversies.

Since the IHRA definition describes itself as a working definition, the Jerusalem Declaration seeks to improve on it by offering: (a) a clearer core definition, and (b) a coherent set of guidelines. The Jerusalem Declaration is thus an improved additional tool. It can also guide institutions that use the IHRA definition in interpreting it. But the Jerusalem Declaration has itself been criticised and should also be used only as one tool amongst others.

The upshot is that there is no need for Waverley Council, or any government, political party, university or other institution, to adopt any single working tool as the definition of antisemitism – and there are good reasons for them not to do so. If you only have a hammer in your toolbox, it will be difficult to untangle spaghetti.