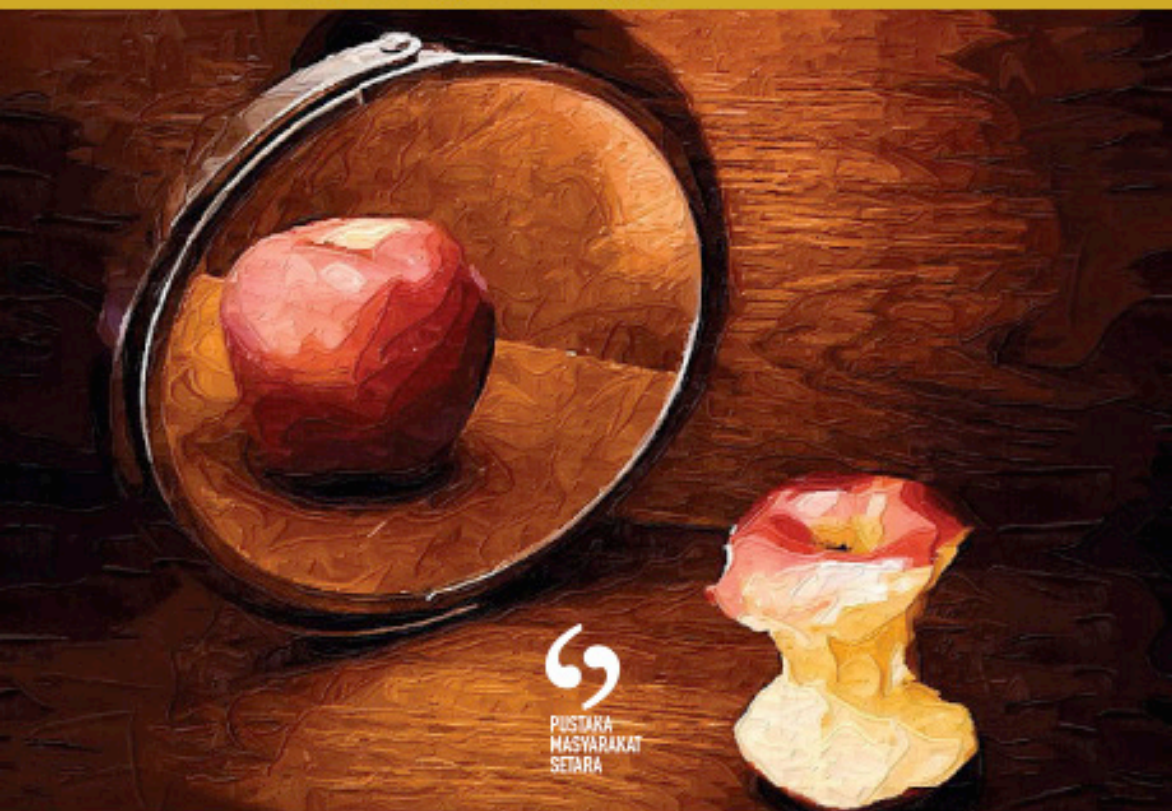


# REPLACE BLASPHEMY WITH INCITEMENT

How Indonesia should Promote Religious Harmony  
while Upholding Human Rights



PUSTAKA  
MASYARAKAT  
SETARA

WRITTEN BY

## Allison DiMase

# **Replace Blasphemy With Incitement**

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while Upholding Human Rights

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## Preface

The increase in the number of religious blasphemy cases following reformation has prompted many parties to question the existence of Law No. 1/PNPS/1965 on Blasphemy. The Law has been effectively used as a tool of subjugation by the political power as a product of reformation. After publishing a research report on Religious Blasphemy Regime 1965-2017 (*Rezim Penodaan Agama 1965-2017*) in February 2017, SETARA Institute also conducted research on the impact of blasphemy laws in many countries around the world.

It must be admitted that the case of Basuki Tjahaja Purnama in 2016-2017 was one of the most absurd cases of religious blasphemy due to the non-fulfillment of criminal elements in the legal act committed by Basuki. Although the court has convicted the guilty party, it is clear that the judge was hesitant to put aside the demand for religious blasphemy in the verdict of Basuki's case. However, Basuki's case has brought negative effects for the protection of human rights. No less than 4 cases of religious blasphemy were reported after Basuki's sentence. Of course these cases are also not worthy of being qualified as a criminal offense, but still processed by law enforcement officers due to the influence of mobs on blasphemy trials.

This report, entitled **REPLACE BLASPHEMY WITH INCITEMENT: How Indonesia should Promote Religious Harmony While Upholding Human Rights**, is a report written only in English by Allison DiMase, a graduate student at the Fletcher School of Law and Diplomacy at Tufts University in the United States. As an intern

in SETARA Institute, Ms. DiMase contributed to completing SETARA Institute research with an international perspective to capture the research report on religious blasphemy published earlier.

SETARA Institute hopes this report enriches the knowledge of many parties to encourage reform of the religious blasphemy law by strengthening the regulation of incitement to hatred rather than continuing to keep the blasphemy law which contains violation by rule and is all too often used as a political tool by contending political groups.

Jakarta, 1 August 2017

# Executive Summary

Rather than serve to protect God, Islam, or Muhammad, such deliberately vague and repressive laws merely empower those with a worldly (i.e., political) agenda and act as a “sword of Damocles” threatening not only religious minorities, but also the right of mainstream Muslims to speak freely about their own religion without being threatened by the wrath of fundamentalists – exercised through the power of government or mobs – whose claims of “defending religion” are little more than a pretext for self-aggrandizement.<sup>1</sup>

*-Abdurrahman Wahid-*

## Background

The recent conviction of Jakarta Governor Basuk “Ahok” TjahajaPurnamahas brought international attention to Indonesia’s blasphemy law, with global and regional leaders together with human rights experts expressing concern at the consequences of the conviction on Indonesia’s reputation. It has called into question Indonesia’s history of promoting tolerance and pluralism and has tarnished Indonesia’s reputation as a leader in Southeast Asia of democracy. Further, Ahok’s conviction makes Indonesia’s commitments to promote the freedom of

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<sup>1</sup> K.H. Abdurrahman Wahid, “God Needs No Defense,” Forward in Paul Marshall and Nina Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide*, (New York: Oxford University Press, 2011), 26.

religion made during the thirteenth session of the Universal Periodic Review in 2012 ring hollow.<sup>2</sup> Statements by regional and global leaders make it clear Indonesia cannot promote tolerance and pluralism while at the same time using its blasphemy law to discriminate against its citizens.

Indonesia's blasphemy law inflicts immense suffering on the country's citizens. When religious minorities experience discrimination, hostility, and violence, police are seen standing by rather than protecting the victims. The rights of the minorities are further restricted and perpetrators are never brought to justice. Impunity impedes the rule of law and has the effect of escalating religious intolerance. Those hardliners who are emboldened by the existence of blasphemy laws to take actions against religious minorities are further justified in their actions when they receive no legal consequences. While impunity justifies the actions of perpetrators of hostility and violence, it instills fear in the men, women, and children who continue to have their rights violated and often must live in communities with those who subjected them to violence.

Several international experts and human rights organizations have advocated against blasphemy laws because they violate human rights. In 2008, five such experts<sup>3</sup> jointly published a Declaration on Defamation

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2 During this UPR session, Indonesia accepted recommendations to continue its efforts to fight against religious discrimination and promote the rights of religious minorities; to train local law enforcement to adequately respond to incidences of violence; and to review all ministerial decrees and local laws related to freedom of religion to ensure their compliance with international human rights law. Indonesia noted three recommendations that the UN Special Rapporteur on the freedom of religion or belief be granted access to visit the country and report on the status of religious freedom. See United Nations, Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review A/HRC/21/7/Add.1*, (5 September 2012). UPR Info Data available at <https://www.upr-info.org>.

3 Those experts are Frank LaRue, UN Special Rapporteur on Freedom of Opinion and Expression; Miklos Haraszti, Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media; Catalina Botero, Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and Faith Pansy Tlakula, African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

of Religions, and Anti-Terrorism and Anti-Extremism Legislation, which states, “the concept of ‘defamation of religions’ does not accord with international standards regarding defamation.”<sup>4</sup> In its General Comment 34 on freedom of expression, the Human Rights Committee stated, “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.”<sup>5</sup> These exceptions are discussed in detail in Part I on international law. Finally, the Rabat Plan of Action<sup>6</sup> says “states that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion.”<sup>7</sup> These human rights experts clearly state blasphemy laws violate human rights and must be repealed.

International human rights experts have also specifically called on Indonesia to repeal its blasphemy law. In 2013, the Human Rights Committee found Indonesia’s blasphemy law unduly restricts religious freedom and the rights of religious minorities and recommended its repeal despite the state’s Constitutional Court decision to uphold

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4 “Joint Declaration on defamation of religions, and anti-terrorism, and anti-extremism legislation,” ARTICLE 19, 20 April 2008. Available at <https://www.article19.org/resources.php/resource/3058/en/joint-declaration-on-defamation-of-religions,-and-anti-terrorism,-and-anti-extremism-legislation>

5 United Nations, Human Rights Committee, *General Comment 34: Article 19: Freedoms of opinion and Expression*, CCPR/C/GC/34 (12 September 2011), 48. General Comment 34 replaced General Comment 10 from 1983.

6 The Rabat Plan of Action is the outcome document on several expert workshops held in various regions in 2011 on incitement to national, racial, or religious hatred as found in international human rights law. Participants from governments, civil society, and international organizations discussed legal and non-legal responses to incitement to hatred in order to enhance efforts to combat it globally. The outcome document is named after Rabat, the capital of Morocco, in which the final expert workshop took place.

7 United Nations, Human Rights Council, *Rabat Plan of Action: Annual report of the United Nations High Commissioner for Human Rights, Addendum: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, A/HRC/22/17/Add.4 (11 January 2013), page 10. Available at [http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)

it.<sup>8</sup> In 2017, United Nations Special Rapporteurs on the freedom of religion or belief and the freedom of opinion and expression issued a joint statement with the Independent Expert on the promotion of a democratic and equitable international order in response to Ahok's conviction. They urged the government to overturn Ahok's sentence on appeal and review and repeal the blasphemy law which they say "is not compatible with a democratic society like Indonesia and it harms religious pluralism in the country."<sup>9</sup> The human rights experts concluded, "Mr. Purnama's blasphemy conviction and imprisonment will undermine freedom of religion or belief and freedom of speech in Indonesia."<sup>10</sup>

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8 United Nations, Human Rights Committee, *Concluding Observations on the Initial Report of Indonesia*, CCPR/C/IDN/CO/1 (21 August 2013), 25.

9 United Nations, "Blasphemy law has no place in a tolerant nation like Indonesia – UN rights experts," *Office of the High Commissioner for Human Rights*, 22 May 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21646&LangID=E>

10 Ibid.



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# Replace Blasphemy With Incitement

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Writer: Allison Dimase

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## Introduction

At least 52 countries have blasphemy laws codified into their domestic legal codes. Figure 1 illustrates the global distribution of countries with blasphemy laws. Punishments for violation range from small fines to the death penalty. States with such laws represent a range of different cultures, histories, religions, and socioeconomic levels.

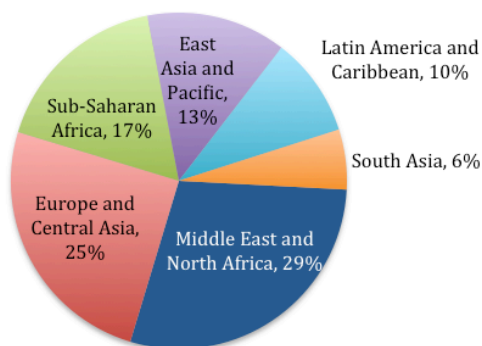
Figure 1: Countries with Existing Blasphemy Laws



States range across the majority of regions including the Middle East and North Africa (15), Europe and Central Asia (13), Sub-Saharan Africa (9), East Asia and Pacific (7), Latin America and Caribbean (5),

and South Asia (3). Figure 2 shows the global distribution of countries with blasphemy laws. More than 80% of countries with these laws have ratified the International Covenant on Civil and Political Rights. Half are members of the Organization of Islamic Cooperation. While several states in Europe still have blasphemy laws on their books, the majority does not enforce them and are working on their repeal.<sup>1</sup>

Figure 2: Regional Breakdown of Global Blasphemy Laws



According to research by the Pew Research Center, both the number of countries with government restrictions of religious belief and countries with acts of social hostility regarding religion rose in 2015.<sup>2</sup> These increases follow two years of declines after reaching an all-time high in 2012. Regions with the highest levels of government restrictions on religion are the Middle East and North Africa and South Asia (see Figure 3 below). Research analyzing the Pew data suggests government restrictions and social hostility regarding religion are correlated – countries with high government restrictions on religious belief tend to have high levels of acts of social hostility and countries

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1 This includes Ireland, despite the widely publicized misunderstanding of the country's recent passing of a blasphemy law in 2009. This is discussed in more detail in Part III on the international discourse surrounding blasphemy.

2 "Global Restrictions on Religion Rise Modestly in 2015, Reversing Downward Trend," *Pew Research Center*, 11 April 2017. Available at <http://www.pewforum.org/2017/04/11/global-restrictions-on-religion-rise-modestly-in-2015-reversing-downward-trend/>

with low government restrictions tend to have low levels of acts of social hostility.<sup>34</sup> Pew research supports this, finding that in those states with laws against blasphemy, apostasy, or defamation of religion, 59% had ‘high’ or ‘very high’ government or social restrictions on religion and 43% experienced ‘high’ or ‘very high’ social hostilities involving religion (compared to 12% in countries without these laws).<sup>5</sup> While this data does not by itself prove the existence of blasphemy laws causes the majority of governments to pass restrictions against religions or a significant portion of society to express hostility, it does provide some insight into the use of laws and norms.

Figure 3: Countries Per Region with Blasphemy Laws

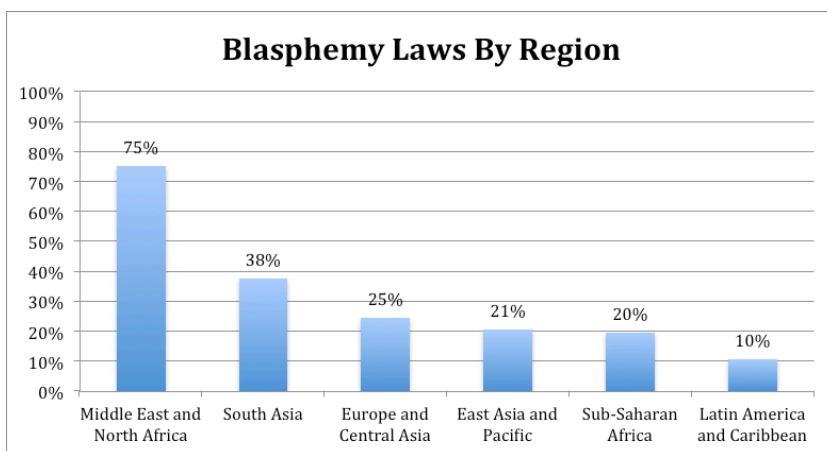


Chart shows percentage of countries in each region with blasphemy laws.

3 Brian J. Grim, “Religion, law and social conflict in the 21st century: Findings from sociological research.” *Oxford Journal of Law and Religion* 1, no. 1 (2012): 254.

4 While laws tend to reflect social norms, laws themselves can also impact social norms. This is called the expressive function of law. For example, the passage of a law mandating recycling might have an affect on society’s judgment of and behavior toward the environment. Example taken from Cass R. Sunstein, “On the expressive function of law,” *University of Pennsylvania Law Review* 144, no. 5 (1996): 2026.

5 “Rising Restrictions on Religion: One-third of the world’s population experiences an increase,” *Pew Research Center*, 9 August 2011, 68–70. Available at <http://www.pewforum.org/files/2011/08/RisingRestrictions-web.pdf>

This report is meant to provide an international context to blasphemy laws as the Indonesian government considers passing legislation on Eliminating Discrimination of Religion/Beliefs (*Penghapusan Diskriminasi Agama/Keyakinan*). It will demonstrate blasphemy laws do not promote religious harmony and protect public order. Instead, they incite discrimination, hostility, and violence against religious minorities and violate the fundamental rights of citizens' to freedom of religion and expression. Part I explores the relevant international human rights law related to blasphemy, specifically articles 18, 19, and 20 of the International Covenant on Civil and Political Rights. Part II analyzes blasphemy laws from a sample selection of countries to discuss their legality in international law. This section synthesizes the information found in the full country reports provided in Annex I which contain local context and the implications of the blasphemy laws on the freedom of religion and the rights of minorities, the freedom of expression, and the rule of law. Part III explores the international discourse on the subject and its shift in focus from restricting the freedom of expression through blasphemy laws to promoting religious harmony through combating incitement to hatred.

## Methodology

This report is a desk review of domestic and international legislation, literature, news stories, and reports. Part I relies primarily on United Nations treaties and reports and human rights court decisions to analyze the international human rights laws that are related to the issue of blasphemy. Part II synthesizes the country reports found in the Annex to analyze the legality of blasphemy laws and their impact on human rights. The country reports survey domestic legislation, news reports, and civil society documentation to provide a more in-depth analysis of the state's blasphemy law. Comparative economic data is provided at the beginning of each country report to provide context. The selection of countries analyzed is meant to represent a range – of contexts and norms; of methods and reasons for implementing



blasphemy laws; and of geographical distribution. All of the countries analyzed have ratified the International Covenant on Civil and Political Rights, the main treaty considered in this report. Full country reports can be found in Annex 1. Part III on the international discourse surrounding blasphemy laws surveys the literature and international seminars and workshops on defamation and incitement to hatred.

For the purposes of this report, blasphemy is defined as words or actions that are insulting to a religion, a religion's personages, or a religion's holy texts.<sup>6</sup> Other common offenses that may accompany blasphemy laws include defiling or profaning places of worship including cemeteries, conceptual symbols, monuments, shrines, and temples;<sup>7</sup> interfering with religious assemblies, ceremonies, funerals, sermons, services, or worship;<sup>8</sup> limitations or bans on proselytizing;<sup>9</sup> insulting or wounding the religious feelings of a person;<sup>10</sup> deviant teachings and wrongful worship;<sup>11</sup> limitations on importing or distributing religious materials;<sup>12</sup> and imitating religious clergy.<sup>13</sup> [ ]

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6 The selection of countries with blasphemy laws is based largely on information found at "Blasphemy and Related Laws," *The Law Library of Congress*, Global Legal Research Center, (January 2017). Available at <https://www.loc.gov/law/help/blasphemy/blasphemy.pdf>

7 Countries with laws on defiling or profaning places of worship include Brazil, Ethiopia, Finland, The Gambia, Japan, Malawi, Moldova, Poland, Qatar, Rwanda, Singapore, Sudan, Switzerland, Tajikistan, Tanzania, Thailand, and Ukraine.

8 Countries with laws on interfering with religious processions include Brazil, Finland, Japan, Lebanon, Malaysia, Morocco, Oman, Singapore, Sudan, Syria, and Tunisia.

9 Countries with laws limiting or banning proselytizing include Azerbaijan, Brunei, Comoros, Greece, India, Kazakhstan, Kyrgyzstan, Laos, Moldova, Morocco, Qatar, Russia, Somalia, United Arab Emirates, and Uzbekistan.

10 Countries with laws on insulting or wounding the religious feelings of others include Brazil, Ethiopia, The Gambia, Gaza, India, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Malawi, Malaysia, Moldova, Myanmar, Nigeria, Pakistan, Philippines, Poland, Russia, Singapore, Spain, Sudan, Tajikistan, Tanzania, Ukraine, West Bank, and Zanzibar.

11 Countries with laws on deviant teachings and wrongful worship include Indonesia and Malaysia.

12 Countries with laws limiting the import or distribution of religious materials include Belarus, Russia, Tajikistan, Tunisia, Turkmenistan, and Uzbekistan.

13 Countries with laws on imitating religious clergy include Bahrain and

# Analysis of International Law

There is an international, universal right to freedom of religion, and states have a legal obligation to protect their citizens' freedom of expression and freedom of religion, including enforcing special protections for the rights of religious minorities. These rights are enshrined in the International Covenant on Civil and Political Rights, which all countries in this report ratified, without reservation. This section will describe these rights in detail including their means of implementation and any limitations that are allowable under international law.

## **Article 18: Freedom of Religion**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

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Thailand.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>1</sup>

The freedom of religion is a core, fundamental human right that cannot be limited by any means, under any circumstances. Article 27 creates an additional obligation for states to protect the right of religious minorities to profess and practice their religion, in community with the other members of their group.<sup>14</sup>

Further rights were established through the United Nations General Assembly's adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN Declaration) in 1981 without a vote. The UN Declaration's article expressing the right to freedom of religion echoes the one found in article 18 the only difference being that the right shall include the freedom *to have* a religion rather than *to have or adopt* one. While this declaration is not a binding treaty, it does reiterate the international community's commitment to the rights outlined in article 18.

International human rights experts have elaborated on the rights established in article 18. The Human Rights Committee, in its General Comment 22, confirms that the article

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<sup>14</sup> Ibid., 27.

is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.<sup>15</sup>

This means those representing the majority religion of each state or majority sects are not permitted to discriminate against religious minorities, including minority sects, for the reasons stated.

Article 18 of the ICCPR and article 1 of the UN Declaration stipulate that no one shall be subject to coercion and allow for some limitations on the *manifestation* of religion. The Human Rights Committee elaborates on the distinction between freedom of religion or belief and freedom to *manifest* religion or belief: “article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally.”<sup>16</sup> While the freedom of religion can never be limited, these articles state the freedom to *manifest* one’s religion may be subject only to “such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>17</sup> This provision is to be

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15 United Nations, Human Rights Committee, *General Comment 22: The right to freedom of thought, conscience and religion*, (1993) HRI/GEN/1/Rev.1, 2.

16 Human Rights Committee, *General Comment 22*, (1993) HRI/GEN/1/Rev.1, 3.

17 United Nations, *International Covenant on Civil and Political Rights* (16 December 1966), 18.2 -18.3. See also United Nations, General Assembly, *Declaration on the Elimination of all forms of intolerance and of discrimination based on religion or belief*, A/RES/36/55 (25 November 1981), 1.2-1.3. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>

strictly interpreted, meaning restrictions are not permitted for goals not listed in article 18(3).<sup>18</sup> The Human Rights Committee explains any government-imposed limitations “must be established by law and must not be applied in a manner that would vitiate [destroy or impair] the rights guaranteed in article 18 ... restrictions may not be imposed for discriminatory purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”<sup>19</sup> In other words, any restrictions on the manifestation of religion must be established by law, for only one of the goals listed in article 18, and implemented in a way that is necessary and proportional to achieve that goal.

In summary, the freedom of religion is a universal, fundamental human right that cannot be limited by states. The *manifestation* of religion may be limited, but only under the following circumstances:

1. If the limitation is prescribed by law
2. If the limitation is for one of the following legitimate goals outlined in ICCPR article 18.3: to protect public safety, order, health, or morals or the fundamental rights and freedoms of others
3. If the limitation is both necessary and proportional to achieve that goal

Any limitations on the freedom of individuals to manifest their religion must meet all three requirements for the limitation to be legal under international law.

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18 Human Rights Committee, *General Comment 22*, (1993) HRI/GEN/1/Rev.1, 8.

19 Ibid., 8.

## **Article 19: Freedom of Expression**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.<sup>2</sup>

In addition to the freedom of religion, the freedom of expression is also a fundamental, core human right. The Human Rights Committee has even expressed the freedom of opinion and expression “constitute(s) the foundation stone for every free and democratic society.”<sup>20</sup> The freedom of expression is included in this analysis because it is often unduly restricted by blasphemy laws. Like the freedom to manifest religion, the freedom of expression may also be limited but only under certain circumstances.

Article 19(3) allows restrictions to be placed on the freedom of expression if the restrictions are provided by law and necessary for respecting the rights or reputations of others, or for the protection of national security or of public order (ordre public), or of public health or

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<sup>20</sup> Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011), 2.

morals.<sup>21</sup> This provision is also to be strictly interpreted, and restrictions are not permitted for goals not listed in article 19(3).<sup>22</sup> States must pass a similar test as article 18 to restrict the freedom of expression. Restrictions can only be applied under the following circumstances:

1. If the limitation is prescribed by law
2. If the limitation is for one of the following legitimate goals outlined in ICCPR article 19(3): for respecting the rights or reputations of others, or for the protection of national security or of public order (ordre public), or of public health or morals
3. If the limitation is both necessary and proportional to achieve that goal

The rest of this section will explain how states can be sure they meet each of these circumstances, as required by international human rights law.

### *1. Limitation as Prescribed by Law*

The Human Rights Committee's General Comment 34 provides guidelines for states seeking to enact laws restricting the freedom of expression. The laws must be precise and accessible to the public so that individuals may regulate their conduct accordingly. They must also provide sufficient guidance to judges on what sorts of expression are to be restricted so that judges do not have full discretion in their application.<sup>23</sup> The European Court of Human Rights expanded on this in its decision in *The Sunday Times v. United Kingdom*, stating:

In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed

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21 United Nations, *International Covenant on Civil and Political Rights* (16 December 1966), 19.3.A and 19.3.B.

22 Human Rights Committee, *General Comment 34*, CCPR/C/GC/34 (12 September 2011), 22.

23 Human Rights Committee, *General Comment 34*, CCPR/C/GC/34 (12 September 2011), 25.

by law.” Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.<sup>24</sup>

Finally, laws restricting the freedom of expression must not only comply with the restrictions enumerated in article 19(3); they must also be compatible with the ICCPR. This means they must be non-discriminatory and must not include penalties such as corporal punishment.<sup>25</sup>

## *2. Limitation for a Legitimate Goal*

The Human Rights Committee also provides guidance on the goals for which the freedom of expression may be limited. The Committee explains, “when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>26</sup> In other words the state must provide the legitimate goals for which the freedom of expression is being restricted (which must be compatible with article 19(3): for respecting the rights or reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health or morals) and explain in detail why the restriction is necessary to achieve that legitimate goal.

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<sup>24</sup> *The Sunday Times v. United Kingdom*, European Court of Human Rights, (26 April 1979), Application No. 6538/74, 49.

<sup>25</sup> Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011), 26.

<sup>26</sup> *Ibid.*, 35.



States are not permitted to restrict the freedom of expression for any reason other than those grounds enumerated in article 19(3). This includes for no grounds at all. In the case of *Mr. Vladimir Velichkin v. Belarus*, authorities arrested Mr. Velichkin for distributing leaflets in the city center of Brest after his request to do so had been denied and he had been told to distribute his leaflets in a different area – at the Stroitel stadium. The Human Rights Committee found his right to freedom of expression was violated because the state provided no grounds on which he should not be allowed to distribute leaflets in the city center of Brest.<sup>27</sup>

### *3. Limitation is Necessary and Proportional*

Restrictions on freedom of expression that are prescribed by law and proposed for a legitimate goal must then be proven to be both necessary and proportional to achieve that goal. The interference in the freedom must be shown to be necessary in that there is a “pressing social need” for the restriction.<sup>28</sup> The Human Rights Committee explains: “when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”<sup>29</sup> The general rule is to protect the freedom and the limitation of the freedom must always be an exception. The test of proportionality is a measure to ensure restrictions are not overbroad. In its General Comment 27, the Human Rights Committee observed that restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they

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<sup>27</sup> United Nations, Human Rights Committee, Communication No. 1022/2001, *Mr. Vladimir Velichkin v. Belarus*, (2005) CCPR/C/85/D/1022/2001.

<sup>28</sup> For more information, see

United Nations, Human Rights Council, *Incitement to racial and religious hatred and the promotion of tolerance: report of the High Commissioner for Human Rights*, A/HRC/2/6 (20 September 2006), 55.

*Lingens v. Austria*, *European Court of Human Rights*, Application No. 9815/82, (8 July 1986), 39-40.

<sup>29</sup> Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011), 21.

must be proportionate to the interest to be protected ... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.<sup>30</sup>

Because the freedom of expression is a fundamental human right, any restrictions of this right must meet the strict circumstances outlined above.

### **Article 20: Incitement to Hatred**

Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.<sup>3</sup>

ICCPR article 20 was drafted in the historical context of World War II, with the atrocities committed by the Nazi regime in mind. The threshold is therefore relatively high for acts and speech to be considered as advocating religious hatred constituting incitement. The language was debated fiercely, and Rene Cassin of France argued the final resolution was a reasonable compromise between the Soviet Union and the United States who wished “to silence free men,” and “to permit full freedom of expression for the purpose of incitement to hatred and violence,” respectively.<sup>31</sup>

Article 20 encourages states to pass laws prohibiting hate speech. The Human Rights Committee explains, “it is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every case in which the State

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30 United Nations, Human Rights Committee, *General Comment 27: Article 12 (Freedom of Movement)*, (2 November 1999) CCPR/C/21/Rev.1/Add.9, 14-15. Referenced in Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011), 34.

31 United Nations, Commission on Human Rights, *Travauxpréparatoires, Draft International Covenant on Human Rights, Article 20 and Article 21*, E/CN.4/SR.174 (8 May 1950), 45.

restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.”<sup>32</sup> The Committee further explains prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favor of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>33</sup>

In other words, blasphemy laws that discriminate against, or are disproportionately applied to, religious minorities are incompatible with the ICCPR.

Similar to any restrictions on the freedom to manifest religion and the freedom of expression, incitement laws must also pass a test to ensure they conform with international human rights law. Restrictions may only be applied under the following circumstances:

1. If the limitation is prescribed by law
2. If the limitation is for communications or interpretations which constitute incitement
3. If the limitation is both necessary and proportional to inhibit incitement

Blasphemy laws are thus only permissible under international law if they comply with the articles of the ICCPR, including articles 18, 19, and 20. The expression must not simply incite; it must *constitute* incitement.

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32 Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011),52.

33 Ibid.,48.

Two documents provide guidelines on the creation and implementation of incitement legislation – the Camden Principles on Freedom of Expression and Equality<sup>34</sup> and the Rabat Plan of Action.<sup>35</sup> The Camden Principles provide in depth definitions for the following terms included in article 20:

- The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity, and detestation towards the target group.
- The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group.
- The term ‘incitement’ refers to statements about national, racial, or religious groups which create an imminent risk of discrimination, hostility, or violence against persons belonging to those groups.<sup>36</sup>

The Rabat Plan of Action suggests states refer to the definitions included in the Principles when drafting legislation on incitement.

The Rabat Plan of Action created guidelines for states’ implementation of incitement legislation, acknowledging the need for guidance when weighing articles 19 and 20 on freedom of expression and prohibition of incitement to hatred.<sup>37</sup> United Nations High Commissioner for Human Rights Navanethem Pillay, in her report presenting the Plan, explained that states have a margin of appreciation in distinguishing which forms of expression are considered incitement

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34 In 2009, British non-governmental organization ARTICLE 19 created the Camden Principles on Freedom of Expression and Equality in consultation with academics, civil society, and international organizations. The Camden Principles are provided in an Annex.

35 The Rabat Plan of Action is provided in an Annex.

36 Article 19, *The Camden Principles on Freedom of Expression and Equality*, (London: April 2009), 12.1. Available at <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

37 Human Rights Council, *Rabat Plan of Action*, A/HRC/22/17/Add.4(11 January 2013), page 4.

All documentation related to the expert workshops available at <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>

to hatred, because this “is contextual and the individual circumstances of each case, such as local conditions, history, cultural and political tensions, must be taken into account.”<sup>38</sup> While local context is important in deciding which speech is considered incitement, the Commissioner made it clear that restrictions are meant to protect individuals and not religions. Pillay explained, “restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals and communities belonging to ethnic, national or religious groups, holding specific beliefs or opinions, whether of a religious or other nature, from hostility, discrimination or violence, rather than to protect belief systems, religions or institutions as such from criticism.”<sup>39</sup> This means legislation prohibiting discussion about religious tenets is not in line with the ICCPR. Further, speech and expression that simply offends religious sensibilities or religious sects does not constitute incitement nor does following a religious sect.

The Rabat Plan of Action outcome document provides the following additional guidance to states when implementing incitement legislation:

In order to establish severity as the underlying consideration of the thresholds, incitement to hatred must refer to the most severe and deeply felt form of opprobrium. To assess the severity of the hatred, possible elements may include the cruelty or intent of the statement or harm advocated, the frequency, quantity, and extent of the communication. In this regard, a six-part threshold test was proposed for expressions considered as criminal offences:

- a) **Context:** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility, or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should

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38 Ibid.

39 Ibid.

place the speech act within the social and political context prevalent at the time the speech was made and disseminated;

- b) **Speaker:** The speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed;
- c) **Intent:** Article 20 of the International Covenant on Civil and Political Rights anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the Covenant, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience;
- d) **Content and form:** The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed;
- e) **Extent of the speech act:** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public;
- f) **Likelihood, including imminence:** Incitement, by definition, is an inchoate crime. The action advocated

through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.<sup>40</sup>

This text is provided as a guideline for incitement legislation, and the full Rabat Plan of Action can be found in the Annex.

As demonstrated, the freedom of religion and the freedom of expression are core, fundamental human rights. The freedom of religion may not be restricted under any circumstances and the freedom to manifest one's religion and the freedom of expression may be restricted only under specific circumstances. The ICCPR encourages states to combat incitement to hatred which must be done in a way that protects minorities and not religions or belief systems. The next section will analyze the implementation of blasphemy laws in five countries to determine their accordance with the guidelines provided in this section.

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<sup>40</sup> Human Rights Council, *Rabat Plan of Action*, A/HRC/22/17/Add.4 (11 January 2013), page 11.

# Analysis of Domestic Blasphemy Legislation

As demonstrated above, there is an international, universal right to freedom of religion and freedom of expression. There are also specific protections for religious minorities. The five states included in this research have each codified domestic laws further protecting these rights as they are found in the ICCPR. However, they have also codified limitations on these freedoms through blasphemy legislation. This section will provide a brief summary of each country's blasphemy laws (full country reports can be found in Annex 1). It will then analyze their implementation against international law to determine whether the laws are necessary and proportional to achieve the goals provided in articles 18(3) and 19(3). The section will end with an analysis of the implications of the blasphemy laws on the freedom of religion and the rights of religious minorities, the freedom of expression, and the rule of law.

## State Blasphemy Law Summaries

Every country analyzed in this study has populations with diverse cultural, ethnic, and religious backgrounds. The selection of countries analyzed is meant to represent a range – of contexts and norms; of methods and reasons for implementing blasphemy laws; and of geographical distribution. All of the countries analyzed have ratified the International Covenant on Civil and Political Rights



## *Egypt*

The majority of Egyptians practice Sunni Islam, and the country's religious minorities include Christianity, Judaism, and minority Islamic sects such as Ahmadis, Quaranists, and Shi'as. Egypt's constitution protects the freedom of religion and the freedom of expression. While there is an article on equality declaring citizens possess equal rights and may not be discriminated against because of their religion, the state only recognizes three 'heavenly religions' – Islam, Christianity, and Judaism. The constitution also prohibits incitement to hatred.

Egypt relies on legislation to prosecute blasphemy. Egypt's penal code provides for a term of imprisonment between six months and five years or a fine between 500 and 1,000 Egyptian pounds (\$28–\$56) for individuals convicted of exploiting and using "religion in advocating and propagating by talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition and division or disdaining and contempting any of the heavenly religions or the sects belonging thereto, or prejudicing national unity or social peace."<sup>41</sup> The law is applied broadly and there has been a significant increase in formal prosecutions in recent years, which is considered a result of the growing power of Islamists following the country's revolution in 2011.

## *Germany*

The majority of Germany's citizens adhere to Christianity (29% Roman Catholics, 27% Protestants, and 1.9% Orthodox Christians). Muslims represent 4.4% of the population and 36% have either no religion or are members of unrecorded religious groups.<sup>42</sup> There are also small groups of Buddhists, Hindus, Jehovah's Witnesses, and Jews. Germany's government actively promotes pluralism, and the government has taken measures to combat incitement to hatred to protect the more than one million asylum seekers and refugees that

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<sup>41</sup> The Arab Republic of Egypt, *The Penal Code: Act No. 58 01 of 1937*, 98(f). Available at [https://www.unodc.org/res/cld/document/criminal\\_code\\_of\\_egypt\\_english\\_html/Egypt\\_Criminal\\_Code\\_English.pdf](https://www.unodc.org/res/cld/document/criminal_code_of_egypt_english_html/Egypt_Criminal_Code_English.pdf)

<sup>42</sup> "People and Society: Germany," *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017.

have sought refugee in the country, most of which are Muslim.

The freedom of expression and the freedom of religion and equality and nondiscrimination of citizens based on religion are enshrined in Germany's constitution. Despite these guarantees, the state continues to retain its blasphemy law which punishes the defamation of religion in a manner capable of disturbing the 'public peace.' Violators are subject to a fine or up to three years imprisonment. The law is rarely used, and the government instead relies on combating incitement to hatred.

### *Indonesia*

Indonesia is the most populous Muslim country in the world and 87.2% of its population adheres to Islam. The state also has minorities of Christians (9.9%), Hindus (1.7%), Buddhists (0.7%), and Confucians (0.1%). The majority of Muslims are Sunni but there are minority Islamic sects such as Ahmadis, Gafatar, and Shi'a throughout the state. Christian sects include Catholics, Jehovah's Witnesses, and Protestants. Indonesia's constitution provides for the freedom of religion which it explains cannot be limited under any circumstances.<sup>43</sup> Individuals have the freedom to believe in and manifest their religion while being free from discrimination based on their religious belief. Despite these provisions, the government officially recognizes only six religions – Buddhism, Catholicism, Christianity, Confucianism, Hinduism, and Islam.

Indonesia's blasphemy law places limitations on communications and interpretations of religion that 'deviate' from the basic tenets of the state-recognized religions. It states, "every person is prohibited from knowingly communicating in public, advocating or seeking public support, for an interpretation of a religion practiced in Indonesia or conducting religious activities that resemble the religious activities of such a religion, where such interpretations and activities deviate from the basic tenets of the religion."<sup>44</sup> To violate this law, communications

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43 Ibid.,281.1.

44 Republic of Indonesia, *Law No. 1/1965 on Defamation of Religion*, 1965, 1. Available at <http://e-dokumen.kemenag.go.id/files/3WsLxrag1286178904.pdf>

and interpretations must be “made with an intention of hostility, vilification, or ridicule.”<sup>45</sup> The law is meant to maintain public order and promote religious harmony, and violators are subject to upwards of five years in prison.

### *Nigeria*

Nigeria is Africa’s most populous country and largest economy. Muslims make up 50% of the population, Christians 40%, and traditional African religions the remaining 10%. The majority of Muslims are Maliki Sunnis and minority sects include Shias and Ahmadiyyas. There are various Christian denominations such as Anglicans, Evangelicals, Methodists, Pentecostals, Presbyterians, Roman Catholics, and the Organization of African Indigenous Churches.<sup>46</sup> Religious affiliation is closely related to ethnicity,<sup>47</sup> and Muslims and Christians are generally relegated to separate areas of the country – the Muslims in the north and Christians in the south with the “middle belt” states made up of a mix of the two religions.

Nigeria’s constitution guarantees the freedom of religion, including the freedom to change religions. Individuals are free to manifest their religion and discrimination based on religious grounds is prohibited. Again, despite these protections, the state maintains a blasphemy law. The law prohibits the public insult of a religion with violators subject to up to two years imprisonment. The law prohibits the public insult of a religion, which must be made with the intention that any class of persons should consider the act an insult. Violators are guilty of a misdemeanor and liable to imprisonment for two years.<sup>48</sup> Muslims

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45 Republic of Indonesia, *Law No. 1/1965*, Article 3. Translation found in ZainalAbidinBagir, “Defamation of Religion Law in Post-Reformasi Indonesia: Is Revision Possible?,” *Australian Journal of Asian Law* 13, no. 2, (March 4, 2013): 5.

46 Christian sects listed in alphabetical order, not according to population statistics. United Nations, Commission on Human Rights, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to Nigeria*, E/CN.4/2006/5/Add.2 (7 October 2005), 19.

47 Ibid., 18.

48 The Federal Republic of Nigeria, *Criminal Code Act (Chapter 77)*, *Laws of the Federal Republic of Nigeria*, 1 June 1916, Amended in 1990, Section 204. Available at

living in states where Sharia law is used in criminal issues are subject to the death penalty for blasphemy and converting to other religions.

### *Pakistan*

Pakistan is one of the most diverse of the countries surveyed and its punishment for blasphemy the harshest. According to Pakistan's 1998 census, 96.3% of the country's population adheres to Islam.<sup>49</sup> Of the followers of Islam, 85-90% are Sunni and 10-15% are Shi'a.<sup>50</sup> The country has small minorities of Hindus (1.6%), Christians (1.6%), Ahmadis (0.2%), and others (0.3%).<sup>51</sup> Each religion has multiple sects and several religions constitute the category 'other.'<sup>52</sup> Pakistan's constitution declares Islam as the state religion while also granting citizens the right to profess and practice their religion.

The state's blasphemy laws are extensive. They include prohibitions against insulting religions (subject to 10 years imprisonment, a fine, or both), defiling the Koran (subject to life imprisonment), and defiling Muhammad's name (death or life imprisonment and a fine). In Pakistan, the laws are meant to maintain sectarian peace and protect public order.

## **Analysis of Legality under International Human Rights Law**

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[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=218191](http://www.wipo.int/wipolex/en/text.jsp?file_id=218191)

49 This data is from the 1998 census. Pakistan conducted a more recent census from March to May 2017. The data was not available at the time of this report's publication. The Islamic Republic of Pakistan, Population Census Organization, *Population Distribution by Religion, 1998 Census*, 335. Available at <http://www.pbs.gov.pk/sites/default/files/other/yearbook2011/Population/16-16.pdf>

50 Data on Muslim sect distribution found at "People and Society: Pakistan," *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017. All CIA World Factbook pages available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

51 The Islamic Republic of Pakistan, Population Census Organization, *Population Distribution*, 335.

52 For a detailed analysis of religious minorities in Pakistan, see DrIfthikhar H. Malik, "Religious Minorities in Pakistan," *Minority Rights Group International*, September 2002.

As described in the previous section on international law, both the freedom of expression and the freedom to manifest one's religion may be restricted under specific circumstances. Any restrictions must be prescribed by law and for a limited number of grounds. Those grounds are:

- Article 18(3) on freedom to manifest one's religion: to protect public safety, order, health, or morals or the fundamental rights and freedoms of others
- Article 19(3) on freedom of expression: for respecting the rights or reputations of others, or for the protection of national security or of public order (ordre public), or of public health or morals

*State laws often cite goals that go well beyond those allowed by these articles.*

All states in this study grant their citizens the freedom of religion and expression. They also allow for limitations on these rights based on certain grounds, some of which are not allowable under international law. This includes Indonesia's goal of maintaining social or religious harmony and Pakistan's goal of maintaining sectarian peace as reasons for restricting the freedom to manifest one's religion. State goals for restrictions on the freedom of expression are also expansionary with Germany seeking public peace and Pakistan limiting expression in "the interest of the glory of Islam or the integrity, security, or defense of Pakistan or any part thereof, friendly relations with foreign States ... or in relation to contempt of court, commission of,<sup>53</sup> or incitement to an offence."<sup>54</sup> There are other ways to achieve these goals that do not unduly restrict citizens' rights. This is why ICCPR articles 18(3) and 19(3) are to be strictly interpreted and why states may not restrict freedoms for reasons not included therein.

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53 'Commission of' was previously 'defamation' prior to the fourth amendment of the constitution passed on 21 November 1975.

54 Islamic Republic of Pakistan, National Assembly of Pakistan, *The Constitution of the Islamic Republic of Pakistan*, 12 April 1973, Article 19.

There are also issues with defining the goals. While ‘public order’ is a legitimate goal under ICCPR article 18(3), Egypt’s defines the term as “the official religion being Islam, that most of the population professes Islam, and that Islamic law is the primary source of legislation.”<sup>55</sup> The extensive nature of this definition does not meet a high enough threshold for restricting the freedom to manifest religion, and its sole focus on Islam discriminates against religious minorities both in the language of the law and in its application.

As established, states are permitted to limit the manifestation of religion and the freedom of expression if the restrictions are prescribed by law and for a limited set of goals. However, state interference in these freedoms must also be proven to be both necessary and proportional to achieving the goals as outlined in ICCPR articles 18(3) and 19(3). For example, if a state restricts the rights of citizens to the freedom to manifest their religion based on the need to protect public order, they must prove the specific restriction is both necessary and proportional to achieve public order. Several cases have established permissible acts for limiting the freedom of expression and religion for the legitimate and necessary purpose of ‘public order.’ The ECHR has accepted ‘public order’

as a justification for the law punishing the distribution of material to servicemen seeking to persuade them to disobey their orders,<sup>56</sup> as well as for the refusal to allow a prisoner to grow a beard which would have made him more difficult to identify, and the refusal to allow him a prayer chain.<sup>57</sup> The protection of public order may also justify limitations on the

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55 *HasanHusniNaguib ‘Abd-al-Masih (a Bahá’í ) vs. the Minister of Interior* (Action No. 12780 of JY61). Found in United States, Department of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report: Egypt*, 2008.

56 *X v. United Kingdom*, 22 European Commission on Human Rights 27 (1981), (6084/73) DR 3. 62. Found in Paul Sieghart, *The international law of human rights*, (New York: Clarendon Press, 1983), 95.

57 *X. v Austria* (1753/63) CD 16. 20. Found in Sieghart, *The international law of human rights*, 95.

right to hold religious services on a public highway, at all events in a country containing religious divisions.<sup>5859</sup>

Other limitations permissible for ‘public order’ include “conscientious objection to military service or compliance with government regulations on changes to a person’s name.”<sup>60</sup> These limitations are used as examples for permissible limitations based on ‘public order.’ They illustrate the high threshold necessary for restricting these core rights. The following section will analyze the states’ implementation of blasphemy laws and the implications this has on human rights will demonstrate these laws are not necessary and proportional to achieving even legitimate goals.

## Implications on Human Rights and the Rule of Law

In all the states surveyed for this report, local and national actors misuse their state’s blasphemy laws against religious minorities. In each state, the letter of the law is not respected and cases are motivated by economic, social, and political tensions. For example, in Germany the blasphemy law must only be used for actions that will disturb the public peace.<sup>61</sup> The law was recently used to convict a man for bumper stickers on his car, despite there being no evidence these had the potential to disturb public peace. Likewise, to violate

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58 Decision of January 19, 1962, HogeRaad, Netherlands (NJ 1962, 417). Found in Sieghart, *The international law of human rights*, 95.

59 Entire passage from Sieghart, *The international law of human rights*, 95.

60 Manfred Nowak & Tanja Vospernik, “Permissible Restrictions on Freedom of Religion or

Belief” in *Facilitating Freedom of Religion and Belief: A Deskbook* eds. Tore Lindholm, W. Cole Durham Jr. & Bahia G. Tahzib-Lie, (The Hague: Martinus Nijhoff Publishers, 2004), 152. Found in Melissa A. Crouch, “Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law,” *Asian Journal of Comparative Law*, 7, no. 1 (2012): 42.

61 While this is not a sufficient reason in international law to limit the freedom of religion or expression, the example is used here to show the potential for blasphemy laws to be misused.

Indonesia's blasphemy law, interpretations of religions that deviate from the basic tenets of a religion must be done with an intention of hostility, ridicule, or vilification. However, that threshold is rarely considered and individuals have been convicted for actions related to business and economic conflicts (2), personal conflicts (8), political conflicts (3), religious conflicts (10), romantic conflicts (3), and social conflicts (4).<sup>62</sup> This section will explore the misuse of blasphemy laws to achieve economic, social, and political ends and the implications this misuse has on the freedom of religion and the rights of minorities, the freedom of expression, and the rule of law.

### ***The Freedom of Religion and the Rights of Religious Minorities***

As discussed above, the freedom of religion is a universal human right that is non-derogable under any circumstances, including in times of emergency.<sup>63</sup> Blasphemy laws are used to restrict both the freedom to manifest one's religion and the freedom of religion, generally. These laws are implemented in a way that 1) protect only majority religions at the expense of all others, 2) disproportionately impacts religious minorities, and 3) emboldens hardline groups to take actions against religious minorities.

Blasphemy laws tend to protect the country's majority religion which discriminates against those religions not protected. These laws restrict the rights of religious minorities to manifest their religion. Some states do not just restrict the manifestation of religion; they ban the religion completely, thus violating their citizens' fundamental freedom

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62 Halili, "Rezim Penodaan Agama: 1965-2017," *Setara Institute*, 11 May 2017.

63 ICCPR article 4.1 states "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin." Article 4.2 clarifies there may be no derogation from article 18. United Nations, *International Covenant on Civil and Political Rights* (16 December 1966), 4.1-4.2.



of religion. In Egypt, the government recognizes and protects three religions – Christianity, Islam, and Judaism. The government has also banned Baha'is and Jehovah's Witnesses. In Indonesia, the government recognizes and protects six religions – Buddhism, Catholicism, Christianity, Confucianism, Hinduism, and Islam. It has banned two minority Islamic sects – the Ahmadiyya and Gafatar. Pakistan also places restrictions on the activities of Ahmadis. The protection of certain religions over others unduly restricts the rights of religious minorities.

The implementation of the blasphemy law in most states disproportionately impacts followers of minority religions. In Egypt, the law is used against Christians and minority Islamic sects such as the Ahmadiyya and Shi'a. Religious minorities charged with blasphemy have been tortured and held in detention without charges for months. In many states, they are convicted simply for being religious minorities. While governments intend their blasphemy laws to help protect religious harmony (Indonesia) and maintain sectarian peace (Pakistan), they have the effect of actually provoking violence against religious minorities.

In several states, the existence of blasphemy laws emboldens hardline fundamentalist groups. With a state law as justification for their behavior, they perpetrate hostility and violence against religious minorities. While these groups represent a minority of the population, they are able to exploit the political and socio-economic frustrations of the majority, particularly in systems that are non-democratic or where the rule of law does not exist. Hardline groups use the cover of blasphemy laws to incite hostility and violence against religious minorities. In many states, authorities do not punish acts of hostility and violence which creates a climate of impunity wherein religious minorities must live in fear next to those who have perpetrated violence against them.

### ***The Freedom of Expression***

Blasphemy laws also have a chilling effect on the freedom of expression. In addition to disproportionately impacting the rights of minorities, they are also often used to silence criticism and settle

personal and political disputes. This implementation of the law encourages self-censorship.

Blasphemy laws are often used to silence political criticism and to settle petty disputes. Egypt's blasphemy law is used against those who are critical about attacks against religious minorities. In Nigeria and Pakistan, the sensitive nature of blasphemy means it is easy to invoke to settle petty disputes. Individuals spread rumors and accuse their business associates, neighbors, and peers of blasphemy to settle personal and political disputes.<sup>64</sup> In Pakistan, a student was killed for criticizing his university's administration, a lawyer was killed for defending a blasphemy case, and high-level politicians have been killed for speaking out against the blasphemy law. This use of blasphemy laws to silence criticism and settle disputes, often with the threat of death, encourages citizens to censor their speech to protect themselves.

Blasphemy laws encourage self-censorship in all the countries surveyed for this report. The law stifles the freedom of expression in Germany where it was recently misused in Western Germany to punish a man for having bumper stickers on his car that include jokes about Christianity. The mere existence of a blasphemy law does not necessarily encourage self-censorship; rather, it is due to the state's political climate and the methods used to implement the law. In Egypt, the escalation in blasphemy cases and the tightening of restrictions by the government have led to an increase in self-censorship. In Indonesia, the lack of clear definitions and inconsistent convictions for blasphemy encourage self-censorship, because citizens cannot be sure if the language they use will be considered offensive enough to provoke action against them. Blasphemy laws further suppress the freedom of expression in states such as Nigeria and Pakistan where it is such a sensitive subject that the mere mention of the term 'blasphemy' is enough to trigger the formation of a mob.

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64 United States, Department of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report: Pakistan*, 2015.

## *The Rule of Law*

As mentioned above, blasphemy can be invoked to settle petty grievances and personal and political disputes. In many countries, courts are quick to make blasphemy convictions due to fear of reprisal by mobs and crowd demonstrations, hindering the administration of justice and the rights of the accused to a fair trial. In many countries with blasphemy laws, the rule of law is inhibited by the willingness of groups to resort to violence and vigilante justice and the impunity they receive from government authorities who refuse to punish perpetrators of hostility and violence.

In Indonesia, Nigeria, and Pakistan, the use of mass pressure impedes the rule of law. Mobs or the threat of large demonstrations are used to strong-arm authorities and are responsible for:

- Legislatures passing laws restricting the rights of religious minorities or banning entire sects altogether (Indonesia and Pakistan)
- Courts imposing blasphemy convictions or increasing blasphemy sentences (Indonesia, Nigeria, Pakistan)
- The destruction of personal property and places of worship as well as killings of, and violence against, religious minorities (Indonesia, Nigeria, Pakistan)

In Indonesia, 62 blasphemy court cases (64%) involved mass pressure.<sup>65</sup> This includes the recent case against Jakarta's governor Basuki "Ahok" Tjahaja Purnama. Islamist hardliners drew large crowds to the capital to influence the outcome of Ahok's re-election and court case. In Nigeria, a court in Kano State had to hold a blasphemy trial in secret after mobs surrounded and burnt down a courthouse. Any attempts to repeal blasphemy laws are obstructed by hardline Islamist groups who can easily organize mobs, protests, and vigilante justice in a short timeframe.

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65 Halili, "Rezim Penodaan Agama: 1965-2017," *Setara Institute*, 11 May 2017.

In states where mass pressure inhibits the rule of law, there also exists a climate of impunity surrounding acts of violence against minorities. When religious minorities experience discrimination, hostility, and violence, police are seen standing by rather than protecting the victims. The rights of the minorities are further restricted and perpetrators are never brought to justice. The rule of law cannot be said to exist in countries where those who break the law are systematically not held accountable. Impunity impedes the rule of law and has the effect of escalating religious intolerance. Those hardliners who are emboldened by the existence of blasphemy laws to take actions against religious minorities are further justified in their actions when they receive no legal consequences. While impunity justifies the actions of perpetrators of hostility and violence, it instills fear in the religious minorities who continue to have their rights violated and often must live in communities with both those who subjected them to violence and the police who stood by as it happened.

# International Discourse on Blasphemy

International actors and human rights experts have recently shifted the medium for promoting religious harmony from restricting the freedom of expression through blasphemy laws to combating incitement to hatred. This approach promotes human rights, protects religious minorities, and receives widespread support from both the Organization for Islamic Cooperation (OIC) and Western Countries. Six countries have repealed their blasphemy laws in the last two years, including Canada, Denmark, France, Iceland, Malta, and Norway.<sup>66</sup> This section will begin by exploring Britain's repeal of its blasphemy law in 2008. Britain is used as an example, because many of the state's advances and reasons for repealing the legislation are similar to other countries that have also abolished their blasphemy laws. The section will then show many of these reasons are also responsible for the global shift in perspective that occurred after the Organization for Islamic Cooperation (OIC) proposed banning blasphemy at the international level.

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<sup>66</sup> Data from "Freedom of Thought Report," *International Humanist and Ethical Union*, 2016. Available at <http://freethoughtreport.com/countries/> Data consolidated in interactive map at <http://end-blasphemy-laws.org>

## Britain's Blasphemy Repeal

In his book *A Brief History of Blasphemy*, Richard Webster describes the evolution of blasphemy in Europe. While persecution of religious minorities began in the middle ages, it was enforced systematically during the Inquisition in the early thirteenth century. By the early sixteenth century, Martin Luther considered various minority religions to be blasphemous as well as sin, the political opinions of the peasantry, and missing church.<sup>67</sup> The penalty for speaking against God or religion was death and sometimes the accused were tortured. Today, while several countries in Europe still have blasphemy laws, they are rarely enforced. When they are, the penalties are usually small fines.<sup>68</sup>

Britain blasphemy law banned the act in both written and verbal forms. To be considered blasphemy, "the content of the material had to be both in conflict with the tenets of the Church of England and couched in indecent or offensive terms likely to shock and outrage the feelings of the general body of Church of England believers."<sup>69</sup> The content would only be considered blasphemy if it was against the Church of England, so language against other religions and Christian sects were permissible. The 1838 *Gathercole Case* stated the Church of England was to be protected not only because it was the established religion of the country, but also because "any general attack on Christianity is the subject of criminal prosecution, because Christianity is the established religion of the country."<sup>70</sup> Other religions would be protected from blasphemy only in cases where the blasphemous content was also against the tenets of the Church of England.

Calls to repeal the state's blasphemy law began in 1979 but took

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67 Richard Webster, *A Brief History of Blasphemy: Liberalism, Censorship, and 'The Satanic Verses,'* (Suffolk: The Orwell Press, 1990), Chapter 1.

68 Two exceptions are Greece and Poland which have a maximum penalty of fines and/or two years in prison. In Greece, convictions are often overturned on appeal and in Poland, there are no recent cases of jail terms for blasphemy.

69 Russell Sandberg and Norman Doe, "The strange death of blasphemy," *The Modern Law Review* 71, no. 6 (2008): 973.

70 (1838) 2 Lewin 237. Found in Sandberg and Doe, "The strange death of blasphemy," 973.

a more serious tone in 1999 when Ireland's Supreme Court upheld a ruling dismissing a blasphemy case. Russell Sandberg and Norman Doe identify five developments that led to the abolition of Britain's blasphemy law: Ireland's Supreme Court decision (1999), the findings of the House of Lords Select Committee on Religious Offenses in England and Wales (2003), the enactment of the Racial and Religious Hatred Act (2006), the *Jerry Springer: the Opera* decision (2007), and finally the repeal of the blasphemy law by the Criminal Justice and Immigration Act (2008). This section will follow their argument.

### ***1. Ireland's Supreme Court: Need Clear Definition of Blasphemy***

The first development that led to the repeal of Britain's blasphemy law was a Supreme Court ruling from Ireland. Ireland's legal system stems from English common law, including its common law against blasphemy. Ireland's last conviction for blasphemy occurred in 1852.<sup>71</sup> After Ireland attained independence in 1916, they adopted the common law provision against blasphemy into the country's constitution. The first prosecution for blasphemy in 140 years occurred in 1995 when civilian John Corway took three newspapers to court for their coverage of Ireland's constitutional referendum legalizing divorce. The newspaper's coverage included one article and two editorial cartoons Corway claimed were "calculated to insult the feelings and religious convictions of readers generally by treating the sacrament of the Eucharist and its administration as objects of scorn and derision."<sup>72</sup> A lower court dismissed the case, saying there was not a clear case of blasphemy and there was no evidence the authors intended to damage the Catholic Church.<sup>73</sup> Conway appealed the verdict, and the Supreme

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71 Paul O'Higgins, "Blasphemy In Irish Law," *The Modern Law Review* 23, no. 2 (1960): 161-164.

72 *Conway v. Independent Newspapers (Ireland) Limited*, [1999] IESC 5; [1999] 4 IR 485; [2000] 1 ILRM 426 (30th July, 1999). Available at <http://www.bailii.org/ie/cases/IESC/1999/5.html>

73 Peter O'Reilly, "Conway v Independent Newspapers: Changing Accents in Ireland's Religious Identity," *University of Leuven*. Available at <http://www.academia>.

Court upheld the ruling in 1999, due to the lack of a clear definition of blasphemy.<sup>74</sup>

Ireland's Law Reform Commission, an independent body tasked with researching the law and providing recommendations to the parliament, published a report on libel which considered the crime of blasphemy. They determined "there is no place for the offence of blasphemous libel in a society which respects freedom of speech."<sup>75</sup> Despite this ruling, holding a referendum to abolish the blasphemy provision would be costly and time consuming. The Commission thus recommended that until the blasphemy provision can be included in a broader constitutional amendment, the parliament should pass a law on blasphemy to replace the common law offence. The Defamation Act 2009 repealed the Defamation Act of 1961 and defined what constitutes a crime of blasphemy. The Act prohibits the publication or utterance of 'blasphemous matter,' which is defined as matter "that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion."<sup>76</sup> Blasphemy is an offense against any religion, and violators are subject to a maximum fine of 25,000 Euros (IDR 374 million). The language was designed in a way that made prosecution impossible, and as of 25 May 2017, there had been no prosecutions under this act. The fact that Ireland passed a blasphemy law in 2009 is widely regarded as an endorsement for blasphemy laws; however, it was created as an inoperative placeholder until the state's constitution can be amended to abolish blasphemy.

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edu/11335475/Law\_Religion\_and\_Blasphemy\_Ireland

<sup>74</sup> For more information, see *Conway v. Independent Newspapers*, IESC, 1999. And Carol Coulter, "Court unable to state what blasphemy is," *The Irish Times*, 31, July 1999. Available at <http://www.irishtimes.com/news/court-unable-to-state-what-blasphemy-is-1.212106>

<sup>75</sup> Ronan Keane et. al., "Consultation Paper on the Crime of Libel," *The Law Reform Commission*, Dublin, August 1991, Section 231. Available at [http://www.lawreform.ie/\\_fileupload/consultation%20papers/cpCrimeofLibel.htm](http://www.lawreform.ie/_fileupload/consultation%20papers/cpCrimeofLibel.htm)

<sup>76</sup> The Republic of Ireland, *Defamation Act 2009*, 2009, 36.2.a. Available at <http://www.irishstatutebook.ie/eli/2009/act/31>



## ***2. Select Committee on Religious Offenses: Cannot Discriminate Against Religious Minorities***

Established in 2003, the House of Lords Select Committee on Religious Offenses in England and Wales was tasked with determining the necessity of the blasphemy law and whether a new law on incitement should be created. The Committee's final report noted "any prosecution for blasphemy today ... is likely to fail on grounds either of discrimination or denial of the right to freedom of expression."<sup>77</sup> The blasphemy law is discriminatory because it protects one religion/sect which discriminates against all others and allows for a potentially unlimited penalty for violation. Since the time of Martin Luther, Britain has curtailed the role of the church in state affairs and embraced pluralism and equality. Thus, its courts are not likely to uphold a law that protects only one religion. While this report was not enough to convince legislators to fully abolish the blasphemy law, it did contribute to the discussion.

## ***3. Racial and Religious Hatred Act: Must Protect Individuals Rather than Religion***

The Racial and Religious Hatred Act of 2006 shifts the nexus of protection from religion to the individual. The Act "creates offences involving stirring up hatred against persons on religious grounds."<sup>78</sup> Religious hatred is defined as hatred of a group of people based on their religious belief or lack thereof.<sup>79</sup> Because this law protects individual believers, it addresses the issue brought up by the Select Committee on Religious Offenses in England and Wales as it does not discriminate against any one religion.

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<sup>77</sup> House of Lords Select Committee on Religious Offences in England and Wales (2003), Volume I (HL Paper 95-I), Appendix 3, para 10. Available at <https://publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/9515.htm> Found in Sandberg and Doe, "The strange death of blasphemy," 978.

<sup>78</sup> United Kingdom, *Racial and Religious Hatred Act 2006*, 2006, 1. Available at [http://www.legislation.gov.uk/ukpga/2006/1/pdfs/ukpga\\_20060001\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/1/pdfs/ukpga_20060001_en.pdf)

<sup>79</sup> Ibid., 3A.29A.

#### **4. *Jerry Springer: the Opera Decision: Restriction of Speech Must Reach High Threshold***

In 2007, the *Jerry Springer: the Opera* decision established a threshold for acts of blasphemy. The Theatres Act 1968 states that ‘no person shall be proceeded against in respect of a performance of a play or anything said or done in the course of such a performance . . . for an offence at common law where it is of the essence of the offence that the performance or, as the case may be what was said or done was obscene, indecent, offensive, disgusting or injurious to morality.’<sup>80</sup> When hearing this case, the High Court included blasphemy as an act which someone may not be prosecuted for if it is done in the context of a performance. The court further found no evidence of damage to society or threat of public disorder, and required this to be a test to prosecute blasphemy.<sup>81</sup> This new test increased the threshold for acts to be considered blasphemous.

The next year, the government abolished the blasphemy law with an amendment to the Criminal Justice and Immigration Act 2008. Britain’s reasons for repealing its blasphemy law in 2008 reflect the reasons many other states have repealed theirs:

- The lack of clear definitions for blasphemy and the use of vague language leave the laws open for abuse by local and national authorities.
- The use of the laws to protect the country’s majority religion takes place at the expense of all other, and the laws are often used to discriminate against religious minorities.
- The laws protect belief systems and religion rather than individuals.
- Any restrictions on the freedom of expression must meet a high threshold.

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<sup>80</sup> United Kingdom, *Theatres Act 1968*, 1968, Chapter 54.2.4.A. Available at <http://www.legislation.gov.uk/ukpga/1968/54>

<sup>81</sup> For a more detailed analysis, see Sandberg and Doe, “The strange death of blasphemy,” 981-83.

Similar reasons also supported the shift in focus of the international community away from international blasphemy or defamation laws and towards combating incitement to hatred. This shift promotes religious harmony in a way that respects human rights and protects religious minorities.

## **Global Shift from Blasphemy to Incitement**

Beginning in 1999, the Organization of Islamic Cooperation (OIC) began promoting the need for an international blasphemy law. Founded in 1969 to create a united front among Islamic countries in responding to the Israeli-Palestinian conflict, the OIC has 57 members and is headquartered in Jeddah, Saudi Arabia. The OIC Charter states it is the organization's mandate "to protect and defend the true image of Islam, to combat defamation of Islam and encourage dialogue among civilizations and religions."<sup>82</sup> The OIC's Plan of Action for 2005-2015 included a section on Combating Islamophobia. Among four action statements were the need to "emphasize the responsibility of the international community, including all governments, to ensure respect for all religions and combat their defamation,"<sup>83</sup> and to "endeavor to have the United Nations adopt an international resolution to counter Islamophobia."<sup>84</sup> As part of this plan, they introduced a draft defamation resolution to the Commission on Human Rights.

Representing the OIC members of the United Nations, Munir Akram of Pakistan introduced draft resolution E/CN.4/1999/L.40 on Defamation of Islam.<sup>85</sup> Akram said the resolution was necessary,

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82 Organization of Islamic Cooperation, *OIC Charter*, 14 March 2008, Article 1.12. Available at [http://www.oic-oci.org/page/?p\\_id=53&p\\_ref=27&lan=en](http://www.oic-oci.org/page/?p_id=53&p_ref=27&lan=en)

83 Organization of Islamic Cooperation, *Ten-Year Program of Action to Meet the Challenges Facing the Muslim Ummah in the 21<sup>st</sup> Century, 2005-2015*, 7-8 December 2005, VII.1. Available at [http://www.oic-iphrc.org/en/data/docs/legal\\_instruments/OIC%20Instruments/TYPOA-%20AEFV/TYPOA-EV.pdf](http://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/TYPOA-%20AEFV/TYPOA-EV.pdf)

84 Ibid., VII.3.

85 Full resolution included in Annex. United Nations, Commission on Human Rights, Pakistan, on behalf of the States Members of the United Nations that are members of the Organization of the Islamic Conference: *Draft resolution, Defamation of Islam*, Agenda Item Racism, Racial Discrimination, Xenophobia and all Forms of

because “in the past few years, there had been new manifestations of intolerance and misunderstanding, not to say hatred, of Islam and Muslims in various parts of the world. It was to be feared that those manifestations might become as widespread and endemic as anti-Semitism had been in the past.”<sup>86</sup> During discussions on the draft resolution, representatives from Germany, India, and Japan took issue with the resolution singling out Islam while other religions continue to be subjected to discrimination, intolerance, and persecution.<sup>87</sup> The resolution was eventually amended to include all religions and was adopted by the Commission on Human Rights (and its successor Human Rights Council) every year between 1999 and 2010 and by the General Assembly between 2005 and 2010.<sup>88</sup>

After the defamation resolutions began to be introduced, there was a shift in the international community’s methods of combatting religious intolerance and promoting religious harmony. The shift followed a similar trajectory to Britain in its repeal of its blasphemy law – to apply the law to followers of all religions, not just the majority religion; to protect individuals rather than religious institutions; and to establish definitions and a high threshold for what actions are considered illegal. The result promotes religious harmony through positive, proactive measures that respect human rights rather than through restrictions on the freedom of expression or the freedom to manifest one’s religion.

### ***Freedom Focused on Individuals Rather than Religion***

Blasphemy laws prohibit speech and acts against religious tenets, leaders, and holy books. As such, proponents of blasphemy

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Discrimination, E/CN.4/1999/L.40 (20 April 1999).

86 United Nations, Commission on Human Rights, *Summary Record of the 61st Meeting, 55th Session, held on Thursday, 29 April 1999*, E/CN.4/1999/SR.61 (19 October 1999), 1.

87 Ibid., 3-5.

88 Paul Marshall and Nina Shay, *Silenced: How apostasy and blasphemy codes are choking freedom worldwide* (Oxford University Press: New York, 2011), 584.

laws usually consider there to be a conflict between the freedom of expression and the freedom of religion. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, AmbeyiLigabo, expounds, “in recent years, and with increased frequency ... an alleged dichotomy between the right to freedom of opinion and expression and the right to freedom of religion or belief has been purported. In particular, it has been argued that the dogmatic use of freedom of expression as a fundamental human right has undermined people’s ability to fully enjoy other human rights, in particular freedom of religion.”<sup>89</sup> Many human rights experts have spoken out against this idea.

In 2006, the Human Rights Council asked the special rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to publish a joint report after hundreds of people died in the protests against Danish newspaper Jyllands-Posten’s published cartoons of Muhammad. Asma Jahangir, the freedom of religion rapporteur made it clear it is the individual who is to be protected by international law, stating, “the right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs.”<sup>90</sup> Special Rapporteur Ligabo echoes this sentiment, stating defamation laws “are designed to protect individuals, not abstract values or institutions.”<sup>91</sup> Therefore, religions do not receive the same protection as individuals. Jahangir expounds, “freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their

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89 United Nations, Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, AmbeyiLigabo*, A/HRC/7/14 (28 February 2008), 63.

90 United Nations, Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, DoudouDiène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, A/HRC/2/3 (20 September 2006), 38.

91 Human Rights Council, *Report of the Special Rapporteur*, A/HRC/7/14 (28 February 2008), 40.

religion itself protected from all adverse comment.”<sup>92</sup> As such, there is no conflict between the freedom of expression and the freedom of religion.

In fact, there is widespread agreement by international human rights experts these rights actually reinforce each other. The Human Rights committee explains, “the freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights.”<sup>93</sup> Further, Jahangir explains the interdependency of human rights: “the right to freedom of religion or belief needs other human rights to be fully exercised, including the right to freedom of association or the right to freedom of expression. The right to freedom of expression as it is protected by international standards, including article 19 of the Covenant, constitutes an essential aspect of the right to freedom of religion or belief.”<sup>94</sup> Former Deputy High Commissioner for Human Rights, Kyung-wha Kang went a step further, saying, “freedom of religion cannot exist if freedom of expression is not respected.”<sup>95</sup> This sentiment is echoed in the Rabat Plan of Action.<sup>96</sup>

### ***Need for Definitions and High Thresholds***

Because the freedom of expression is essential to the freedom of religion, the international community began to see a need to define the terms and thresholds in article 20. The High Commissioner for Human Rights contended, “it is difficult to extract firm conclusions on the rules

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92 Human Rights Council, *Report of the Special Rapporteur*, A/HRC/2/3 (20 September 2006), 37.

93 Human Rights Committee, *General Comment 34*, CCPR/C/GC/34(12 September 2011), 4.

94 Human Rights Council, *Report of the Special Rapporteur*, A/HRC/2/3 (20 September 2006), 41.

95 United Nations, “Striking a balance between freedom of expression and the prohibition of incitement to hatred,” *Office of the High Commissioner for Human Rights*, 23 October 2012. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/Strikingabalancebetweenfreedomofexpression.aspx>

96 Human Rights Council, *Rabat Plan of Action*, A/HRC/22/17/Add.4(11 January 2013), Page 7.

governing hate speech from the cases.”<sup>97</sup> While there was a general rule that freedom of expression protects ideas that shock and offend<sup>98</sup> and strong criticism of religion,<sup>99</sup> concepts such as incitement were not well defined.

Human rights experts recognize the thresholds would be subjective based on states’ margin of appreciation but that there should still be guidelines on objective legal criteria for states to prevent arbitrary application of incitement standards. In a report on the freedom of opinion and expression, Rapporteur Ligabo provided the following requirements for incitement legislation, “it should not justify any type of prior censorship, it should be clearly and narrowly defined, it should be the least intrusive means in what concerns limitations to freedom of expression and it should be applied by an independent judiciary.”<sup>100</sup> Further requirements were developed by experts in 2008 during a seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights held in Geneva. These objective criteria include:

- The public intent of inciting discrimination, hostility, or violence must be present for hate speech to be penalized;
- Any limitations on freedom of expression should be clearly and narrowly defined and provided by law. In addition, they must be necessary and proportionate to the objective they propound to achieve, i.e. prohibiting hate speech;
- Limitations should not threaten the exercise of the right itself.

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97 Human Rights Council, *Incitement to racial and religious hatred*, A/HRC/2/6 (20 September 2006), 41.

98 See *Handyside v. United Kingdom*, European Court of Human Rights, (7 December 1976), Application No. 5493/72, 49. And *Arslan v. Turkey*, European Court of Human Rights, (8 July 1999), Application No. 23462/94, 44.i.

99 Human Rights Council, *Incitement to racial and religious hatred*, A/HRC/2/6 (20 September 2006), 45.

100 Human Rights Council, *Report of the Special Rapporteur*, A/HRC/7/14 (28 February 2008), 65.

The least intrusive means insofar as freedom of expression is concerned should be used in order to prevent a chilling effect;

- The adjudication of such limitations should be made by an independent and impartial judiciary.<sup>101</sup>

The seminar sought to better understand the line between freedom of expression and combating incitement to hatred with regard to religious issues, specifically in increasingly multicultural societies. During the seminar, “freedom of expression was characterized by most observers as not the problem but rather part of the solution; it was felt that free confrontation of ideas and exposure of intolerance should prevail over prohibition and censorship. There was broad consensus that the concepts of ‘incitement’ and ‘discrimination’ were preferable to the notion of ‘defamation of religions.’”<sup>102</sup> In other words, rather than promote an international blasphemy or ‘defamation of religions’ law that restricts the freedom of expression, the international community should focus on article 20 on incitement. There was thus a fundamental shift in focus stemming from the seminar, a shift that better promotes human rights and protects religious minorities.

The shift in focus meant the defamation resolutions began to lose support. That same year, the resolution “passed only by plurality. For the first time, there were more “no” votes and abstentions than there were “yes” votes.”<sup>103</sup> In 2009, Egypt and the United States cosponsored

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101 “Freedom of expression and incitement to racial or religious hatred,” *Joint statement by Githu Muigai, UN Special Rapporteur on Contemporary Forms of Racism, Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, and Frank La Rue, UN Special Rapporteur on Freedom of Opinion and Expression*, (22 April 2009), 3. Available at <http://www.ohchr.org/Documents/Issues/Religion/SRJointstatement22April09.pdf>

102 United Nations, Human Rights Council, Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, (Geneva, 2-3 October 2008),” *Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/10/31/Add.3 (16 January 2009), 57.

103 L. Bennett Graham, “Defamation of Religions: The End of Pluralism?”



Resolution 12/16 on ‘freedom of opinion and expression.’ The resolution “*expresses* its concern that incidents of racial and religious intolerance, discrimination and related violence, as well as of negative racial and religious stereotyping continue to rise around the world, and condemns, in this context, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>104</sup> The nonbinding resolution was adopted without a vote.

Without adequate support for the defamation resolutions to pass, OIC did not put forward another resolution in 2011. Instead, the organization proposed Resolution 16/18 on ‘Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief.’ The resolution calls on states to implement the following actions to foster a domestic environment of religious harmony and tolerance, as advocated in a speech made by the Secretary General of the OIC before the Human Rights Council:

- a) Encouraging the creation of collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects in the fields of education, health, conflict prevention, employment, integration and media education
- b) Creating an appropriate mechanism within Governments to, inter alia, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation
- c) Encouraging training of Government officials in effective outreach strategies
- d) Encouraging the efforts of leaders to discuss within their

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*Emory International Law Journal* 23, no. 1 (2009): 72.

104 United Nations, Human Rights Council, *Resolution 12/16: Freedom of opinion and expression*, A/HRC/RES/12/16 (12 October 2009), 4. Available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement>

communities the causes of discrimination, and evolving strategies to counter these causes

- e) Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence
- f) Adopting measures to criminalize incitement to imminent violence based on religion or belief
- g) Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building
- h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence<sup>105</sup>

The resolution reflects the global shift to promote religious harmony not through restricting freedom of expression but through combating incitement based on article 20. OIC has put forward similar resolutions in the Human Rights Council and General Assembly every year since and they receive widespread support. Their 2016-2025 Plan of Action focuses on incitement rather than defamation and promotes Resolution 16/18.<sup>106</sup>

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105 Entire resolution included in Annex. United Nations, Human Rights Council, *Resolution 16/18: Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*, A/HRC/RES/16/18 (12 April 2011), 5.A-H. Available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf)

106 Organization of Islamic Cooperation, *OIC-2025 Program of Action*, 2016. Available at <http://www.oic-oci.org/docdown/?docID=16&refID=5>

In summary, the shift in focus of the international community away from international blasphemy or defamation laws and towards combating incitement to hatred demonstrates the many reasons blasphemy laws are flawed. Blasphemy laws discriminate against religious minorities and violate their rights to freedom of religion. They protect religions instead of individuals. Their lack of clear definitions allow them to be misused in ways that violate the rights of individuals to the freedom of expression. They do not promote religious harmony; in fact, they are used to provoke violence. They should be repealed. States should instead implement legislation combating incitement to hatred. These laws prohibit the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Eliminating advocacy of hatred should be the main purpose of the blasphemy laws to begin with, and incitement laws are meant to protect individuals from advocacy that would incite actions against them. Incitement laws combat religious intolerance and promote religious harmony in ways that respect human rights and protect religious minorities.

## **Conclusion**

While there is a margin of appreciation in how states implement human rights, it is not so wide as to allow for the systematic banning of minority religions because their beliefs differ from the majority of the state. Every state analyzed in this report implements their country's blasphemy law in a way that is illegal under international human rights law. Each state ratified the International Covenant on Civil and Political Rights and further codified the rights of their citizens to the freedom of religion and expression. However, they also have blasphemy laws which are used to violate these rights. While international law allows for restrictions on the manifestation of religion and the freedom of expression under certain circumstances, the implementation of the blasphemy laws goes well beyond these allowances. Further, Indonesia's blasphemy law restricts not only the freedom to manifest religion but also the freedom of religion, which is a human right that cannot be limited under any circumstances.

Both civilians and authorities misuse the laws extensively, violating the rights of fellow citizens and religious minorities. Blasphemy laws are used to achieve economic, social, and political ends and this misuse has consequences for the freedom of religion and the rights of minorities, the freedom of expression, and the rule of law. These laws are implemented in a way that protects only majority religions at the expense of all others, disproportionately impacts religious minorities, and emboldens hardline groups to take actions against religious minorities. The use of these laws to silence criticism and settle disputes encourages self-censorship and violates the freedom of expression. The rule of law is inhibited when mobs or the threat of large demonstrations are used to strong-arm authorities and influence judicial and political decisions. It is inhibited further by the willingness of groups to resort to violence and vigilante justice and the impunity they receive from government authorities who refuse to punish perpetrators of hostility and violence.

The criminalization of blasphemy is on the decline worldwide, and states continue to repeal their blasphemy laws. States' reasons for repealing their blasphemy laws reflect the same reasons the international community shifted its focus away from international blasphemy or defamation laws and towards combating incitement to hatred. Actors in both circumstances recognize the need to protect all religions without discrimination, the need to focus protection on the individual rather than religions or belief systems, and the need to clearly define terms and establish high thresholds for restricting expression. The result is the same – combating religious intolerance and promoting religious harmony in a way that respects human rights and protects religious minorities. Indonesia must follow the lead of the international community to redeem its reputation as a leader in Southeast Asia of democracy and pluralism.

## **Recommendations**

Based on these findings, Setara Institute recommends the government take the following actions:

### *Repeal Blasphemy Law (Law No. 1/1965 on defamation of religion)*

The government must promote religious harmony and public order in a way that does not discriminate against its citizens and promote hostility and violence towards them. The President and the People's Legislative Assembly must immediately repeal the blasphemy law. They should also remove all articles referencing blasphemy and expanding actions considered blasphemous from the draft law on Eliminating Discrimination of Religion/Beliefs (*Penghapusan Diskriminasi Agama/ Keyakinan*).

The President of the Republic of Indonesia must recognize the state's blasphemy law is used to target religious minorities and violate the fundamental rights of the citizens the President is sworn to protect. It is against international human rights law and its implementation violates the rights of Indonesian citizens to the freedom of religion and expression. It emboldens actors who perpetrate hostility and violence against religious minorities and creates a climate of fear in minority communities. Its use goes against the spirit of the state's motto 'Unity in Diversity.' The President, recognizing these facts, must agree with international experts and special rapporteurs who recently expressed that blasphemy laws have no place in Indonesia as a state with a tradition of pluralism and tolerance.

### *Promote the Rule of Law*

In Indonesia, the response to attacks against religious minorities is to close their houses of worship or relocate them against their will instead of bringing the perpetrators of the violence to justice. In the name of promoting 'public order,' local authorities let the perpetrators and instigators of violence remain free while punishing the victims. This creates a climate of impunity which only serves to further embolden these groups who promote discrimination and hostility against religious minorities. Those hardliners who are emboldened by the existence of blasphemy laws to take actions against religious minorities are further justified in their actions when they receive no legal consequences. While impunity justifies the actions of perpetrators of hostility and violence, it instills fear in the religious minorities who continue to have their

rights violated and often must live in communities with both those who subjected them to violence and the police who stood by and watched it happen.

Indonesian authorities should work to protect religious minorities by enforcing the rule of law and punishing perpetrators of hostility and violence. The government must stop responding to acts of hostility and violence perpetrated against religious minorities with actions that restrict their freedom of religion. Authorities must instead hold the perpetrators accountable.

There is no room for vigilante justice in a democratic society if it is to be based on the rule of law. Perpetrators of hostility and violence must be brought to account. There exists a climate of impunity for perpetrators of violence when authorities refuse to punish them for fear of provoking hostility on a larger level. The rule of law cannot be said to exist in a country where those who break the law are systematically not held accountable.

### *Refine and Enforce Incitement to Hatred Legislation*

The People's Legislative Assembly must review and revise its legislation on combating incitement to hatred to prohibit any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. These laws must clearly and narrowly define the terms 'advocacy,' 'hatred,' and 'incitement,' and comply with the ICCPR, the Camden Principles on Freedom of Expression and Equality, and the Rabat Plan of Action.<sup>107</sup>

Indonesia's current incitement laws can be found in the penal code and Law No. 11/2008. Penal Code article 156 prohibits publicly giving expression "to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia."<sup>108</sup> The same

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<sup>107</sup> The Camden Principles and Rabat Plan of Action are included in the Annex.

<sup>108</sup> Republic of Indonesia, *Indonesian Penal Code*, 156. Available at [https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf)

article defines groups as “each part of the population of Indonesia that distinguishes itself from one or more other parts of that population by race, country of origin, religion, origin, descent, nationality or constitutional condition.”<sup>109</sup> Violators are subject to a maximum four years in prison or a maximum fine of 4,500 rupiah (\$0.34). Article 157 prohibits disseminating writings or portraits for the same reasons with a maximum penalty of imprisonment of 2.5 years or a fine of 4,500 rupiah (\$0.34).<sup>110</sup> These articles are found on either side of article 156a, the state’s blasphemy law.

Law No. 11/2008 Concerning Electronic Information and Transactions criminalizes incitement online. Article 28 subjects to a penalty of up to six years imprisonment and up to one billion rupiah (\$75,046) “any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and intergroups [*Suku, Agama, Ras, dan Antargolongan/ SARA*].”<sup>111</sup> Like the blasphemy law, penal code articles 156 and 157 and Law No. 11/2008 article 28.2 are misused and must be revised. They are used to punish religious minorities and individuals who express different interpretations of religion. Mass demonstrations are also used to achieve convictions by pressuring arrests and convictions, inhibiting the rule of law.

The People’s Legislative Assembly must revise the laws to clearly protect religious minorities, because the law is meant to protect individuals rather than religions. The government must not allow the language to be interpreted in a way that further restricts the freedom of expression, and the law must be implemented objectively, without targeting religious minorities. The law must not prohibit speech that simply offends religious sensibilities or deviates from the teaching of

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109 Ibid.

110 Ibid., 157.

111 Republic of Indonesia, *Law of the Republic Of Indonesia Number 11 Of 2008 Concerning Electronic Information and Transactions*, 2008, acts prohibited at 28.2 and punishment at 45.2. Available at <https://www.bu.edu/bucflp/files/2012/01/Law-No.-11-Concerning-Electronic-Information-and-Transactions.pdf>

majority religious sects. Further, following a minority religious sect does not advocate hatred or constitute incitement.

### *Implement a Multilateral Approach*

Indonesia's repeal of its blasphemy law and its revision of legislation combating incitement to hatred are a major first step towards promoting religious harmony in a way that protects the human rights of its citizens. These changes must be accompanied by a multilateral approach to achieve Unity in Diversity,<sup>112</sup> because discrimination and hostility are merely external manifestations of the much larger issues of prejudice and intolerance.<sup>113</sup> Therefore, efforts to combat incitement to hatred and violence must be accompanied by the following social and political changes, which engage actors throughout society:

- Government actors: Local, regional, and national government actors must promote pluralism, equality, and non-discrimination. The national government must provide oversight of local and regional government regulations which might be discriminatory. The government must protect religious minorities by promoting equity and empowering minority communities. This includes ensuring their access to education, employment, healthcare, housing, legal systems and public services. The government should ensure every Indonesian has complete access to an identity card (KTP) regardless of their religious affiliation. Members of religious minorities should not have to convert to one of the recognized six religions to receive access to public services.<sup>114</sup> The government must also ensure access of religious minorities

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112 Recommendations for this multilateral approach inspired by "Security & Protection of Ahmadiyya in Indonesia: Policy tools to reduce radicalization against Ahmadiyya," *Fahmina Institute, Farsight, and Setara Institute for Democracy and Peace*, March 2017. and Human Rights Council, *Rabat Plan of Action*, A/HRC/22/17/Add.4 (11 January 2013), page 13.

113 "Freedom of expression and incitement," *Joint statement*, (22 April 2009), 3.

114 Kiki Siregar, "As homelands devastated, Indonesian tribe turns to Islam," *The Jakarta Post*, 16 June 2017. Available at <http://www.thejakartapost.com/news/2017/06/16/as-homelands-devastated-indonesian-tribe-turns-to-islam.html>



to participate in public and political life including holding public office.

- Law enforcement at local level: Local authorities must enforce the rule of law by arresting those that perpetrate hostility and violence against religious minorities. The government should also provide training for local law enforcement on how to build trust with religious minority communities. If these communities do not trust the police or do not expect them to investigate complaints, they are more likely to not report incidences of abuse against their communities. This is not only due to the fact that they will likely not receive assistance, but also because they do not feel safe attracting additional attention to themselves.
- Civil society: Stakeholders and civil society organizations should continue to use their unique position to build bridges between religious minority communities and government actors, local authorities, and opposition groups. Civil society organizations at the local, regional, and national levels should continue to promote pluralism and engage Indonesia's tolerant majority.
- Religious leaders: Religious leaders should actively promote tolerance and pluralism while speaking out against fundamentalism and groups that advocate religious hatred that constitutes incitement to discrimination, hostility, and violence.
- Larger society: The government must promote respect and tolerance in all aspects of society. Actions include improving access to education and promoting literacy. The government must also promote cross-cultural understanding and engagement between religious communities in safe spaces.

As SETARA has said in the past, limiting religious freedom to achieve religious harmony is a fundamental misunderstanding of the underlying social issues. Harmony cannot be achieved if religious

minorities continue to experience discrimination and violence. It is essential to place the human rights of individuals at the center of efforts to achieve religious harmony.<sup>115</sup> One thing is certain: if the government fails to act, Indonesia's citizens will continue to face persecution and violence and Unity in Diversity will be forever out of the country's grasp.

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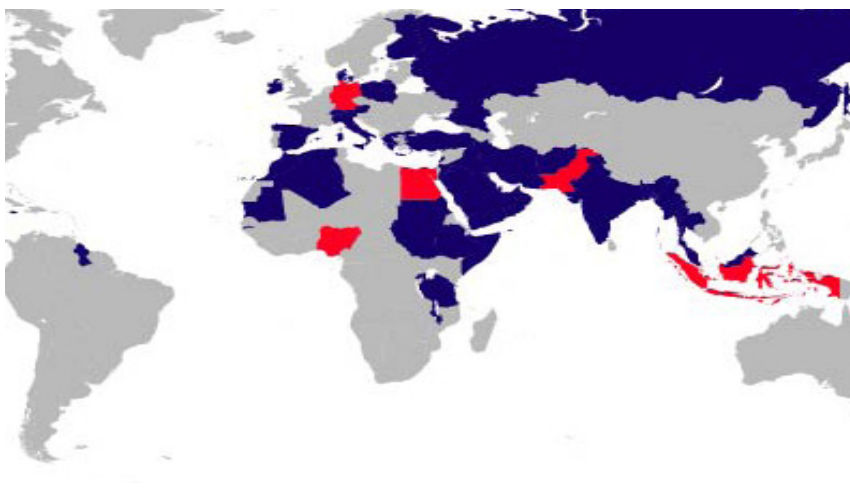
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115 Ismail Hasani, ed., *Penghapusan Diskriminasi Agama/Keyakinan*, (Jakarta: Pustaka Masyarakat Setara, 2011), 128.

# Annex 1: Country Reports

Annex 1 contains in-depth country reports for Egypt, Germany, Indonesia, Nigeria, and Pakistan. The country reports survey domestic legislation, news reports, and civil society documentation to provide a more in-depth analysis of the state's blasphemy law. The selection of countries analyzed is meant to represent a range – of contexts and norms; of methods and reasons for implementing blasphemy laws; and of geographical distribution. All of the countries analyzed have ratified the International Covenant on Civil and Political Rights, the main treaty analyzed in this report.

Figure 4: Selected Countries



Each country report begins with comparative demographic and economic data to provide context. This is followed by an explanation of the country’s human rights obligations under international law and any domestic laws further solidifying the rights of religious minorities and the freedom of religion and expression. Next, each state’s blasphemy laws are described and their implementation analyzed to determine both their legality in international law and their implications on the freedom of religion and the rights of minorities, the freedom of expression, and the rule of law.

Egypt



Population <sup>5</sup>	92,128,271	
Population Density	91.3 persons per km <sup>2</sup>	
GDP Per Capita <sup>6</sup>	\$3,514.50	
Gini Index <sup>7</sup>	30.8	
Human Development Index <sup>8</sup>	0.691	4
Literacy <sup>9</sup>	Youth: 73.9%, 0.81 GPI Adult: 89.3%, 0.93 GPI	
Independence	1922, from United Kingdom	
Region	Middle East/North Africa	

More than 90% of the Arab Republic of Egypt’s 90 million citizens are Muslim, the vast majority of which adhere to Sunni Islam. There are also small communities of Shi’as (estimated at 800.000 to 2 million),

Quaranists, and Ahmadis. Ten percent of the population are Christians, with approximately 8% belonging to the Coptic Orthodox Church and 2% belonging to other Christian denominations. While there are higher percentages of Christians in areas of Upper Egypt and sections of Alexandria and Cairo, they are not concentrated in specific locations. There are also small communities of Baha'is, Jehovah's Witnesses, and Jews.<sup>116</sup>

### ***Egypt's International Obligations and Blasphemy Law***

Egypt has a responsibility under international law to protect religious freedom and religious minorities. Egypt signed the ICCPR in 1967 and ratified it in 1982 with no reservations. This ratification bound the state by international law to abide by the articles of the treaty. This section will explore the state's domestic laws on human rights and will then detail the state's blasphemy law.

<b>Treaty Name</b>	<b>Signature Date</b>	<b>Ratification, Accession(a), Succession(d) Date</b>
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		25-Jun-1986 (a)
International Covenant on Civil and Political Rights (CCPR)	04-Aug-1967	14-Jan-1982
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)	Not Signed/Ratified	

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116 "People and Society: Egypt," *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017. All CIA World Factbook pages available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html> and United States, Department of State, Bureau of Democracy, Human Rights, and Labor, International Religious Freedom Report: Egypt, 2015. All United States Department of States International Religious Freedom Reports available at <https://www.state.gov/>

Treaty Name	Signature Date	Ratification, Accession(a), Succession(d) Date
Convention for the Protection of All Persons from Enforced Disappearance (CED)	Not Signed/Ratified	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	16-Jul-1980	18-Sep-1981
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	28-Sep-1966	01-May-1967
International Covenant on Economic, Social and Cultural Rights (CESCR)	04-Aug-1967	14-Jan-1982
Convention on the Rights of the Child (CRC)	05-Feb-1990	06-Jul-1990

*Source: United Nations, Ratification Status by Country, Office of the High Commissioner for Human Rights.*

### *Freedom of Religion*

Egypt adopted a new constitution in 2014, its second since the country's revolution in 2011 during the Arab Spring. The constitution declares the freedom of belief to be absolute while the practice of religious rituals and establishment of places of worship are to be organized by law.<sup>117</sup> Article 53 on equality declares, "citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against on the basis of religion, belief, sex, origin, race, color, language, disability, social class, political or geographical affiliation, or for any other reason."<sup>118</sup> The same article provides that discrimination and

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<sup>117</sup> The Arab Republic of Egypt, *Constitution of the Arab Republic of Egypt*, 2014, 64. Available at [https://www.constituteproject.org/constitution/Egypt\\_2014.pdf](https://www.constituteproject.org/constitution/Egypt_2014.pdf)

<sup>118</sup> Ibid., 53.

incitement to hate are both crimes punishable by law.

The constitution declares Islam as the state religion and Sharia as the principle source of legislation.<sup>119</sup> However, it clarifies that “the principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders.”<sup>120</sup> The state recognizes only these three religions: Islam, Christianity, and Judaism. While the article does not specify allowable limitations for this right, presidential decrees and laws restrict the rights of religious minorities in the name of ‘public order’ (discussed further below).

### *Freedom of expression*

The constitution guarantees the freedom of thought and opinion of Egypt’s citizens. It states, “all individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication.”<sup>121</sup> The article does not specify allowable limitations for the right to freedom of expression. Despite these provisions, there are several legal constrictions on the expression of both individuals and the press.

### *Blasphemy Law*

Egypt relies on legislation to prosecute blasphemy. Egyptian Penal Code article 98(f) provides for a term of imprisonment between six months and five years or a fine between 500 and 1,000 Egyptian pounds (\$28–\$56) for individuals convicted of exploiting and using “religion in advocating and propagating by talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition and division or disdaining and contempting any of the heavenly religions

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119 Ibid.,2.

120 Ibid.,3.

121 Ibid., 65.

or the sects belonging thereto, or prejudicing national unity or social peace.”<sup>122</sup> The ‘heavenly religions’ include only the state-recognized religions of Christianity, Islam, and Judaism. Therefore, article 98(f) only prohibits blasphemy against these three religions.

Egypt also has several additional laws which commonly accompany blasphemy laws. Article 160 of the Penal Code outlaws breaking, destroying, ravaging, or violating the sanctity of religious buildings, symbols, or objects that contain a profound reverence and sanctity for members of a creed or group of people. Violations are subject to imprisonment and a fine of 100 to 500 Egyptian pounds (\$6–\$28).<sup>123</sup> Article 161 prohibits the printing and publishing of holy books whose text is altered in a way that changes the book’s original meaning. It also prohibits public imitation of a religious celebration with the aim of ridicule.<sup>124</sup> While there is no law against proselytization, a 2008 court decision determined conversion from Islam (by individuals who were born Muslim) is apostasy based on the principles of Sharia. Individuals who were born into other religions and converted to Islam are free to then convert from the religion.<sup>125</sup>

Egypt primarily relies on Penal Code article 98(f) to prosecute blasphemy. The law is applied broadly and there was a significant increase in formal prosecutions in 2015 (the last year for which data is available), which is considered a result of the growing power of Islamists following the country’s revolution in 2011. In 2015, 20 persons were prosecuted and eight convicted. The implementation of the law has broad implications for religious minorities and the freedom of religion.

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122 The Arab Republic of Egypt, *The Penal Code: Act No. 58 01 of 1937*, 98(f).

123 Ibid., 160.

124 Ibid., 161.

125 For more information, see United States, Department of State, *International Religious Freedom Report: Egypt*, 2015.



## ***Implications on the Freedom of Religion and Religious Minorities***

The government actively refuses to recognize religions outside of the 'heavenly revealed' three and bans others outright. Specific minority sects and religions discriminated against due to their lack of recognition include Ahmadis and Mormons. A 1960 presidential decree banned Jehovah's Witnesses and Law 263 of 1960 banned Baha'is. Both Jehovah's Witnesses and Baha'is were banned in the name of 'public order.'

Egypt's constitution does not enumerate the goals for which limitations on the freedom of religion and freedom of expression can be placed. However, the Cairo Administrative Court outlined these goals in a 2008 decision in the case of Hasan Husni Nagaib 'Abd-al-Masih, a Baha'i. The court explained "the freedom to practice religious rites is subject to limits, especially the maintenance of public order, public morals, and conformity to the provisions and principles of Islam, which forbid Muslims to convert."<sup>126</sup> While public order and public morals are legitimate goals for which to limit the manifestation of religion, 'conformity to the provisions and principles of Islam' is not.

While public order and public morals are legitimate goals for restricting the manifestation of religion in international law, the question remains: is the restriction necessary and proportional to achieve those goals. Several cases have established permissible acts for limiting the freedom of expression and religion for the legitimate and necessary purpose of 'public order.' The ECHR has accepted 'public order'

as a justification for the law punishing the distribution of material to servicemen seeking to persuade them to disobey their orders,<sup>127</sup> as

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<sup>126</sup> *Hasan Husni Nagaib 'Abd-al-Masih vs. the Minister of Interior* (Action No. 12780 of JY61). Found in United States, Department of State, *International Religious Freedom Report: Egypt*, 2008.

<sup>127</sup> *X v. United Kingdom*, 22 European Commission on Human Rights 27 (1981), (6084/73) DR 3. 62. Found in Sieghart, *The international law of human rights*, 95.

well as for the refusal to allow a prisoner to grow a beard which would have made him more difficult to identify, and the refusal to allow him a prayer chain.<sup>128</sup> The protection of public order may also justify limitations on the right to hold religious services on a public highway, at all events in a country containing religious divisions.<sup>129130</sup>

Other limitations permissible for ‘public order’ include “conscientious objection to military service or compliance with government regulations on changes to a person’s name.”<sup>131</sup> These cases all illustrate a high threshold for restricting the freedom to manifest one’s religion to maintain ‘public order.’ In the case of *HasanHusniNaguib ‘Abd-al-Masih vs. the Minister of Interior*, the Court defined ‘public order’ as “the official religion being Islam, that most of the population professes Islam, and that Islamic law is the primary source of legislation.”<sup>132</sup> The extensive nature of this definition does not meet a high enough threshold for restricting the freedom to manifest religion, and its sole focus on Islam discriminates against religious minorities both in print and in application.

The implementation of Egypt’s blasphemy law disproportionately impacts followers of minority religions. On 15 March 2010, Egypt’s State Security police force launched a campaign against several members of the Ahmadiyya faith. The police arrested nine individuals who were held in detention without charges for six weeks. In April, they were convicted under article 98(f) for “showing contempt for the

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128 *X. v Austria* (1753/63) CD 16. 20. Found in Sieghart, *The international law of human rights*, 95.

129 Decision of January 19, 1962, HogeRaad, Netherlands (NJ 1962, 417). Found in Sieghart, *The international law of human rights*, 95.

130 Entire passage from Sieghart, *The international law of human rights*, 95.

131 Manfred Nowak & Tanja Vospernik, “Permissible Restrictions on Freedom of Religion or

Belief” in *Facilitating Freedom of Religion and Belief: A Deskbook* eds. Tore Lindholm, W. Cole Durham Jr. & Bahia G. Tahzib-Lie, (The Hague: MartinusNijhoff Publishers, 2004), 152. Found in Crouch, “Law and Religion in Indonesia,” 42.

132 *HasanHusniNaguib ‘Abd-al-Masih (a Bahá’í) vs. the Minister of Interior* (Action No. 12780 of JY61). Found in United States, Department of State, *International Religious Freedom Report: Egypt*, 2008.

Islamic religion.”<sup>133</sup> When questioned, some of the detainees claimed the police tortured them to compel their confession to the charges. A judge ordered the release of three of the detainees on 4 June and the rest on 7 June. The Ahmadis served more than 80 days in detention without charges being filed.<sup>134</sup>

Shi’as have also been targeted for their beliefs. On May 17, 2015, a retired doctor and two individuals were convicted of blasphemy. The prosecution claimed the two individuals transported 54 books and 100 CDs containing Shi’a teachings to the retired doctor in 2013. The men were convicted of denigrating religions and “adhering to the Shi’a faith.” A DaqahliaTalkha Appellate Misdemeanor Court sentenced the doctor to a six-month prison term and the two individuals, who were tried in absentia, to the maximum sentence of five years imprisonment.<sup>135</sup>

## ***Conclusion***

Egyptian authorities have taken measures to promote religious tolerance. During the state’s most recent UPR process in 2014, Egypt accepted seven recommendations to encourage initiatives aimed at promoting cultural diversity, dialog, religious tolerance, respect, and a better understanding between all peoples and religions. President Abdel Fattah al-Sisi took measures in 2015 to promote religious tolerance including calling on imams and scholars to promote tolerance, visiting a Christian church during Christmas, and constructing a church in honor of Christian Copts who had been killed in Libya.<sup>136</sup> Despite these efforts, violence and blasphemy charges rose during the year. The escalation in blasphemy cases and the tightening of restrictions by the government

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133 “After 80 Days of Detention: State Security Prosecutor Releases All Ahmadi Detainees,” *Egyptian Initiative for Personal Rights*, 8 June 2010. Available at <https://eipr.org/en/press/2010/06/after-80-days-detention-state-security-prosecutor-releases-all-ahmadi-detainees-eipr>

134 United States, Department of State, *International Religious Freedom Report: Egypt*, 2010.

135 United States, Department of State, *International Religious Freedom Report: Egypt*, 2015.

136 Ibid.

have also led to an increase in self-censorship in the country, negatively impacting the freedom of expression.

Egypt's blasphemy law is discriminatory both because it only applies to the three state-recognized religions and because it disproportionately impacts religious minorities. These minorities, convicted simply for being minorities, have been subjected to torture and held in detention without charges for months. The law does not meet international standards because it is not implemented in a way that is necessary and proportional to protect public order, the goal for which it is intended. The government should respect the rights of religious minorities by following their international commitment to shift away from blasphemy and toward combating incitement to hatred.

In 2009, Egypt cosponsored Resolution 12/16 on 'freedom of opinion and expression' with the United States. This resolution represented a turning point in the global discussion that shifted away from blasphemy laws and towards combating incitement to hatred. Recently, Egyptian lawmaker AmnaNosseir has taken steps to amend the state's blasphemy law, stating "I have suggested ... a draft law amending some provisions of Law 58 of 1937, by deleting the text of paragraph (f) of Article 98, as it contradicts the philosophy and the provisions of the Egyptian constitution."<sup>137</sup> While Egypt is currently in the midst of a revolution which may change the state's philosophy moving forward, authorities should consider following Nosseir's lead. The government should abolish the blasphemy law and follow their international commitment as a cosponsor of Resolution 12/16 and work to combat incitement to hatred as a way to promote religious harmony while upholding human rights and protecting the state's religious minorities.

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137 Quote found in Marina Barsoum, "Egypt's anti-blasphemy law: Defence of religion or tool for persecution?" *Ahram*, 15 May 2016. Available at <http://english.ahram.org.eg/NewsContent/1/151/216896/Egypt/Features/Egyptys-antiblasphemy-law-Defence-of-religion-or-to.aspx>

## Germany



Population	82,175,684
Population Density	230.1 persons per km2
GDP Per Capita	\$41,936.10
Gini Index	28.3
Human Development Index	0.926
Literacy	Data Not Available
Independence	Not Applicable
Region	Europe and Central Asia

The majority of the 82 million citizens living in the Federal Republic of Germany are Christian, with 29% adhering to Roman Catholicism, 27% to Protestantism, and 1.9% to Orthodox Christianity. Muslims represent 4.4% of the population and 36% have either no religion or are members of unrecorded religious groups.<sup>138</sup> There are also small groups of Buddhists, Hindus, Jehovah's Witnesses, and Jews. Germany's government actively promotes pluralism, and the country's history and experience of the holocaust has led authorities to take issues of incitement to hatred and protection of minorities exceptionally seriously.

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<sup>138</sup> "People and Society: Germany," *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017.

Beginning in 2015, Germany instituted an open-door policy for refugees and asylum seekers as millions sought safety in Europe after harrowing journeys across the Mediterranean or through Southeast Europe. Germany actively encouraged the integration of groups seeking refuge from civil wars in the Middle East and from economic turmoil in some African countries.<sup>139</sup> While the new arrivals are not yet included in the population figures above, officials and NGOs estimate Muslims make up the majority of the more than one million refugees and asylum seekers which now reside in Germany.<sup>140</sup>

### Germany’s International Obligations and Blasphemy Law

Germany has a responsibility under international law to protect religious freedom and religious minorities. Germany signed the ICCPR in 1968 and ratified it in 1973 with no reservations. This ratification bound the state by international law to abide by the articles of the treaty. This section will explore the state’s domestic laws on human rights and will then detail the state’s blasphemy law.

Treaty Name	Signature Date	Ratification, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	13-Oct-1986	01-Oct-1990
International Covenant on Civil and Political Rights (CCPR)	09-Oct-1968	17-Dec-1973
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)	13-Feb-1990	18-Aug-1992

139 Stefan Trines, “Lessons From Germany’s Refugee Crisis: Integration, Costs, and Benefits,” *World Education News & Reviews*, 2 May 2017. Available at <http://wenr.wes.org/2017/05/lessons-germanys-refugee-crisis-integration-costs-benefits>

140 United States, Department of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report: Germany*, 2015.

<b>Treaty Name</b>	<b>Signature Date</b>	<b>Ratification, Accession(a), Succession(d) Date</b>
Convention for the Protection of All Persons from Enforced Disappearance (CED)	26-Sep-2007	24-Sep-2009
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17-Jul-1980	10-Jul-1985
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	10-Feb-1967	16-May-1969
International Covenant on Economic, Social and Cultural Rights (CESCR)	09-Oct-1968	17-Dec-1973
Convention on the Rights of the Child (CRC)	26-Jan-1990	06-Mar-1992

*Source: United Nations, Ratification Status by Country, Office of the High Commissioner for Human Rights.*

### *Freedom of Religion*

Germany's constitution guarantees the freedom of religion. Article 140 on the law of religious denominations references the state's prior constitution – the Weimar Constitution – confirming its articles on religious freedom are to be an integral part of Germany's constitution.<sup>141</sup> Articles 136-139 and 141 of the Weimar Constitution provide for the religious freedom of all of Germany's citizens. The constitution requires the separation of church and state, affirming, "civil and civic rights and obligations are neither conditioned nor limited by the exercise of freedom of religion. The exercise of civil or civic rights, the admittance to public offices are independent of religious confession."<sup>142</sup>

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<sup>141</sup> Federal Republic of Germany, *Basic Law for the Federal Republic of Germany*, last amended 23 December 2014, 140. Available at [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0820](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0820)

<sup>142</sup> Federal Republic of Germany, *The Reich Constitution of August 11th 1919*

The constitution further states there is to be no state church and the freedom of citizens to form religious communities is guaranteed.<sup>143</sup> Finally, article 3 provides that all persons shall be equal before the law<sup>144</sup> and “no person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions.”<sup>145</sup> Freedom of religion and equality and nondiscrimination of citizens based on religion are enshrined in Germany’s constitution.

### *Freedom of Expression*

Germany’s constitution also protects the freedom of expression of citizens. Article 5 states “every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources.”<sup>146</sup> The article goes on to clarify these rights can be limited through general laws, “in provisions for the protection of young persons, and in the right to personal honor.”<sup>147</sup> Despite the guarantee on freedom of expression, the state continues to retain its blasphemy law.

### *Blasphemy Law*

Germany’s blasphemy law, dating from 1871, is located in chapter 11 of the country’s Criminal Code on offenses related to religion and ideology. Section 166 states, “whosoever publicly or through dissemination of written materials defames the religion or ideology of others in a manner that is capable of disturbing the public peace, shall be liable to imprisonment not exceeding three years or a fine.”<sup>148</sup> Violators

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(*Weimar Constitution*) with Modifications, 11 August 1919, 136. Available at [http://www.zum.de/psm/weimar/weimar\\_vve.php#First%20Part](http://www.zum.de/psm/weimar/weimar_vve.php#First%20Part)

143 Ibid.,137.

144 Federal Republic of Germany, *Basic Law*, 3.1.

145 Ibid.,3.3.

146 Ibid.,5.1.

147 Ibid.,5.2.

148 Federal Republic of Germany, *German Criminal Code*, last amended 2 October 2009, 166. Available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/criminal\\_code\\_germany\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/criminal_code_germany_en_1.pdf)



are subject to a fine or up to three years imprisonment.

### ***Implications on Freedom of Expression***

While convictions for blasphemy are uncommon, the law stifles freedom of expression. In 2016, Albert Voss was convicted of blasphemy and fined 500 euros (\$573). Voss is an avowed atheist and was charged based on the bumper stickers he attached to his car which poked fun at Christianity, particularly Catholicism. A local person filed a complaint and authorities seized Voss' car. Despite his protests that his right to freedom of expression protected his use of bumper stickers, the court convicted him of defaming Christianity. According to reports, the judge said, "you should have known that what you did is a criminal offence," and "the Pope and the cross are central elements of the Catholic faith. I do not consider this art. Freedom of expression is limited by the law."<sup>149</sup> Law can indeed limit freedom of expression, but only in extremely limited circumstances.

As explained in the section on international law above, there are legitimate grounds for restricting the freedom of religion or the freedom of expression. This is to be strictly interpreted, and grounds not included in ICCPR articles 18(3) and 19(3) are not legitimate ground for which to restrict these freedoms. Germany's blasphemy law is an effort to protect 'public peace' which is not one of the grounds provided in those articles. Therefore, it is not a legitimate reason for Germany to restrict its citizens' freedoms. In a review of international cases on '*public order*,' Paul Sieghart found:

The Supreme Court of India has said that the contravention of law always affects order, but before it can be said to affect public order it must affect the community or the public at large. One has to imagine three concentric circles the largest

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149 Justin Huggler, "Germany fines man for 'blasphemous' car bumper stickers," *The Telegraph*, 26 February 2016. Available at <http://www.telegraph.co.uk/news/worldnews/europe/germany/12174806/Germany-fines-man-for-blasphemous-car-bumper-stickers.html>

representing ‘law and order,’ the next representing ‘public order,’ and the smallest representing ‘security of the State.’ An act may affect law and order but not public order, just as an act may affect public order but not the Security of the State. ‘Public order’ includes acts which disturb public tranquility and are breaches of the peace, but not acts which only disturb the serenity of others.<sup>150</sup>

This decision demonstrates the need for a high threshold for expression to threaten public order. Simply disturbing ‘public peace’ does not meet this threshold, so it is clear the maintenance of public peace is not a legitimate reason to restrict the freedom of religion or expression.

Voss’ case hinges on the disruption of public peace, and it illustrates the ability for blasphemy laws to be abused. Germany’s blasphemy law clearly states that to be considered blasphemy, the dissemination of defamatory materials must be done in a way that is capable of disturbing the public peace. There is no indication in Voss’ case that the public peace, aside from the individual who filed the complaint, was in danger of being disturbed. Therefore, Voss’ conviction violated his freedom of expression.

The Council of the European Union is concerned about the misuse of blasphemy laws and has called for their repeal. The Council created guidelines on the promotion and protection of religion or belief which stress the interdependence and interrelatedness of the right to freedom of religion and the right to freedom of expression and explain that these rights are meant to protect persons rather than religions or beliefs in themselves.<sup>151</sup> The guidelines further state one of the EU’s principles is to “recall at all appropriate occasions that laws that criminalize blasphemy restrict expression concerning religious or other beliefs; that they are often applied so as to persecute, mistreat, or intimidate persons

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150 *MadhuLimaye v. Sub-Divisional Magistrate, Monghyr* (1971) 2 SCR 711. Found in Sieghart, *The international law of human rights*, 95.

151 Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, 24 June 2013, 31. Available at <https://eeas.europa.eu/sites/eeas/files/137585.pdf>

belonging to religious or other minorities, and that they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief; and recommend the decriminalization of such offences.”<sup>152</sup> Germany will eliminate a law prohibiting defaming heads of state, claiming it is “obsolete and unnecessary.”<sup>153</sup> Their preference for combating incitement to hatred over punishing blasphemy may mean the blasphemy is next on the chopping block.

### ***Germany’s Reliance on Combating Incitement***

Germany’s experience with the Holocaust created a particular need for the government to take steps to combat advocacy of hatred that constitutes incitement to discrimination, hostility, and violence to ensure the state will ‘never again’ experience similar circumstances. While they are a small minority, Nazis still exist in Germany. The recent influx of religious minorities has encouraged them to become more mainstream. Germany has reacted by protecting its religious minorities by combating incitement to hatred.

In 2009, Githu Muigai, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, visited Germany. While there, the Federal Ministry of Interior provided Muigai with figures on right-wing extremism in the country:

Officials noted that there are about 30,000 right-wing extremists in the country at present, 4,800 of which are believed to be neo-Nazis, in nearly 160 associations. Apart from these organized groups, according to the Ministry some 9,500 persons are believed to be ready to engage in racist violence. Furthermore, around 13,000 extremists are organized in extreme right-wing political parties. While civil society organizations estimated that these figures are much

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152 Ibid., 32.b.

153 Merrit Kennedy, “Germany Is Scrapping Law That Bans Insulting Foreign Leaders,” NPR, 25 January 2017. Available at <http://www.npr.org/sections/thetwo-way/2017/01/25/511611581/germany-is-scrapping-law-that-bans-insulting-foreign-leaders>

lower than the real number of extremists in Germany, the figures nevertheless show that extreme right-wing ideologies, including neo-Nazism, are still active and abundant in the country.<sup>154</sup>

A country devastatingly familiar with the actions that follow incitement speech, Germany has an extensive incitement law to protect minorities.

Germany's criminal code prohibits incitement to hatred. Section 130 on incitement reads:

- (1) Whosoever, in a manner capable of disturbing the public peace
  1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or
  2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population, shall be liable to imprisonment from three months to five years.
- (2) Whosoever
  1. with respect to written materials (section 11(3)) which incite hatred against segments of the population or a national, racial or religious group, or one characterized by its ethnic customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group

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154 United Nations, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, GithuMuigai – Addendum: Mission to Germany*, A/HRC/14/43/Add.2 (22 February 2010), 29.

- a. disseminates such written materials;
  - b. publicly displays, posts, presents, or otherwise makes them accessible;
  - c. offers, supplies or makes them accessible to a person under eighteen years; or
  - d. produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of Nos (a) to (c) or facilitate such use by another; or
2. disseminates a presentation of the content indicated in No 1 above by radio, media services, or telecommunication services shall be liable to imprisonment not exceeding three years or a fine.<sup>155</sup>

The law has been used extensively to punish acts of incitement to hatred, which have increased in recent years. A rise in xenophobia occurred as many citizens in Germany and throughout Europe have reacted negatively against the influx of refugees and triggered the emergency of nationalist, far-right, anti-Islam political movements such as PEGIDA (Patriotic Europeans against the Islamisation of the West) in Germany. The German government, which has opened the country's borders to more refugees than any other, is using its incitement law to ensure the safety of these religious minorities.

Several German citizens have been convicted for incitement to violence. According to research by the Washington Post, a 29-year-old woman from Berlin was convicted of incitement and sentenced to five months of probation in July 2015. The woman posted on Facebook in response to a recent alleged rape by an asylum seeker that if the government did not seek tougher measures against refugees, "more

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155 Federal Republic of Germany, *German Criminal Code*, 130.

asylum seekers' homes will burn.”<sup>156</sup> Likewise, a 26-year-old man in Northeast Germany was sentenced in October 2015 to five months probation and fined 300 euros (\$345) for posting on Facebook that “refugees should “burn alive” or “drown” in the Mediterranean.”<sup>157</sup> Germany has convicted these citizens, because the language in their posts constitutes incitement to hostility.

Germany has not only convicted individual citizens, authorities have also gone after political leaders. Lutz Bachmann, the founder of PEGIDA, was convicted by a district court of incitement in 2015 for a Facebook post in which he described asylum seekers as ‘cattle,’ ‘scum,’ and ‘trash.’<sup>158</sup> A state court upheld the verdict and ordered Bachmann to pay a fine of 9,600 euros (\$10,200).<sup>159</sup> PEGIDA has held frequent demonstrations against Islam and refugees. While their numbers are dwindling, the movement had 25,000 protesters in the streets at the height of its popularity. The use of such incendiary language by the leader of a movement of thousands of people easily falls under incitement to hatred. Bachmann’s statement was about national, racial, or religious groups (incitement) and referred to intense and irrational emotions of enmity and detestation toward the group (hatred). His use of Facebook to promote these ideas amongst PEGIDA followers and the larger community is of particular concern.

## Conclusion

Germany rarely prosecutes blasphemy and its most recent conviction is likely to be overturned on appeal. The country’s blasphemy

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156 Anthony Faiola, “Germany springs to action over hate speech against migrants,” *Washington Post*, 6 January 2016. Available at <http://wapo.st/2uxqyjc>

157 Ibid.

158 Kate Brady, “PEGIDA founder Lutz Bachmann found guilty of inciting hatred,” *Deutsche Welle*, 3 May 2016. Available at <http://www.dw.com/en/pegida-founder-lutz-bachmann-found-guilty-of-inciting-hatred/a-19232497>

159 “German court upholds fine against PEGIDA front man Lutz Bachmann for inciting hatred,” *Deutsche Welle*, 30 November 2016. Available at <http://www.dw.com/en/german-court-upholds-fine-against-pegida-front-man-lutz-bachmann-for-inciting-hatred/a-36585966>

law does not meet international standards for the restriction of citizens' freedom of religion or expression. While it is prescribed by law, it is not used for a legitimate goal as required by ICCPR articles 18(3) or 19(3). It thus restricts the freedom of expression in a way that is against international law.

It is likely the German authorities understand the blasphemy law is obsolete which would explain its infrequent use. The government instead seeks to promote public peace through its law banning incitement to hatred and hostility. These laws are better equipped to punish perpetrators of hostility and violence while upholding the freedom of religion and the freedom of expression. []

## Indonesia

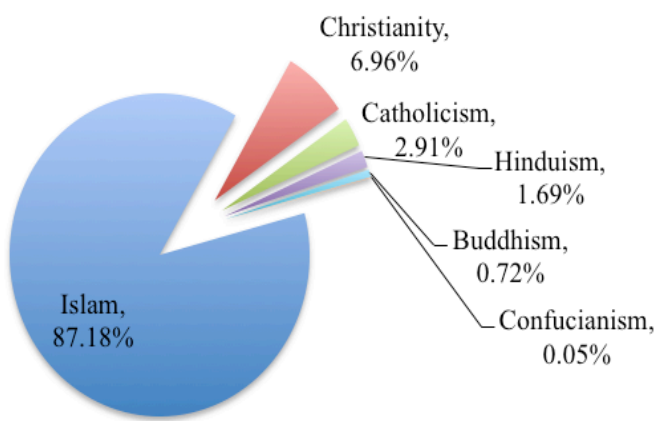


Population	263,510,146
Population Density	137.7 persons per km2
GDP Per Capita	\$3,570.30
Gini Index	38.1
Human Development Index	0.689
Literacy	Youth: 98.8%, 1.00 GPI Adult: 92.8%, 0.94 GPI
Independence	1945, from the Netherlands
Region	East Asia and Pacific

Indonesia is the most populous Muslim country and the fourth most populous country behind China, India, and the USA. Its population of 260 million is made up of more than 300 ethnic groups, more than

700 languages, and is spread across 17,000 islands. The state officially recognizes only six religions: Buddhism, Catholicism, Christianity, Confucianism, Hinduism, and Islam. According to Indonesia's 2010 census, the six religions make up the percentages shown in Figure 5 with 0.13% of people responding their religion is one 'other' than those six recognized by the state, 0.06% not stating their religion, and 0.32% not asked their religious affiliation.<sup>160</sup> The majority of those who practice Islam belong to either the Nadhatul Ulama (NU) or the Muhammadiyah who each claim 40 million and 30 million followers, respectively.<sup>161</sup> Other minority Islamic sects include the Ahmadiyya, Gafatar, and Shi'a.

Figure 5: Religions in Indonesia



Source: BadanPusat Statistik, "Penduduk Menurut Wilayah dan Agama yang Dianut," SensusPenduduk 2010

160 BadanPusatStatistik, "PendudukMenurut Wilayah dan Agama yang Dianut," *SensusPenduduk 2010*, Jakarta, 2010. Available at <http://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=0>

161 Melissa Crouch, "Indonesia, militant Islam and Ahmadiyah: Origins and implications," University of Melbourne Islam, Syari'ah and Governance Background Paper Series (2010). Available at <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=CBF0331839D2306478FE2B6FF71DEB5B?doi=10.1.1.691.9875&rep=rep1&type=pdf>



Indonesia has been an independent state for 72 years, 19 of which have been under a democratic political system. The archipelago is remarkably old, the country relatively new, and its people exceptionally diverse. It is in this context that leaders adopted the nationalist ideology of Pancasila as the philosophical foundation of a state. Pancasila encompasses the following five principles which are enshrined in the state's independence constitution: "belief in the One and Only God, just and civilized humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives of the people, and the realization of social justice for all the people of Indonesia."<sup>162</sup> The state is not secular but also not based on Islam.

### ***Indonesia's International Obligations and Blasphemy Law***

Indonesia has a responsibility under international law to protect religious freedom and religious minorities. Indonesia ratified the ICCPR in 2006 with no reservations after passing Law No. 12/2005. This ratification bound the state by international law to abide by the articles of the treaty. This section will explore the state's domestic laws on human rights and will then detail the state's blasphemy law.

<b>Treaty Name</b>	<b>Signature Date</b>	<b>Ratification, Accession(a), Succession(d) Date</b>
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	23-Oct-1985	28-Oct-1998
International Covenant on Civil and Political Rights (CCPR)		23-Feb-2006 (a)

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<sup>162</sup> Republic of Indonesia, *Constitution of the Republic of Indonesia*, August 18, 1945, Preamble. Downloaded from Oxford Constitutions of the World.

Treaty Name	Signature Date	Ratification, Accession(a), Succession(d) Date
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)	Not Signed/Ratified	
Convention for the Protection of All Persons from Enforced Disappearance (CED)	27-Sep-2010	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	29-Jul-1980	13-Sep-1984
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)		25-Jun-1999 (a)
International Covenant on Economic, Social and Cultural Rights (CESCR)		23-Feb-2006 (a)
Convention on the Rights of the Child (CRC)	26-Jan-1990	05-Sep-1990

Source: United Nations, Ratification Status by Country, *Office of the High Commissioner for Human Rights*.

## Freedom of Religion

When Indonesia gained independence in 1945, the government protected religious freedom in its constitution. According to Pancasila, the state was to be based on belief in only one god.<sup>163</sup> While this goes against the right to have *or adopt* a religion, citizens were free outside of this limitation to choose and practice the religion of their choice, even if

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<sup>163</sup> *Constitution of the Republic of Indonesia*, 29.1.

it was outside of the recognized six.<sup>164</sup> The constitution went on to explain the freedom of religion is a human right that cannot be limited under any circumstance.<sup>165</sup> It states, “every person shall have the freedom to believe in his/her faith (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.”<sup>166</sup> The law guarantees every person the freedom to worship according to their religious belief.<sup>167</sup> All persons also have the right “to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment.”<sup>168</sup> The constitution protects the rights of citizens to freedom of religion in Indonesia and protects religious minorities from discriminatory treatment as all persons shall be protected from discrimination, regardless of the cause. These rights gained further authority when the state adopted its law on human rights.

Indonesia’s Law No. 39/1999 on Human Rights further codifies the guarantee of the state to every person the right to the freedom to choose his or her religion and to worship according to the teaching of that religion.<sup>169</sup> The law guarantees every person the right to equal treatment before the law and to the protection of his or her human rights without discrimination.<sup>170</sup> The law defines discrimination as “all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion ... that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.”<sup>171</sup> Citizens have the right to choose their

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164 Ibid., 28E.1.

165 Ibid., 28I.1.

166 Ibid., 28E.2.

167 Ibid., 29.2.

168 Ibid., 28I.2.

169 Republic of Indonesia, *Law No. 39/1999 on Human Rights*, September 23, 1999, 22.1. Available at <http://www.refworld.org/docid/4da2ce862.html>

170 Ibid., 3.2-3.3.

171 Ibid., 1.3.

religion and worship according to its teachings while being free from discrimination and human rights violations of all actors, including both the private and public sphere.<sup>172</sup>

### Indonesia's Blasphemy Law

Indonesia's blasphemy law (Law No. 1/1965 on defamation of religion) places limitations on communications and interpretations of religion. It states, "every person is prohibited from knowingly communicating in public, advocating or seeking public support, for an interpretation of a religion practiced in Indonesia or conducting religious activities that resemble the religious activities of such a religion, where such interpretations and activities deviate from the basic tenets of the religion."<sup>173</sup> To violate this law, communications and interpretations must be "made with an intention of hostility, vilification, or ridicule."<sup>174</sup> The law is meant to maintain public order and religious harmony, and violators are subject to upwards of five years in prison.

Indonesia's blasphemy law reflects the grounds for limiting freedom to manifest religion and freedom of expression found in article 18(3) and 19(3), but provides for one additional limitation based on 'religious values.' In 2009, Indonesia's Constitutional Court upheld the law, after conducting a judicial review, in the interests of public order and religious values and as an effort to maintain social harmony and prevent religious deviancy.<sup>175</sup> Of these, only 'public order' can be used as a legitimate ground for restricting the freedom to manifest one's religion under international law.<sup>176</sup> Indonesia invokes this court

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<sup>172</sup> Ibid., 1.6.

<sup>173</sup> Republic of Indonesia, *Law No. 1/1965 on Defamation of Religion*, 1965, 1. Available at <http://e-dokumen.kemenag.go.id/files/3WsLxrag1286178904.pdf>

<sup>174</sup> Ibid., 3. Translation found in Zainal Abidin Bagir, "Defamation of Religion Law in Post-Reformasi Indonesia: Is Revision Possible?," *Australian Journal of Asian Law* 13, no. 2, (March 4, 2013): 5.

<sup>175</sup> Constitutional Court, Republic of Indonesia, *Decision No 140/PUU-VII/2009*, April 19, 2010.

<sup>176</sup> During deliberations, the Court recognized 'religious values' is not one of the limitations allowed for in the ICCPR, suggesting 'religious values' is being used as

decision in international human rights discussions. In its 2012 national report to the Working Group on the Universal Periodic Review, Indonesia states, “the Government is of the view that the Law No. 1/PNPS/1965, which has undergone a judicial review at the Constitutional Court, provides the basis for maintaining public order in the community in terms of religious issues.”<sup>177</sup> Of the reasons listed for the necessity of the blasphemy law, only public order is a legitimate goal for placing limitations or restrictions on the freedom of religion. Officials cite this goal most often.

### ***Implications on the Freedom of Religion and Religious Minorities***

Indonesia’s courts have prosecuted 97 blasphemy cases, 89 of which occurred after Reformasi.<sup>178</sup> The increase in blasphemy cases since the state turned towards democracy is positively correlated with the increasing power of Islamist groups throughout the country. Indonesian authorities use the state’s blasphemy law to limit the freedom of religion and the right of minorities to profess and practice their religion in community with other members of their group. The following section will discuss cases of the Gafatar and Ahmadiyya religious minorities. These communities of Indonesians have suffered at the hands of religious extremists and government officials because of their religious beliefs. Their cases will be used to analyze whether the restrictions outlined in the blasphemy law are necessary and proportional to achieve public order per article 18(3).

#### **Fajar Nusantara Movement (Gafatar)**

The Fajar Nusantara Movement also known as Gafatar began

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a different basis than ‘morals,’ which are an acceptable limitation to both the freedom of religion and expression. See Crouch, “Law and Religion in Indonesia,” 42.

<sup>177</sup> United Nations, Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia*, A/HRC/WG.6/13/IDN/1 (7 March 2012), paragraph 62.

<sup>178</sup> Halili, “Rezim Penodaan Agama: 1965-2017,” *Setara Institute*, 11 May 2017.

in Indonesia in January 2012 with branches located in all provinces to serve its 55,000 members. The Gafatar's belief system combines beliefs from Christianity, Islam, and Judaism and is led by the Muslim mystic Ahmad Mushaddeq.<sup>179</sup> In 2008, Mushaddeq began a four-year prison sentence for blasphemy after the MUI issued a fatwa declaring his movement, Al-Qiyadah Al-Islamiyah, 'deviant.' His movement has since been renamed the Milah Abraham movement, and most recently, the Gafatar. Despite the changes of name, the government continues to resist Mushaddeq's movement, and the Ministry of Home Affairs "refused to extend Gafatar's nongovernmental registration permit for doctrinal reasons in 2015."<sup>180</sup>

In early 2016, government officials simultaneously engaged in efforts to ban the Gafatar as a way to maintain religious harmony and maintain public order while ethnic mobs threatened violence against the community in the West Kalimantan Province of Mempawah. On 14 January, Home Affairs Minister Tjahjokumolo directed administrators in the provinces to shut down Gafatar offices. The following day, mobs of ethnic Malays and Dayaks threatened Gafatar communities with violence if they did not leave Mempawah within three days.<sup>181</sup> Instead of protecting the religious community from the mobs, security forces encouraged them to leave and Human Rights Watch reported the "authorities' warnings included explicit references to notorious "mass killing" incidents in the 1990s in the nearby communities of Sambas and Sampit."<sup>182</sup> No charges were filed against those who threatened violence against the Gafatar. Instead, the government banned the religion completely after authorities forcefully relocated them.

Not only were the mobs never brought to justice, but the MUI and government ministries used the incident as a reason to engage in coordinated efforts against the Gafatar. On 3 February, the MUI declared

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179 "Indonesia: Persecution of Gafatar Religious Group Thousands Forcibly Evicted, Relocated, Detained," *Human Rights Watch*, March 29, 2016.

180 Ibid.

181 Ibid.

182 Ibid.

the Gafatar a heretical organization at the height of attacks against them.<sup>183</sup> The decree declared the group heretical and prohibited them from “deploying, interpreting, and conducting any activities that deviate from the teachings of mainstream Islam.”<sup>184</sup> The next day, Coordinating Human Development and Culture Minister Puan Maharani, the daughter of former president Megawati Soekarnoputri, called on the police to “bring former leaders of Gafatar to justice for spreading controversial teachings.”<sup>185</sup> These statements make it clear the Gafatar were targeted based on their religious beliefs. On 24 March, the Attorney General’s Office and the Ministries of Home and Religious Affairs submitted a joint decree banning the group, influenced by the fatwa.<sup>186</sup> At a news conference announcing the ban, Attorney General Muhammad Prasetyo said, “if we let it go on, Gafatar could potentially cause public unrest and trigger various other sensitive issues.”<sup>187</sup> In other words, the Indonesian government banned an entire religious minority group to protect public order because a mob attacked them.

Indonesia’s banning of the Gafatar is against international law. Article 18 of the ICCPR guarantees the right to freedom of thought, conscience, and religion. This right is non-derogable under any circumstances, meaning the state cannot limit the freedom of religion for any reason. As explained in Part I, the Human Rights Committee confirmed that article 18

is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices

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183 Haeril Halim, “MUI declares Gafatar heretical,” *The Jakarta Post*, February 4, 2016.

184 Setara Institute, The Foundation of Legal Aid Institutions, and Human Rights Working Group Indonesia, *Joint Submission of Stakeholders on the UPR On the Situation of Freedom of Religious and Belief Violation in Indonesia: Case of Millah Abraham / Gafatar*, 2. Available at <http://hrwg.org/wp-content/uploads/2016/11/8-Joint-Submission-UPR-Gafatar-Millah-Abraham-1-.pdf>

185 Haeril Halim, “Minister says Gafatar leaders must be prosecuted,” *The Jakarta Post*, February 5, 2016.

186 SKB No. 93/2016.

187 Stefani Ribka, “Gafatar ban seen as a setback,” *The Jakarta Post*, March 26, 2016.

analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.<sup>188</sup>

While states may limit the freedom to *manifest* one's religion, those limitations must meet strict thresholds. International law protects the rights of religious minorities, and Indonesia violated those rights in its ban on the Gafatar. The state similarly violated the rights of the Ahmadiyya.

## Ahmadiyya

The Ahmadiyya religion began in Punjab state in India in the mid-nineteenth century as an Islamic revivalist movement led by Mirza Ghulam Ahmad. The religion reached Sumatra in 1925 and gained formal recognition in 1953 through a decree from Indonesia's Minister for Justice. The numbers in Indonesia are contested, with the government claiming there are 50,000 to 80,000 and the Ahmadis claiming 300,000 to 400,000.<sup>189</sup> Ahmadis believe Muhammad was not the last prophet, which has led them to be considered heretics in Indonesia.<sup>190</sup>

In 2005, mobs demolished a congregation of Ahmadis located in Ketapang, West Lombok in the West Nusa Tenggara Province. The government then attempted to relocate the group despite members not wanting to be relocated. It was at this time the MUI declared that the Ahmadiyya religion's teachings 'deviated' from those in the

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<sup>188</sup> Human Rights Committee, *General Comment 22*, (1993) HRI/GEN/1/Rev.1, 2.

<sup>189</sup> Melissa Crouch, "Indonesia, militant Islam and Ahmadiyah: Origins and implications," *University of Melbourne Islam, Syari'ah and Governance Background Paper Series* (2010). Available at <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=CBF0331839D2306478FE2B6FF71DEB5B?doi=10.1.1.691.9875&rep=rep1&type=pdf>

<sup>190</sup> "Stop Impunity in Violence against Religious Minorities in Indonesia," *Forum-Asia*, February 9, 2011.



Koran.<sup>191</sup> As of June 2016, 119 Ahmadiis still lived in temporary transit shelters.<sup>192</sup> These members are forced to take menial jobs to feed their families and “the government has not made any serious effort to initiate conflict resolution between the Ahmadiyya community in the shelter and other communities. There is also no effective remedy provided by the government, particularly for those who lost their property and other valuable belongings due to the forced eviction.”<sup>193</sup> Much like the Gafatar, violence against the Ahmadiyya was used to justify banning the religion under the blasphemy law, invoking the need to maintain public order.

In 2008, the Minister of Religious Affairs, the Attorney General, and the Minister of the Interior submitted a Joint Decree regarding the Ahmadiyya. Given the blasphemy law’s prohibition on interpretations that deviate from a religion’s basic tenets, the decree warns and orders the Ahmadiyya “to discontinue the promulgation of interpretations and activities that are deviant from the principal teachings of Islam, that is to say the promulgation of beliefs that recognize a prophet with all his teachings who comes after the Prophet Muhammad SAW.”<sup>194</sup> The ministers claim the decree was necessary given the need for the government to protect the peace and order of community life. Ahmadiyya members who did not disband would be subject to punishment under the blasphemy law. Again, the government took steps to restrict the rights of religious minorities in the name of protecting public order rather than punishing those inciting violence against them.

Ahmadiis continued practicing despite the ban. On 6 February

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191 “Indonesia: Persecution of Gafatar,” *Human Rights Watch*.

192 “Indonesia: No protection for freedom of movement and residence,” *Asian Legal Resource Center*, June 6, 2016.

193 *Ibid.*,

194 Republic of Indonesia, The Minister of Religious Affairs, the Attorney General and the Minister, *Joint Decree No. 3/2008: A Warning and Order to the followers, members, and/or leading members of the Indonesian Ahmadiyya Jama’at (JAI) and to the General Public*, June 9, 2008. English translation available at <http://www.thepersecution.org/world/indonesia/docs/skb.html>

2011, approximately 20 Ahmadis held a peaceful ceremony in Cikeusik village in Banten in western Java.<sup>195</sup> Approximately 1,500 Islamist militants associated with the Islamic Defenders Front (Front Pembela Islam/FPI) attacked the Ahmadis with machetes, sticks, and stones while shouting, “You are infidels! You are heretics!”<sup>196</sup> While police were at the scene, “many left when the crowd began descending on the Ahmadiyya house.”<sup>197</sup> Three Ahmadis died in the attack. Most recently, on January 5, 2016, in the Bangka Regency of Sumatra in the Bangka-Belitung Islands Province, the local administration sent a letter to the Ahmadis, “demanding that the Ahmadiyya either convert to Sunni Islam or to face expulsion from Bangka.”<sup>198</sup> These actions against the Ahmadiyya are representative of local government actions towards and against religious minorities throughout Indonesia.

As demonstrated in the examples of discrimination and violence experienced by the Gafatar and Ahmadiyya,<sup>199</sup> the MUI uses the blasphemy law as a basis to designate minority religions as blasphemous. This may take place before or after the religious minority is attacked. The state can then use the MUI decision to ban these religions, which may further stoke tensions. While there is a margin of appreciation in how states implement human rights, it is not so wide as to allow for the systematic banning of minority religions because their tenets are different than the state’s majority religion. The Human Rights Committee agrees. In 2013, the Committee found

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195 “Stop Impunity in Violence,” *Forum-Asia*, February 9, 2011.

196 “In Religion’s Name: Abuses against Religious Minorities in Indonesia,” *Human Rights Watch*, February 28, 2013.

197 Ibid.

198 NurulFitriRamadhani and Marguerite AfraSapiie, “Govt involved in ‘more rights violations,’” *The Jakarta Post*, December 13 2016.

199 While this report only provides in-depth analysis for the Gafatar and Ahmadiyya due to length constraints, other religious minorities also face persecution because their tenets differ from Sunni Islam. For example, calls have been made to ban Shi’a Islam and promotions of “jihad, violence, and sectarian purging against Shi’a Muslims.” Muhammad Haji, “The Shi’a Muslims of Indonesia,” *The Center for Academic Shi’a Studies*. Available at <http://www.shiaresearch.com/Doc/TheShiaMuslimsofIndonesia.pdf>

Indonesia's blasphemy law unduly restricts religious freedom and the rights of religious minorities and recommended its repeal despite the state's Constitutional Court decision to uphold it.<sup>200</sup>

### ***Implications on the Rule of Law***

In Indonesia, when there is hostility and violence directed against religious minorities, local authorities respond by placing further restrictions on the minorities rather than holding the perpetrators accountable. Police often stand by while the violence takes place and refuse to arrest the perpetrators. The fear is that knowledge of arrests for hostility against religious minorities will galvanize even larger mobs and more violence. Mobs have not only committed violence against minorities in Indonesia, they have also recently influenced political elections and judicial court decisions. The rule of law requires a system wherein there are laws that are understood by the public and consequences for breaking those laws. The rule of law cannot be said to exist when those who break the law are never held accountable and when mobs have undue influence over political processes. This section will discuss the impunity that exists for perpetrators of violence against religious minorities and the rule of law implications in the trial and detention of Basuki "Ahok" Tjahaja Purnama.

### **Impunity for Violence Against Religious Minorities**

The usual response in Indonesia to attacks against religious minorities is to further restrict the rights of those minorities. This can include sealing their places of worship, forcibly removing them from their communities, or banning them from practicing their religion. Meanwhile, those actors who incited and perpetrated the hostility and violence against the religious minorities are not held accountable. Police are seen standing by watching the violence occur or actively engaging in it.

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200 United Nations, Human Rights Committee, *Concluding Observations on the Initial Report of Indonesia*, CCPR/C/IDN/CO/1 (21 August 2013), paragraph 25.

The attacks against the Gafatare explained above began on 18 January 2016, and the police and military stood by while the mob destroyed Gafatar property. Authorities intervened and forcibly evacuated Gafatar members when there was a threat to their physical safety.<sup>201</sup> Security forces forcibly evicted and relocated more than 7,000 Gafatar members to North Sumatera Province from mid-January to mid-February. Members were thus protected from physical assault through their forced eviction, after which “authorities then arbitrarily detained and interrogated them and threatened them with criminal charges.”<sup>202</sup> The community was uprooted with no livelihood or protection guarantees from the government and no remedies for their farms and property, which were looted and destroyed by the mob.<sup>203</sup> Members of the Gafatar had their land destroyed by a mob, were forcibly evicted from their land, and were threatened with criminal charges. Their religion was then banned by the government. No charges were brought against the perpetrators.

Indonesia’s Shi’a community experiences similar violence and restrictions of their religious freedom. Shia communities are concentrated in Jakarta, Madura, and Sumatra and estimates of their numbers vary from one to six million.<sup>204</sup> A Shi’a community located in the Sampang Regency on Madura Island in East Java has been hard-hit by militants. On 29 December 2011, a mob “set fire to a place of worship, a boarding school and various homes in the vicinity. Police did not take adequate measures to protect the community and instead of intervening to stop the attack, some recorded video footage of it on their phones.”<sup>205</sup> State actors stood by as religious minorities were attacked. This was

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201 Ibid.

202 Ibid.

203 “Indonesia: No protection for freedom of movement and residence,” *Asian Legal Resource Center*, June 6, 2016.

204 United Nations, Human Rights Council, “Rising Anti-Shia Discrimination in Indonesia and the Curtailment of Freedom of Expression and Opinion,” Written statement submitted by *Al-khoei Foundation*, A/HRC/26/NGO/14 (23 May 2014), 2.

205 “Shia Community Face Removal from Shelter,” *Amnesty International*, June 21, 2013. Available at [http://ua.amnesty.ch/urgent-actions/2012/11/336-12/336-12-2?ua\\_language=en](http://ua.amnesty.ch/urgent-actions/2012/11/336-12/336-12-2?ua_language=en)

followed by a fatwa from the MUI, stating the teachings of Shi'a cleric TajulMuluk from Sampang were deviant. Muluk was then arrested for blasphemy and sentenced to four years in prison.<sup>206</sup> In a declaration of support for the fatwa, the East Java Executive Board of Nahdlatul Ulama (NU) claimed the move was necessary because Muluk's teachings could give rise to clashes and riots.<sup>207</sup> The next year, despite the existence of the fatwa and its supposed ability to calm tensions, mobs rioted against the Shi'a in Sampang.

On 26 August 2012, a 500-person mob attacked the Shi'a community in KarangGayam village with sickles and stones. One person was killed, dozens were injured, and 35 homes were destroyed. The conflict displaced approximately 332 people, 168 of which were transferred to a sports complex for temporary shelter.<sup>208</sup> They remained in the shelter up to two years later despite their desire to return to their homes and community. On 1 May 2013, local authorities terminated the community's supply of food and water. Sampang Regent FannanHasib then "agreed to demands from anti-Shi'a groups to evict the Shi'a community from their temporary shelter in [the] sports complex, and remove them from Madura island in East Java ... after hundreds of people protested outside the office of the Sampang district House of Representatives on May 7, 2013."<sup>209</sup> While the protest might have moved up his timeline, Hasib campaigned for office on a promise to relocate the Shi'a community out of Sampang.<sup>210</sup> In summary, the Shi'a community was attacked by an angry mob, their families were injured, and their homes destroyed. After they were displaced, the local government actively discriminated against them and removed them from the island completely after a second mob formed, protesting their

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206 Ibid.

207 Cholis Akbar, "PWNU Jatim Dukung Fatwa MUI Soal Dakwah Tajul Muluk," *Hidayatullah.com*, January 4, 2012.

208 "Indonesia: No protection for freedom," *Asian Legal Resource Center*, June 6, 2016.

209 "Shia Community Face Removal," *Amnesty International*.

210 Indra Harsaputra and Margareth S. Aritonang, "Sampang Shia in peril," *The Jakarta Post*, May 8, 2013.

existence on Madura island. No one involved in advocating religious hatred against the community, which constituted incitement to the hostility and violence, was held accountable.

Inaction by the police in many violent attacks against religious minorities has garnered the attention of international actors. The conditions of the displaced Shi'a community also came to the attention of the Committee for the Rights of the Child. The Committee expressed deep concern about the "insufficient protection from and investigation into violent attacks against persons belonging to religious minorities, including children,"<sup>211</sup> and the "insufficient assistance to victims, many of whom have lost their homes in attacks and have had to stay in temporary shelters for several years, without sufficient access to clean drinking water and sanitation, food or health care."<sup>212</sup> International human rights actors have expressed similar concerns about the violence experienced by the Ahmadiyya.

The Committee against Torture expressed concern at the lenient penalties the perpetrators faced<sup>213</sup> and at the "persistent, disturbing allegations of a routine failure to investigate such violence and the reluctance on the part of the police and authorities to provide the Ahmadiyya with adequate protection or to conduct prompt, impartial, and effective investigations into such acts."<sup>214</sup> The Committee recommended Indonesia ensure impartial and effective investigations and prosecutions in such attacks,<sup>215</sup> take measures to protect the

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211 United Nations, Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, CRC/C/IDN/CO/3-4 (10 July 2014), 67.A.

212 Ibid., 67.B.

213 Human Rights Committee, *Concluding Observations*, CCPR/C/IDN/CO/1 (21 August 2013), Paragraph 17.

214 United Nations, Committee Against Torture, *Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention - Concluding Observations Of The Committee Against Torture: Indonesia*, CAT/C/IDN/CO/2, (2 July 2008), Paragraph 19.

215 Ibid, Paragraph 19.

victims of attacks against religious minorities,<sup>216</sup> and “work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such violence.”<sup>217</sup>

Indonesia’s religious minorities experience discrimination, hostility, and violence. Instead of protecting the victims, authorities react by further restricting their rights. Meanwhile, police are either seen standing by while the violence occurs or actively engaging in it. Perpetrators are not brought to justice and victims are not compensated. There exists a climate of impunity for perpetrators when authorities refuse to punish them for fear of provoking hostility on a larger level. The rule of law cannot be said to exist in a country where those who break the law are systematically not held accountable.

### **The Trial and Detention of Basuki “Ahok” TjahajaPurnama**

“You’ve been lied to by [people] misquoting the 51<sup>st</sup> verse of the Al-Maidah,”<sup>218</sup> said Jakarta Governor Basuk “Ahok” TjahajaPurnama during a meeting with constituents in the Thousand Islands regency on 27 September 2016. The first Christian governor of Jakarta in decades attempted to counter his opponents who claim the 51<sup>st</sup> verse of the Al-Maidah, a chapter in the Koran, should be interpreted to mean Muslims should not vote for non-Muslims. A video of his statement was edited to appear as if he said, “you’ve been lied to by the 51<sup>st</sup> verse of the Al-Maidah.” The video went viral and protests erupted across Jakarta, accusing Ahok of blasphemy. Despite the fact that the video was doctored, the MUI confirmed Ahok committed blasphemy when he insulted the Koran and the religious leaders (*ulama*) who interpret it.<sup>219</sup>

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216 Human Rights Committee, *Concluding Observations*, CCPR/C/IDN/CO/1 (21 August 2013), Paragraph 17.

217 Committee Against Torture, *Concluding Observations*, CAT/C/IDN/CO/2, Paragraph 19.

218 “Facebook User Interrogated by Police Over Ahok’s Alleged Blasphemy,” *Jakarta Globe*, November 10, 2006.

219 CallistasiaAnggunWijaya, “MUI Accuses Ahok of Religious Blasphemy,”

When mass demonstrations followed, Ahok was put on trial and lost his bid for reelection. The court convicted him of blasphemy and sentenced him to two years in prison, despite the prosecution having only sought a one-year prison term. Human Rights Watch researcher Andreas Harsono explains, “emboldened by the government’s inaction on discrimination and violence against religious minorities, over the last 19 years Islamists have increasingly sought to enforce laws like the blasphemy law more strictly to “protect” Islam and move Indonesia from a secular to an Islamic state.”<sup>220</sup> In what Melissa Crouch describes as “Islamist rule by law,” the threats by Islamists to form mobs exerts power over the capital’s legal institutions. She explains, “this is a rule by law that uses the instruments and institutions of the law in a way that is backed by violence, intimidation, and coercion.”<sup>221</sup> Crouch considers the use of Islamist rule by law as opposed to the rule of law as enforced by Indonesia’s elected government to be the greatest threat to the future of democracy in Indonesia. This section will focus on the international response to Ahok’s conviction and the implications of his case on the rule of law in Indonesia. It assumes the reader is familiar with the particulars of the case.<sup>222</sup>

Global and regional leaders and human rights experts have

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*The Jakarta Post*, 12 October 2016.

220 Andreas Harsono, “Indonesia’s courts have opened the door to fear and religious extremism: By jailing the Jakarta governor Ahok for blasphemy, judges have sent a chilling message to moderates and non-Muslims,” *The Guardian Opinion*, 10 May 2017. Available at <https://www.theguardian.com/world/commentisfree/2017/may/10/indonesias-courts-have-opened-the-door-to-fear-and-religious-extremism>

221 Melissa Crouch, “Islamist rule by law in Indonesia: The threat to Indonesian democracy,” *Asia and the Pacific Policy Society*, 2 December 2016. Available at <https://www.policyforum.net/islamist-rule-law-indonesia/>

222 For background on the case, see

Kate Lamb, “Jakarta governor Ahok’s blasphemy trial: all you need to know,” *The Guardian*, 12 December 2016. Available at <https://www.theguardian.com/world/2016/dec/12/jakarta-governor-ahoks-blasphemy-trial-all-you-need-to-know> and

Callistasia Anggun Wijaya, “Ahok guilty of blasphemy, sentenced to two years,” *The Jakarta Post*, 9 May 2017. Available at <http://www.thejakartapost.com/news/2017/05/09/ahok-guilty-of-blasphemy-sentenced-to-two-years.html>



expressed concern at the consequences of Ahok's conviction. United Nations Special Rapporteurs on the freedom of religion or belief and the freedom of opinion and expression issued a joint statement with the Independent Expert on the promotion of a democratic and equitable international order in response to Ahok's conviction. They urged the government to overturn Ahok's sentence on appeal and review and repeal the blasphemy law which they say "is not compatible with a democratic society like Indonesia and it harms religious pluralism in the country."<sup>223</sup> The human rights experts concluded, "Mr. Purnama's blasphemy conviction and imprisonment will undermine freedom of religion or belief and freedom of speech in Indonesia."<sup>224</sup> In addition to the special rapporteurs and independent expert, the Southeast Asia Regional Office of the United Nations Office of the High Commissioner for Human Rights tweeted, "we are concerned by jail sentence for Jakarta governor for alleged blasphemy against Islam. We call on Indonesia to review blasphemy law."<sup>225</sup> The focus of the UN and human rights experts is on the rights of religious minorities, the freedom of religion, and the freedom of expression in Indonesia.

The international community has long praised Indonesia for its commitment to 'Unity in Diversity,' however, the conviction of Ahok has left a stain on the country's history of pluralism. The European Union Delegation to Indonesia and Brunei Darussalam issued a statement in conjunction with the European Union Heads of Mission in Indonesia. The statement reads, "the European Union has always praised the leadership of Indonesia as the world largest Muslim majority country, a strong democracy and a country with a proud tradition of tolerance and pluralism. We call on the Indonesian government, its institutions and its people to continue this long standing tradition of tolerance

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223 United Nations, "Blasphemy law has no place in a tolerant nation like Indonesia – UN rights experts," *Office of the High Commissioner for Human Rights*, 22 May 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21646&LangID=E>

224 Ibid.

225 UN Human Rights Asia, Twitter Post, 9 May 2017, 2:10 a.m. Available at <https://twitter.com/ohchrasia/status/861871089500045312?lang=en>

and pluralism.”<sup>226</sup> Noting Indonesia’s commitment to promoting and protecting the rights enshrined in the ICCPR, the statement explains, “the European Union has consistently stated that laws that criminalize blasphemy when applied in a discriminatory manner can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief.”<sup>227</sup> Further, Amnesty International explained the verdict “will tarnish Indonesia’s reputation as a tolerant nation.”<sup>228</sup> Amnesty’s Director for Southeast Asia and the Pacific, Champa Patel, said Ahok’s “verdict demonstrates the inherent injustice of Indonesia’s blasphemy law, which should be repealed immediately.”<sup>229</sup> These statements make it clear a country cannot promote tolerance and pluralism while also using a blasphemy law to discriminate against and restrict the rights of minorities.

Ahok’s conviction has also called into question Indonesia’s place as a regional leader of democracy in Southeast Asia. The Chair of ASEAN Parliamentarians for Human Rights and a member of the Malaysian Parliament, Charles Santiago, stated, “Ahok has become a victim of rising extremism and religious identity politics. But this decision has impacts beyond justice for one individual. It is a triumph for intolerance and an ominous sign for minority rights. At a time when fundamental freedoms, including freedom of expression and freedom of religion, are under increasing threat region-wide, this verdict sends the wrong signal to Indonesia’s neighbors in the ASEAN community.”<sup>230</sup> Ahok’s verdict

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226 “EU Local statement on freedom of religion or belief and freedom of expression (Jakarta, 9 May 2017),” *Delegation of the European Union to Indonesia and Brunei Darussalam*, 9 May 2017. Available at [https://eeas.europa.eu/delegations/indonesia/25799/eu-local-statement-freedom-religion-or-belief-and-freedom-expression-jakarta-9-may-2017\\_en](https://eeas.europa.eu/delegations/indonesia/25799/eu-local-statement-freedom-religion-or-belief-and-freedom-expression-jakarta-9-may-2017_en)

227 Ibid.

228 “Indonesia: Ahok conviction for blasphemy is an injustice,” *Amnesty International*, 9 May 2017. Available at <https://www.amnesty.org/en/latest/news/2017/05/indonesia-ahok-conviction-for-blasphemy-is-an-injustice/>

229 Ibid.

230 “Regional lawmakers alarmed at conviction of Jakarta governor,” *ASEAN Parliamentarians for Human Rights*, 9 May 2017. Available at <http://aseanmp.org/2017/05/09/alarmed-at-conviction-of-jakarta-governor/>

has brought into question Indonesia's reputation as an example of a tolerant and diverse society and a leader in Southeast Asia.

## ***Conclusion***

Indonesia's blasphemy law is against international law. The law prohibits individuals from interpreting religions in ways that 'deviate' from the basic tenets of one of the state's six recognized religions. It is meant to promote religious harmony and to protect public order. In international law, restrictions on the freedom of religion and the freedom of expression are only allowed for the goals outlined in ICCPR articles 18(3) and 19(3). The articles must be strictly interpreted. While public order is a legitimate goal, religious harmony is not.

The state's implementation of the blasphemy law is not necessary and proportional to achieving public order. Restrictions on the freedom of religion and expression must reach a high threshold and while the freedom to *manifest* one's religion may be limited, the state may never limit the freedom of religion. As the examples of the Gafatar and Ahmadiyya illustrate, the government uses the law to ban religious minorities in response to violence against them. Finally, the blasphemy law prohibits interpretations of religion that 'deviate' from the basic tenets of the state's recognized religions. As such, it promotes the status quo of six religions, which goes against the spirit of the state's motto 'Unity in Diversity.'<sup>231</sup>

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231 Halili, "Rezim Penodaan Agama: 1965-2017," *Setara Institute*, 11 May 2017.

# Nigeria



Population	191,835,936
Population Density	210.8 persons per km <sup>2</sup>
GDP Per Capita	\$2,671.7
Gini Index	48.8
Human Development Index	0.527
Literacy	Youth: 66.4%, 0.77 GPI Adult: 51.5%, 0.68 GPI
Independence	1960, from Britain
Region	Sub-Saharan Africa

The Federal Republic of Nigeria is Africa’s most populous country and largest economy. The country is ethnically, religiously, and linguistically diverse. Though English is the official language, the country’s more than 250 ethnic groups<sup>232</sup> speak more than 500 indigenous languages. Muslims make up 50% of the population, Christians 40%, and traditional African religions the remaining 10%. The majority of Muslims are Maliki Sunnis and minority sects include Shias and Ahmadiyyas. There are various Christian denominations such as Anglicans, Evangelicals, Methodists, Pentecostals, Presbyterians, Roman Catholics, and the Organization of African Indigenous Churches.<sup>233</sup>

232 This includes the Hausa and the Fulani 29%, Yoruba 21%, Igbo (Ibo) 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, and Tiv 2.5%).“People and Society: Nigeria,” *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017.

233 Christian sects listed in alphabetical order, not according to population

Religious affiliation is closely related to ethnicity (most Hausas/Fulanis are Muslims and most Yorubas and Igbos are Christian).<sup>234</sup> Muslims and Christians are generally relegated to separate areas of the country – the Muslims in the north and Christians in the south with the “middle belt” states made up of a mix of the two religions. Tensions between Christians and Muslims dominate societal discussions about religious harmony and the existence of indigenous religions is minimized and often mocked. Despite this, Christians and Muslims still engage in some traditional religious practice as it is part of their culture.<sup>235</sup>

Half of Nigeria’s experience since independence has been under military rule. It began transitioning to a democracy in 1999. The country is made up of 36 states and the Federal Territory of Abuja. The government exists on three tiers: federal, state (36), and local government areas (774).<sup>236</sup> It also has three legal systems: common law, Sharia law, and customary law (based on customs and traditions). Articles 275-279 of the constitution allow states to establish Sharia courts to handle cases for Muslims, but the articles do not describe the courts’ parameters. Traditionally, the courts heard cases on civil matters such as personal status and family law. Beginning in 1999, several of the northern states where Muslims are concentrated expanded the scope of the Sharia courts to include criminal matters. This began with Zamfara State, and by 2002, there were 12 states using this system.<sup>237</sup> The Supreme Court

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statistics. United Nations, Commission on Human Rights, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to Nigeria*, E/CN.4/2006/5/Add.2 (7 October 2005), 19.

234 Commission on Human Rights, *Report of the Special Rapporteur*, E/CN.4/2006/5/Add.2 (7 October 2005), 18.

235 Commission on Human Rights, *Report of the Special Rapporteur*, E/CN.4/2006/5/Add.2 (7 October 2005), 20-21.

236 United Nations, Human Rights Council, *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Nigeria*, A/HRC/WG.6/4/NGA/1 (5 January 2009), 6.

237 Those states are Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara. Commission on Human Rights, *Report of the Special Rapporteur*, E/CN.4/2006/5/Add.2 (7 October 2005), 47-48.

has jurisdiction to review court cases from all three legal systems.

***Nigeria’s International Obligations and Blasphemy Law***

Nigeria has a responsibility under international law to protect religious freedom and religious minorities. Nigeria ratified the ICCPR in 1993 with no reservations. This ratification bound the country by international law to abide by the articles of the treaty. This section will explore the state’s domestic laws on the rights outlined in articles 18, 19, 20, and 27. It will then detail the state’s blasphemy law.

Treaty Name	Signature Date	Ratification, Accession (a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	28-Jul-1988	28-Jun-2001
International Covenant on Civil and Political Rights (CCPR)		29-Jul-1993 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)	Not Signed/Ratified	
Convention for the Protection of All Persons from Enforced Disappearance (CED)		27-Jul-2009 (a)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	23-Apr-1984	13-Jun-1985
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)		16-Oct-1967 (a)
International Covenant on Economic, Social and Cultural Rights (CESCR)		29-Jul-1993 (a)

Treaty Name	Signature Date	Ratification, Accession (a), Succession(d) Date
Convention on the Rights of the Child (CRC)	26-Jan-1990	19-Apr-1991

Source: United Nations, Ratification Status by Country, *Office of the High Commissioner for Human Rights*.

## Freedom of Religion

Nigeria's constitution declares that neither the federal government nor any state governments shall adopt a religion as the state religion.<sup>238</sup> Article 38 further outlines the rights of citizens to the freedom of religion, stating, "every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."<sup>239</sup> This article is subject to laws that are reasonably justifiable in a democratic society for defense, public safety, public order, public morality, public health, or for protecting the rights and freedom of other persons.<sup>240</sup> The constitution does not specify that it is the manifestation of religion that is subject to these limitations rather than the freedom of religion.

Finally, the constitution protects individuals from discrimination on the grounds of their religious affiliation. Article 15 states in accordance with the state motto of "Unity and Faith, Peace and Progress," national integration is to be actively encouraged and discrimination on the grounds of religion prohibited.<sup>241</sup> Article 42 provides that citizens may

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238 The Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria*, 1999, 10. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/ng/ng014en.pdf>

239 Ibid., 38.1.

240 Ibid., 45.1.A-45.1.B.

241 The article also prohibits discrimination based on place of origin, sex, status, ethnic or linguistic association or ties. Ibid., 15.2.

not be subjected to restrictions or privilege based on their inclusion in a particular religious group.<sup>242</sup>

## **Freedom of Expression**

The constitution also outlines the right of every person to the freedom of expression, including the freedom to receive and impart ideas and information without interference.<sup>243</sup> This right may be limited by the same means as the freedom of religion. It may also be restricted for the following additional purposes:

- Preventing the disclosure of information received in confidence.
- Maintaining the authority and independence of courts.
- Regulating telephony, wireless broadcasting, television, or the exhibition of cinematograph films.
- Imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.<sup>244</sup>

The restrictions on freedom of expression outlined in Nigeria's constitution go beyond those allowed under ICCPR article 19(3).

## **Blasphemy Law**

Nigeria's blasphemy law is in Chapter 19 of its criminal code on

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242 The article also prohibits restrictions or privilege based on a citizen's inclusion in a particular community based on ethnic group, place of origin, sex, or political opinion. Ibid., 42.1.A-42.1.B.

243 Ibid., 39.1.

244 Ibid., 39.3.A-39.3.B.



offenses relating to religious worship. The law prohibits the public insult of a religion, which must be made with the intention that any class of persons should consider the act an insult. Violators are guilty of a misdemeanor and liable to imprisonment for two years.<sup>245</sup> Muslims living in states where Sharia law is used in criminal issues are subject to the death penalty for blasphemy and converting to other religions. Other federal laws relating to religious worship accompanying the blasphemy law include the prohibition of interfering with religious burials, ceremonies, worship, and obstructing clergy from performing their duties.<sup>246</sup>

### ***Implications on Freedom of Religion and Human Security***

Nigeria has experienced significant religious violence since the state began transitioning to a democracy in 1999. The following are some examples, as outlined by the Special Rapporteur on freedom of religion:

- Between 21 and 25 February 2000 and between 22 and 23 May of the same year, at least 2,000 people were killed in Kaduna (and in the south of Nigeria as retaliation) as a result of the adoption of a sharia penal code by Kaduna State;
- Between 7 and 13 September 2001, in Jos and surrounding areas of Plateau State, more than 1,000 people were killed after a Christian woman tried to walk through a praying Muslim congregation outside a Mosque;
- Between 21 and 23 November 2002, in Kaduna, 250 people were killed after a press article mentioned that the Prophet Muhammad would have approved the holding of the Miss World contest in Nigeria;

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245 The Federal Republic of Nigeria, *Criminal Code Act (Chapter 77)*, *Laws of the Federal Republic of Nigeria*, 1 June 1916, Amended in 1990, 204. Available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=218191](http://www.wipo.int/wipolex/en/text.jsp?file_id=218191)

246 Ibid., 205-206.

- On 24 February and on 2 and 11 May 2004, at least 1,000 people were killed in a cycle of retaliatory violence in the town of Yelwa, Plateau State and Kano, Kano State.<sup>247</sup>

Sectarian violence is also perpetrated by Boko Haram against both minorities and moderate Muslims. Boko Haram is now allied with Daesh (also known as ISIS).

While these conflicts occur based on religious identity, they may actually be due to tensions based on ethnic, political, and socio-economic factors. During a trip to Nigeria in 2005, former UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, found that while religion was not the cause of tension and violence, “conflicts have nevertheless unfolded along religious lines and that increasingly, most societal attitudes and behaviors are translated into religious terms, a phenomenon that exacerbates the differences between religions and creates a climate of religious intolerance.”<sup>248</sup> As an example, actors in Jos explained the conflict as based on a clash between indigenous peoples and settlers over land acquisition and property rights.<sup>249</sup> Violence occurs along religious lines when religious identity is used politically as a tool to garner support. This finding was reinforced by the Special Rapporteur on minority rights, Rita Izsák, when she visited the country in 2014. Izsák reported, “most civil society and government representatives asserted that the current religious and ethnic dimensions of the conflicts were not a primary cause by themselves, but a result of the use of these factors by the different groups in order to mobilize and reach out to a larger number of people to their cause.”<sup>250</sup> It is in this context of mob violence and the political manipulation of religious identity that blasphemy is prosecuted through the courts or vigilante justice.

On 22 August 2016, a Christian student from the Abdu Gusau

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247 Commission on Human Rights, *Report of the Special Rapporteur*, E/CN.4/2006/5/Add.2 (7 October 2005), 81.

248 Ibid., 91.

249 Ibid., 82.

250 Ibid., 31.

Polytechnic was accused of blasphemy in the Talata-Mafara area of Zamfara State in the Muslim North. The student allegedly made a blasphemous statement against Muhammad, and a large group of his Muslim classmates began beating him in the street. After the mob left him for dead, a Muslim man who was from the same tribe and spoke the same language as the student drove him to the hospital. When the students from the disbursed mob found out, they went to the hospital looking for the accused blasphemer. After being refused entrance, they refocused their attention on the Muslim man, burning down his shop and his home. There were eight people in his house at the time; they all died in the fire. Zamfara Governor Alhaji Abdulaziz Yari set a nightly curfew in the area to avoid an escalation of violence. He vowed to bring the perpetrators to justice, and President Buhari called the act unacceptable and said the “law will take its course.”<sup>251</sup> As of this writing, there was no news of arrests or convictions made in the case.<sup>252</sup>

The high rate of violence experienced by Nigerians led one writer to phrase the human security situation in Nigeria as “death as our way of life.”<sup>253</sup> In the cases listed above, a significant number of killings occurred in a short time span, indicating a large portion of the population either engaged in the killings or were impacted by them.<sup>254</sup> In the areas

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251 Adam Withnall, “Nigerian mob burns down house of Muslim who tried to save Christian accused of blasphemy,” *Independent*, 23 August 2016. Available at <http://www.independent.co.uk/news/world/africa/nigerian-mob-burns-down-house-of-muslim-who-tried-to-save-christian-accused-of-blasphemy-a7205376.html>

252 For more information, see

“8 killed in Zamfara over alleged blasphemy against Islam,” *Vanguard*, 22 August 2016. Available at <http://www.vanguardngr.com/2016/08/8-killed-zamfara-alleged-blasphemy-islam/> and

SaniTukur, “How Zamfara ‘blasphemy’ mob killings occurred,” *Premium Times*, 23 August 2016. Available at <http://www.premiumtimesng.com/news/headlines/209135-zamfara-blasphemy-mob-killings-occurred.html>

253 Chris Ngwodo, “Death As Our Way of Life: Deconstructing Violence in Nigeria,” *Premium Times Opinion*, 18 March 2017. Available at <http://opinion.premiumtimesng.com/2017/03/18/death-way-life-deconstructing-violence-nigeria-chris-ngwodo/>

254 Commission on Human Rights, *Report of the Special Rapporteur*, E/

where violence occurred, “so many people have been implicated in – and suffer from – the violence that a majority of the people in those places live in an atmosphere of fear, anger and sadness which, in a way, prevents the population from returning to normal life.”<sup>255</sup> The lack of personal security has a chilling effect on the right of citizens to freedom of religion. While most conflicts are actually based on factors other than religion, the use of religious identity as a galvanizing force means Nigerians “can legitimately claim that they do not feel secure to freely practice their religion because they may feel targeted because of their religious identity.”<sup>256</sup> While the blasphemy law is not responsible for all of the religious violence in Nigeria due to the manipulation of religious identity, it is a galvanizing force for violence given the sensitive nature of blasphemy.

### ***Implications on the Rule of Law and Freedom of Expression***

In Nigeria, there exists a climate of impunity surrounding acts of violence which stifles the freedom of expression and the freedom to manifest one’s religion. Former Special Rapporteur Rita Izsák found in instances of religious violence, security forces did not arrive when called and no action was taken against the perpetrators of violence. Offenders are not prosecuted and victims are not compensated.<sup>257</sup> Former Special Rapporteur Asma Jahangir made the same finding, and expounded on its implications on freedom of religion:

Impunity further strengthens the fears of those who have been affected by previous instances of violence and inherently limits the enjoyment of their right to freely manifest their religion or belief. In the context of this mandate, reports have often pointed out that perpetrators who enjoy impunity,

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CN.4/2006/5/Add.2 (7 October 2005), 84.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid., 45.

<sup>257</sup> United Nations, Human Rights Council, *Report of the Special Rapporteur on minority issues, Rita Izsák, Mission to Nigeria (17 to 28 February 2014)*, A/HRC/28/64/Add.2 (5 January 2015), 39-40.

even for well-intentioned reasons, remain active in keeping religious tensions alive. Impunity therefore only escalates religious intolerance.<sup>258</sup>

**Impunity allows perpetrators of hostility and violence to continue to harass religious minorities.**

On 2 June 2016, Bridget Agbahime was murdered by a mob accusing her of blasphemy. Bridget, a 74-year-old Igbo Christian ran a shop in the KofarWambai Market in Kano. According to her husband, Mike Agbahime, a senior pastor at the Deeper Life Bible Church, Bridget wanted to close her shop to attend a church program when a Muslim man approached the front of the shop to wash his feet and hands in preparation for praying. Bridget asked him to stop so she could lock her shop. An argument ensued when the man refused, telling her to wait for him to finish. Bridget and Mike went to the landlord of their shop to report the incident and were confronted by a mob rallied by the man's accusation of blasphemy against Bridget. She was stoned and beaten to death in front of her husband.<sup>259</sup>

By 10 June, many actions had occurred surrounding the event – the police had arraigned five suspects; Muslim Rights Concern, a prominent Muslim group, had condemned the killing; and President MohammaduBuhari proclaimed that “justice would be done.”<sup>260</sup> The

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258 Commission on Human Rights, *Report of the Special Rapporteur*, E/CN.4/2006/5/Add.2 (7 October 2005), 95.

259 Many details taken from ““She Was Killed Right In My Presence” – Husband Of Woman Killed For “Blasphemy” Reveals,” *NationalHelm*, 3 June 2016. Available at <https://www.nationalhelm.co/2016/06/my-wife-was-killed-right-in-my-presence.html> Other reports claim Bridget was beheaded. See Hassan Adebayo, “Kano blasphemy: Islamic group condemns killing, wants perpetrators prosecuted,” *Premium Times*, 5 June 2016. Available at <http://www.premiumtimesng.com/news/top-news/204706-kano-blasphemy-islamic-group-condemns-killing-wants-perpetrators-prosecuted.html>

260 “Buhari condemns ‘blasphemy killing’ in Kano as police arrest suspects,” *Premium Times*, 4 June 2016. Available at <http://www.premiumtimesng.com/news/headlines/204685-buhari-condemns-blasphemy-killing-kano-police-arrest-suspects.html>

federal government also deployed additional security forces to Kano to prevent the situation from “degenerating into a major security threat,” according to Nigeria’s national police chief, Solomon Arase.<sup>261</sup> Five months later, after public outcry had died down, a Kano Magistrates’ Court released all five suspects after Kano State Attorney General HarunaFalali advised the court there was “no case to answer as the suspects are all innocent.”<sup>262</sup> Five suspects were arrested and released without charges five months later. No further explanation was given. The Christian Association of Nigeria condemned the decision to release the suspects, and claimed, “as it stands today, there is no single prosecution record of any criminal who killed under the pretense of blasphemy in Nigeria despite the number of victims and incontrovertible facts showing that those killings were done in daylight and mostly by persons who live within the communities where these heinous crimes were committed.”<sup>263</sup> No one was held to account for Bridget’s death, and her husband was forced to flee to the Southeast after receiving death threats.

The rate of impunity and the implementation of sharia in the northern states have had a detrimental effect on the freedom of expression and led to self-censorship. In May 2015, authorities arrested Sufi cleric

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261 “Nigeria: Christians Demand Protection After Woman Killed for Insulting Islam,” *All Africa*, 4 June 2016. Available at <http://allafrica.com/stories/201606050149.html>

262 For more information, see

“Court frees all suspects in Kano blasphemy killing,” *Premium Times*, 3 November 2016. Available at <http://www.premiumtimesng.com/news/headlines/214435-court-frees-suspects-kano-blasphemy-killing.html> and

Samuel Ogundipe, “Blasphemy Killing: Kano govt won’t explain why suspects in Bridget Agbahime’s murder were freed,” *Premium Times*, 19 December 2016. Available at <http://www.premiumtimesng.com/news/headlines/218376-blasphemy-killing-kano-govt-wont-explain-why-suspects-in-bridget-agbahimes-murder-were-freed.html>

263 Statement made by Christian Association of Nigeria’s Director of Legal and Public Affairs Barr, Kwamkur Samuel. Found in Caleb Ayansina, “Nobody who killed under pretence of blasphemy has been brought to justice in Nigeria, CAN laments,” *Vanguard*, 7 November 2016. Available at <http://www.vanguardngr.com/2016/11/nobody-who-killed-under-pretence-of-blasphemy-has-been-brought-to-justice-in-nigeria-can-laments/>

Abdul Inyass and eight of his followers (seven men and one woman) for allegedly making blasphemous statements against Muhammad. The group was at an event honoring Sheik Ibrahim Niasse, the founder of Haqiqa, a mystical branch of the Tijjaniyya movement, a minority Sufi sect. Abdul Inyass allegedly said “Niasse was bigger than Prophet Muhammad,” sparking protests across the city. When the trial began on May 22, a mob surrounded and burnt down the courthouse. Judges then held the trial in secret to quell protests. In June 2015, Upper Sharia Court RijiyaLemu sentenced Inyass’ followers to death for blasphemy in accordance with sections 110 and 302 of the Kano State penal code. On 4 January 2016, an Upper Sharia Court in Kano also sentenced Abdul Inyass to death by hanging.<sup>264</sup> The case of Abdul Inyass aptly illustrates the implications of the impact of the blasphemy law on both the rule of law and the freedom of expression.

## ***Conclusion***

As explained in the section above on international law, states are not permitted to restrict the freedom to manifest one’s religion or the freedom of expression for any reason other than those grounds enumerated in articles 18(3) and 19(3). This includes restricting the freedom for no grounds at all, and states must refer to a particular goal when creating restrictions for the freedom of expression. The individual’s right is violated if no grounds are cited as reasons for restricting the right. The Nigerian government does not provide grounds for its blasphemy law.

While not expressly stated by the Nigerian government, the examples of blasphemy cases in this section demonstrate the potential for religious conflict to disturb public order and the actions taken by

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<sup>264</sup> For more information, see

“Nigeria court in Kano sentences cleric to death for blasphemy,” *BBC News*, 6 January 2016. Available at <http://www.bbc.com/news/world-africa-35241608> and

Abdulsalam Muhammad, “Islamic cleric sentenced to death for ‘blasphemy,’” *Vanguard*, 5 January 2016. Available at <http://www.vanguardngr.com/2016/01/islamic-cleric-sentenced-to-death-for-blaspheming-prophet-mohammed/>

local and state government to restore it. If public order is taken as the goal for which the freedom of expression is restricted, it is clear that the law does not protect public order, it incites violence. If conflicts regarding other issues exist below the surface, the simple mention of blasphemy is an easy way to galvanize a mob to violence.

The Nigerian government has expressed willingness to make additional efforts to reduce religious violence. During its UPR review, Nigeria accepted 15 recommendations to work to protect the rights of religious minorities and promote religious tolerance. They also accepted eight recommendations to ensure the political and socio-economic rights of minorities generally.<sup>265</sup> To have an impact, the government must take steps to combat incitement to violence. As writer Chris Ngwodo puts it, “if anything is hurting Nigeria, it is not her diversity, but her inability to manage it by reason of poor governance, and more profoundly, the state’s blatant inability and unwillingness to dispense justice.”<sup>267</sup>

Like the other states in this study, the state must have a comprehensive plan to promote religious harmony while also combating **incitement** to violence. Efforts must include promoting respect and tolerance, improving access to education and promoting literacy, access to public office for religious minorities. Various and numerous stakeholders should be included and measures must be implemented at all levels of government to ensure their effectiveness.

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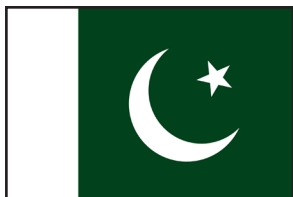
265 The state noted two recommendations, which included sexual orientation and gender identity amongst the list of protected minorities.

266 First session in February 2009 (Session 4) and second session in October 2013 (Session 17). UPR Info, Data available at <https://www.upr-info.org>.

267 Chris Ngwodo, “Death As Our Way of Life.”



## Pakistan



Population	195,400,000
Population Density	245.4 persons per km <sup>2</sup>
GDP Per Capita	\$1,434.7
Gini Index	30.0
Human Development Index	0.550
Literacy	Youth: 70.7%, 0.78 GPI Adult: 54.9%, 0.59 GPI
Independence	1947, from Britain
Region	South Asia

The Islamic Republic of Pakistan is a state with immense ethno-linguistic, religious, and sectarian diversity. Ninety percent of the population learns regional dialects before learning the national language of Urdu. According to Pakistan's 1998 census, 96.3% of the country's population adheres to Islam.<sup>268</sup> Of the followers of Islam, 85-90% are Sunni and 10-15% are Shi'a.<sup>269</sup> The country has small minorities of Hindus (1.6%), Christians (1.6%), Ahmadis (0.2%), and others (0.3%).<sup>270</sup>

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268 This data is from the 1998 census. Pakistan conducted a more recent census from March to May 2017. The data was not available at the time of this report's publication. The Islamic Republic of Pakistan, Population Census Organization, *Population Distribution by Religion, 1998 Census*, 335. Available at <http://www.pbs.gov.pk/sites/default/files/other/yearbook2011/Population/16-16.pdf>

269 Data on Muslim sect distribution found at "People and Society: Pakistan," *The World Factbook*, Washington, DC: Central Intelligence Agency, 2017.

270 The Islamic Republic of Pakistan, *Population Distribution by Religion, 1998 Census*, 335.

Each religion has multiple sects and several religions constitute the category ‘other.’<sup>271</sup>

In the decades since Pakistan’s independence, the state has struggled with whether it is to be a liberal-secular state or an Islamic state. Upon independence in 1947, Pakistan was a secular state. Pakistan’s founding father Mohammed Ali Jinnah envisioned a state built on the fundamentals of equality, nondiscrimination, and pluralism. The white stripe on Pakistan’s flag was included to represent religious minorities. By 1956, the country was renamed the Islamic Republic of Pakistan and Muslim clerics started to gain significant power. During the military dictatorship of General Zia ul-Haq (1977-1988), Zia engaged in an Islamization program that increased the Islamization of society and the influence of Shari’a on the state’s legal system. He introduced three provisions to the penal code punishing blasphemy, including harsher-than-ever punishments such as life imprisonment and the death penalty. He also introduced two measures that limit the religious freedom of the Ahmadiyya (discussed in detail below). General Zia ul-Haq’s rule pushed the country’s identity further down the spectrum away from a state based on pluralism.

Religious Minority	Percent Population	Percent Blasphemy Accusations
Ahmadiyya	0.2%	34.0%
Christian	1.6%	13.9%
Hindu	1.6%	1.8%

General Zia ul-Haq’s blasphemy laws had a significant impact on the increase in blasphemy accusations. Prior to 1986, only 14 blasphemy cases were reported.<sup>272</sup> Between 1987 and 2016, 1,472

271 For a detailed analysis of religious minorities in Pakistan, see DrIfthikhar H. Malik, “Religious Minorities in Pakistan,” *Minority Rights Group International*, September 2002.

272 “Timeline: Accused under the Blasphemy Law,” *Dawn*, 18 August 2013. Available at <https://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law>

individuals were accused of blasphemy, including 730 Muslims (49.6%), 501 Ahmadis (34.0%), 205 Christians (13.9%), and 26 Hindus (1.8%).<sup>273</sup> These numbers demonstrate the disproportionate impact of the law on religious minorities, as the number accused is significantly larger than the group's proportion of the population. Minorities also face greater risks than Sunni Muslims accused of the same charge<sup>274</sup> and are subject to "physical attacks, social stigmatization, psychological insecurity, forced conversions, and continued institutional degradation."<sup>275</sup> Nineteen people are currently on death row for the offense.<sup>276</sup>

In addition to legal cases of blasphemy prosecuted by the state, individuals and mobs use vigilante justice to punish those accused of blasphemy. There are also reports of societal actors coercing religious minorities to convert to Islam and girls being forced into marriage and conversion. Between 1987 and 2016, at least 62 individuals were killed on the suspicion of blasphemy.<sup>277</sup>

Several factors are responsible for Pakistan's high rate of intolerance of blasphemy. One major element is the education system. Authorities systematically remove the history of minorities who contributed to the foundation of the state to make room for more Sunni Muslims.<sup>278</sup>

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273 Data from the National Commission for Justice and Peace. The religion of the remaining 10 individuals could not be attained because they were killed before legal proceedings began. Found in "HRCF Annual Report of 2016: Freedom of thought, conscience, and religion," *Human Rights Commission of Pakistan*, 2016, 96. Available at <http://hrcp-web.org/hrcpweb/wp-content/uploads/2017/05/State-of-Human-Rights-in-2016.pdf>

274 "HRCF Annual Report of 2016," *Human Rights Commission of Pakistan*, 96.

275 DrIftikhar H. Malik, "Religious Minorities in Pakistan," 22.

276 "Why doesn't Pakistan reform its blasphemy laws?" *The Economist*, 25 April 2017. Available at <http://www.economist.com/blogs/economist-explains/2017/04/economist-explains-14>

277 Data from Center for Social Justice, based in Lahore. Found in AlizehKohari, "Acts of faith: Why people get killed over blasphemy in Pakistan," *Herald Pakistan*, 9 January 2017. Available at <http://herald.dawn.com/news/1153487>

278 United Nations, Commission on Human Rights, *Implementation of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*, Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/23, Addendum: Visit

Teaching of religious intolerance is widespread, and many textbooks “include derogatory statements about minority religious groups, including Ahmadiyya Muslims, Hindus, Jews, and Christians.”<sup>279</sup> The Special Rapporteur on freedom of religion or belief found the following factors also contribute to intolerance: “the lack of a civil society admitting countervailing forces, the behavior of an elite often bent on preserving its own interests, a political system still in the process of democratization, a very low rate of literacy, and a harsh economic and social environment.”<sup>280</sup> Pakistan has also experienced radical demographic changes in the decades since independence, the strains of which means disputes and violence which were originally attributed to religious identity might in fact be based on other factors such as ethnicity or socio-economic status.<sup>281</sup> Further research is needed in this area.

### ***Pakistan’s International Obligations and Blasphemy Law***

Pakistan has a responsibility under international law to protect religious freedom and religious minorities. Pakistan signed the ICCPR in 2008 and ratified the treaty in 2010 with no reservations. This ratification bound Pakistan by international law to abide by the articles of the treaty. This section will explore the state’s domestic laws on the rights outlined in articles 18, 19, 20, and 27. It will then detail the state’s blasphemy law.

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by the Special Rapporteur to Pakistan, E/CN.4/1996/95/Add.1 (2 January 1996), 59. Available at <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Visits.aspx>

279 United States, Department of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report: Pakistan*, 2015.

280 Commission on Human Rights, *Visit by the Special Rapporteur*, E/CN.4/1996/95/Add.1 (2 January 1996), 71.

281 DrIftikhar H. Malik, “Religious Minorities in Pakistan,” 6.

Treaty Name	Signature Date	Ratification, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	17-Apr-2008	23-Jun-2010
International Covenant on Civil and Political Rights (CCPR)	17-Apr-2008	23-Jun-2010
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (CCPR-OP2-DP)	Not Signed/Ratified	
Convention for the Protection of All Persons from Enforced Disappearance (CED)	Not Signed/Ratified	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		12 Mar 1996 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	19-Sep-1966	21-Sep-1966
International Covenant on Economic, Social and Cultural Rights (CESCR)	3-Nov-2004	17-Apr-2008
Convention on the Rights of the Child (CRC)	20-Sep-1990	12-Nov-1990

Source: United Nations, Ratification Status by Country, *Office of the High Commissioner for Human Rights*.

## Freedom of Religion and Protection of Minorities

Pakistan's domestic instruments further solidify the freedom of religion and the rights of minorities found in the ICCPR into law. The state's 1973 constitution states it is the will of the people to establish an order wherein Muslims are enabled to order their lives according to Islam but also wherein there are adequate provisions made for

minorities to freely profess and practice their religions.<sup>282</sup> While the constitution declares Islam as the state religion,<sup>283</sup> article 20 further elaborates the rights of citizens to religious freedom: “every citizen shall have the right to profess, practice, and propagate his religion; and every religious denomination and every sect thereof shall have the right to establish, maintain, and manage its religious institutions.”<sup>284</sup> The same article states this right may be subject to law, public order, and morality. Article 36 further protects minorities, stating, “the State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.”<sup>285</sup> Despite this provision, only Muslims are permitted to become president.<sup>286</sup>

### Freedom of Expression

The constitution’s article 19 grants every citizen the right to freedom of speech and expression, “subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security, or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of,<sup>287</sup> or incitement to an offence.”<sup>288</sup> As detailed above, the ICCPR only allows for the limitation of the freedom of expression for the respect of the rights or reputations of others and for the protection of national security, public order (ordre public), public health, or morals.<sup>289</sup> As such, Pakistan’s limitations go

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282 Islamic Republic of Pakistan, *The Constitution of the Islamic Republic of Pakistan*, 12 April 1973, Preamble. Similar provisions regarding Muslims and the Islamic way of life found in Article 31.

283 Ibid., 2.

284 Ibid., 20.A-20.B.

285 Ibid., 36.

286 Ibid., 41.2.

287 ‘Commission of’ was previously ‘defamation’ prior to the fourth amendment of the constitution passed on 21 November 1975.

288 Islamic Republic of Pakistan, *The Constitution*, 12 April 1973, 19.

289 United Nations, *International Covenant on Civil and Political Rights*(16

beyond what is allowable by international law.

## Blasphemy Law

Pakistan authorities use blasphemy laws to limit the freedom of religion, the freedom of expression, and the right of minorities to profess and practice their religion in community with other members of their group. Like most of its colonies, Pakistan inherited its penal code from Britain. This code included a section on blasphemy meant to quell animosity based on religious identity after the Partition of India. Since then, Pakistan has significantly expanded Chapter XV on offenses relating to religion to include the following offences:

**Table 1: Religious Offenses in Pakistan**<sup>290</sup>

Article	Prohibited Acts	Punishment
Article 295	Defiling places of worship or sacred objects with the intention of insulting a religion	Two years imprisonment, a fine, or both
Article 295-A, added in 1927	Deliberately offending religious feelings by insulting a religion	10 years, a fine, or both
Article 295-B, added in 1982*	Defiling the Koran	Life imprisonment
Article 295-C, added in 1986*	Defiling Muhammad's name	Death or life imprisonment and a fine
Article 296	Disturbing religious assemblies	One year, a fine, or both

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December 1966),19.3.A-19.3.B.

290 Islamic Republic of Pakistan, *Pakistan Penal Code (Act XLV of 1860)*, 6 October 1860, Articles 295, 295-A, 295-B, 295-C, 296, 297, 298, 298-A. Available at <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

Article	Prohibited Acts	Punishment
Article 297	Trespassing on burial places with the intention of wounding religious feelings or insulting a religion	One year, a fine, or both
Article 298	Deliberately wounding religious feelings	One year, a fine, or both
Article 298-A, added in 1980*	Defiling the sacred names of religious personages	Three years, a fine, or both

\*Added during General Zia-ul-Haq's military regime.

In 1980 under General Zia-ul-Haq's direction, Pakistan established the Federal Shariat Court. The court is tasked with determining whether state laws are in conformity with the injunctions of Islam, as taken from the Koran and Sunnah. If the Court deems a law 'repugnant' to the injunctions of Islam, the law becomes void on the date of the decision and the proper authorities must take steps to amend the law to bring it into conformity. By 1986, the court found sections of 55 federal laws and 212 provincial laws to be out of conformity with the injunctions of Islam, including Penal Code section 295-C, the country's blasphemy law.<sup>291</sup> In a 30-page decision citing scriptures and passages from the Koran and Hadith, the court ruled the punishment of life imprisonment for the crime of blasphemy against Muhammad is repugnant to the injunctions of Islam.<sup>292</sup> The punishment of life imprisonment was thus stricken from the code and the punishment of death was also to be prescribed for blasphemy against other prophets.<sup>293</sup> This decision has

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291 Justice Gul Muhammad Khan, *Islamization of Laws in Pakistan*, Presidential Address at 5th Pakistan Jurists Conference in Karachi, reprinted in 38 ALL PAK. LEGAL DECISIONS, JOURNAL 249, 261 (1986); J. Henry Korson, *Islamization and Social Policy in Pakistan*, 6 J. S. ASIAN & MIDDLE E. STUD. 71, 72 (1982). Found in David F. Forte, "Apostasy and Blasphemy in Pakistan," *Connecticut Journal of International Law* 10, no. 1 (1994): 37.

292 *Muhammad Ismail Qureshi vs Pakistan*, Shariat Petition No.6/L of 1987, Federal Shariat Court, 3 October 1990, 67. Available at <http://khatm-e-nubuwwat.org/lawyers/data/english/8/fed-shariat-court-1990.pdf>

293 *Ibid.*, 68.



yet to be appealed successfully at the Supreme Court.<sup>294</sup>

### ***Implications on the Freedom of Religion and Religious Minorities***

Pakistan uses the concept of blasphemy to restrict the right of the country's Ahmadis to profess and practice their religion in community with other Ahmadis. As demonstrated above, Ahmadis make up only 0.2% of Pakistan's population but account for 34% of blasphemy cases. In 1974, Pakistan's parliament voted to pass the second amendment to the constitution. The amendment, which was passed in part due to rioting by the clergy, declared Ahmadis as non-Muslim minorities.<sup>295</sup> The constitution defines the term 'Muslim' as someone who believes in the "absolute and unqualified finality of the Prophethood of Muhammad."<sup>296</sup> The provision goes on to specifically include Ahmadis in the definition of a 'non-Muslim.'<sup>297</sup>

General Zia-ul-Haq's military regime further hindered the rights of Ahmadis. Ordinance XX added Articles 298-B and 298-C to the penal code, prohibiting Ahmadis from using certain religious terminology,

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294 For more information on the Federal Shariat Court, see: Forte, "Apostasy and Blasphemy in Pakistan," 27-68. Islamic Republic of Pakistan, *The Constitution*, 12 April 1973, 203A-J.

United States, Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Pakistan*, 1990, 1591. Available at [https://archive.org/stream/countryreportson1990unit/countryreportson1990unit\\_djvu.txt](https://archive.org/stream/countryreportson1990unit/countryreportson1990unit_djvu.txt)

295 For a more detailed analysis of the political climate at the time of the amendment, see Sadia Saeed, "Pakistani nationalism and the state marginalisation of the Ahmadiyya community in Pakistan." *Studies in ethnicity and nationalism* 7, no. 3 (2007): 132-152.

296 Islamic Republic of Pakistan, *The Constitution*, 12 April 1973, 260.3.A.

297 Per article 260.3.B, "'non-Muslim' means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes." Ibid., Article 260.3.B.

calling their place of worship a mosque, and reciting the Azan.<sup>298</sup> They are also prohibited from calling themselves Muslims and their religion Islam, from proselytizing, and from outraging the religious feelings of others.<sup>299</sup> Any violation is subject to three years imprisonment and/or a fine. In explaining the reasoning behind this ordinance, Pakistan expressed to the United Nations the purpose is “to restrain certain Ahmadiyya practices which offend Orthodox Muslims”<sup>300</sup> which “could hurt the sentiments of society in general and could lead to creating tension between various sections of society.”<sup>301</sup> The government explained further:

The Admadis as a non-Muslim minority have been accorded all the rights and privileges guaranteed to minorities under the Constitution and laws of Pakistan. Some religious practices of the Ahmadis are similar to those of Muslims, which poses a *threat to public order and safety*. Consequently, these religious practices have to be regularized through reasonable legislative and administrative restraints so as to maintain sectarian peace ... The exercise of a right is never absolute, as is stipulated in article 18, paragraph 3 of the International Covenant on Civil and Political Rights and article 1, paragraph 3 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, as well as article 20 of the Constitution of Pakistan.<sup>302</sup>

In other words, Pakistan implemented legislation restricting the

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298 Islamic Republic of Pakistan, *Pakistan Penal Code* (Act XLV of 1860), 6 October 1860, Article 298-B.

299 Ibid., Article 298-C.

300 *Summary of Arbitrary Executions, Report by Special Rapporteur, Mr. S. Amos Wako, Appointed Pursuant to Resolution 1984/35 of 24 May 1984 of the Economic and Social Council*, 41 U.N. Commission on Human Rights (Agenda Item 12) at 20, U.N. Doc. E/CN.421 (1986). Found in Linda J. Berberian, “Pakistan Ordinance XX of 1984: International Implications on Human Rights,” *Loyola of Los Angeles International and Comparative Law Journal* 9, no. 3 (1987): 679.

301 Ibid.

302 Emphasis added. Commission on Human Rights, *Visit by the Special Rapporteur*, E/CN.4/1996/95/Add.1 (2 January 1996), 42.

Ahmadis' freedom of expression, their freedom of religion, and their rights as minorities, based on the goal of maintaining sectarian peace and public order. According to international law, public order is a legitimate goal for restricting the freedom to manifest one's religion and the freedom of expression if the restriction is necessary and proportional to achieving that goal. The following cases of blasphemy accusations will be used to determine the extent to which these restrictions are necessary and proportional to achieve public order.

AbulShukoor's experience as an Ahmadi in Pakistan is indicative of the range of violations experienced by the minority sect. In 1974, his optical shop and house were both ransacked and looted. In 1985, he was charged with blasphemy simply for being an Ahmadi. In 1990, he was imprisoned for three years after a cleric filed a complaint Shukoor was wearing a ring with a message from the Koran. In 2015, police harassed 80-year-old Shukoor and vandalized his bookstore located in Ahmadi-majority Rabwah. He was then charged for selling Ahmadiyya books.<sup>303</sup> Arresting and convicting religious minorities for blasphemy is not necessary and proportional to achieving public order. It violates their rights to freedom of religion and their rights as minorities.

The case of 25-year-old journalism student Mashal Khan will also provide context to how accusations of blasphemy are used in Pakistan to stifle critical expression. On 13 April 2017, Khan was lynched by a thousands-strong mob at AbdulkWali Khan University in Mardan. Khan, a Sufi Muslim, was accused of using Facebook to promote the Ahmadi faith. Students surrounded Khan, demanding that he recite verses from the Koran. Despite his protestation that he was not Ahmadi, the mob beat him with sticks and shot him until he was dead. Two days earlier, Khan had spoken to Khyber News, voicing criticism about the university's administration. The day he was lynched, the assistant registrar posted a notice stating the university was suspending Khan and conducting an investigation into alleged "blasphemous activities." This notice incited the mob. Police found no evidence proving Khan was guilty of blasphemy and Prime Minister Nawaz Sharif condemned

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303 "Ahmadi bookstore owner and manager arrested for Blasphemy," *Rabwah Times*, 12 December 2015.

the incident after public outcry.<sup>304</sup>

The Ahmadis consider themselves Muslims, their religion Islam, their places of worship mosques, and their call to prayer Azan. They wish to use religious terminology and name their sons Muhammad, and Pakistan's concept of blasphemy restricts their ability to do so. The expansive nature of the law does not simply restrict the Ahmadi's ability to manifest their religion; it restricts their religious freedom. This is illegal under international law, as the freedom of religion is non-derogable under any circumstances under the ICCPR. Further, the blasphemy law does not protect public order by restricting Ahmadi practices; it incentivizes violence against them. Between 1984 and 2015, "248 members have been killed because of their faith; 323 have been the victim of attempted murder; 27 worship places have been demolished; 32 have been sealed by the authorities and 16 illegally appropriated; 39 graves have been desecrated and the bodies of 65 have been refused burial in joint cemeteries."<sup>305</sup> This is not just the case for Ahmadis; other religious minorities experience similar persecution.

Religious minorities throughout Pakistan are subject to violence both at the mere mention of blasphemy and simply for being minorities. In August 2009, a mob of 20,000 burned and looted more than 100 Christian homes in Gojra after a false claim was disseminated that a Koran had been burned. Officials believe the Sunni Militant group Sipah-e-Sohaba was responsible for the attacks, which left

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304 For more information, see "Pakistan: Journalism student brutally killed by mob over alleged blasphemy," *Hindustan Times*, 13 April 2017. Available at <http://www.hindustantimes.com/world-news/pakistan-journalism-student-brutally-killed-by-mob-over-alleged-blasphemy/story-6RqX1UHcEovPctxn18fTDO.html> and

Robert Mackey, "Students at Pakistani University Lynch Classmate Falsely Accused of Blasphemy," *The Intercept*, 14 April 2017. Available at <https://theintercept.com/2017/04/14/students-pakistani-university-lynch-classmate-falsely-accused-blasphemy/>

305 Data from an annual report by Jamaat-e-Ahmadiya published on 25 April 2016. Found in Rana Tanveer, "Significant increase in hate propaganda against Ahmadiyya community, says report," *The Express Tribune Pakistan*, 25 April 2016. Available at <https://tribune.com.pk/story/1091294/significant-increase-in-hate-propaganda-against-ahmadiyya-community-says-report/>

seven dead and 20 wounded.<sup>306</sup> Minority Shia communities are also disproportionately targeted in terror attacks. In 2015, there were 38 attacks resulting in 251 fatalities and 316 injuries.<sup>307</sup> Hindus are targeted for forced marriage and conversions. The high rate of violence against minorities led Pakistan's former minister of minority affairs, ShahbazBhatti, to state "the blasphemy law is being used to terrorize minorities in Pakistan."<sup>308</sup> Bhatti was later killed for this statement. The evidence of violence against religious minorities suggests the blasphemy law is doing nothing to maintain public order. Pakistan's blasphemy laws are thus restricting the rights of religious minorities to the freedom of religion and the freedom of expression in ways that are not necessary and proportional to the goal of public order. They are thereby against international law.

The United Nations agrees and has called for the repeal of Pakistan's blasphemy laws several times. In 1985, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed its grave concern about Ordinance XX, finding the law violates the right to freedom of thought, expression, conscience and religion, and the right of religious minorities to profess and practice their religion, among others.<sup>309</sup> The sub-commission requested the Commission on Human Rights call on Pakistan to repeal the law.<sup>310</sup>

Following a country visit to Pakistan in 1995, Special Rapporteur on the question of religious intolerance,<sup>311</sup> Mr. S. Amos Wako,

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306 Sabrina Tavernese, "Hate Engulfs Christians in Pakistan," *New York Times*, 2 August 2009. Available at <http://www.nytimes.com/2009/08/03/world/asia/03pstan.html>

307 United States, Department of State, *International Religious Freedom Report: Pakistan*, 2015.

308 Statement in an interview in Gojra, cited in Sabrina Tavernese, "Hate Engulfs Christians in Pakistan," *New York Times*, 2 August 2009. Available at <http://www.nytimes.com/2009/08/03/world/asia/03pstan.html>

309 United Nations, Economic And Social Council, Commission On Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Situation in Pakistan*, E/CN.4/Sub.2/1985/57 (1985), 1.

310 Ibid., 3.

311 In 2000, the Commission on Human Rights changed the title to Special

concluded Pakistan's blasphemy laws are likely to favor or foster intolerance in society. The law applied specifically to the Ahmadi minority is particularly questionable and in some respects frankly unwarranted. More generally speaking, blasphemy as an offence against belief may be subject to special legislation. However, such legislation should not be discriminatory and should not give rise to abuse. Nor should it be so vague as to jeopardize human rights, especially those of minorities ... While protecting freedom of conscience and freedom of worship is clearly a necessity, applying the death penalty for blasphemy appears disproportionate and even unacceptable.<sup>312</sup>

In 2011, High Commissioner for Human Rights Navi Pillay condemned the assassination of two political leaders for their opposition to the blasphemy laws and called on the government to honor their stand by supporting their position on the laws.<sup>313</sup> In 2016, Melhem Khalaf, the Country Rapporteur for Pakistan on the Committee for the Elimination of Racial Discrimination, expressed concerns regarding the radicalization of some parts of the population and some political parties, citing the blasphemy laws as fueling this radicalization.<sup>314</sup> Despite these calls, the blasphemy law remains. The next section will explore the laws implications on the freedom of expression and rule of law.

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Rapporteur on freedom of religion or belief.

312 Commission on Human Rights, *Visit by the Special Rapporteur*, E/CN.4/1996/95/Add.1 (2 January 1996), 82.

313 "UN human rights chief condemns Pakistan assassination, urges reform of blasphemy laws," *United Nations, Office of the High Commissioner for Human Rights*, 2 March 2011. Available at <http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10784&LangID=E>

314 "Committee on the Elimination of Racial Discrimination considers the report of Pakistan," *United Nations, Committee on the Elimination of Racial Discrimination*, 17 August 2016. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20386&LangID=E#sthash.jKkDgvy1.dpuf>

## ***Implications on the Freedom of Expression and Rule of Law***

The propensity of the blasphemy law to incite violence has chilling implications for freedom of expression and the rule of law in Pakistan. Government concessions to the ulama began early on in the country's history, followed by decades of military rule, culminating in General Zia ul-Haq's Islamization program, which attempted to curry the favor of religious leaders. Any attempts to amend the blasphemy laws are obstructed by hardline Islamic clerics and groups who can easily organize mobs, protests, and vigilante justice at the drop of a hat.

The sensitive nature of blasphemy in Pakistan, and the willingness of these groups to resort to violence and vigilante justice, inhibits the rule of law in the country. Lower courts are quick to convict individuals for blasphemy without following evidentiary standards because they operate in an 'atmosphere of intimidation' wherein they fear reprisal.<sup>315</sup> The Special Rapporteur found "that in many cases the administration of justice is hindered, especially through pressure brought to bear by crowd demonstrations organized by religious extremists."<sup>316</sup> Once in jail, those accused of blasphemy are still at risk and at least 51 people were murdered or died in prison between 1990 and 2011 before their trials finished.<sup>317</sup> Both suspects and authorities have reason to be frightened.

The mere mention of changing the laws or legally defending those accused of breaking them has led to assassinations and mob violence. In 2011, the governor of Punjab, Salmaan Taseer, and federal minister of religious affairs, Shahbaz Bhatti, were both assassinated for speaking out against the law.<sup>318</sup> In 2014, human rights lawyer Rashid Rehman

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315 United States, Department of State, *International Religious Freedom Report: Pakistan*, 2015.

316 Commission on Human Rights, *Visit by the Special Rapporteur*, E/CN.4/1996/95/Add.1 (2 January 1996), 65.

317 Mohammad Nafees, "History Extrajudicial Murders, Deaths in Jail, & Suicide by Blasphemy Suspects." Available at <http://crss.pk/downloads/Reports/Special-Posts/Blasphemy%20Law%20Extra%20Judicial%20Killings.pdf> Cited in "Timeline: Accused under the Blasphemy Law," Dawn, 18 August 2013.

318 "HRCP Annual Report of 2016," *Human Rights Commission of Pakistan*, 12.

was assassinated for defending a blasphemy case.<sup>319</sup> In May 2017, a crowd of 500 people turned on police when they refused to hand over a Hindu man accused of blasphemy. They began beating officers and local government officials before resorting to gun violence. A 10-year-old boy was killed and five others wounded in the attack.<sup>320</sup> The problem is exacerbated by the misuse of the blasphemy law to settle personal and political disputes.

Because the mere mention of blasphemy is an infallible way to see one's opponents devastated, it is often falsely invoked to settle petty disputes. Justice IbadurRehmanLodhi quoted research from the Legal Aid Society, Karachi, in his decision to acquit Ghulam Ali Asghar on the charge of blasphemy, stating the majority of blasphemy cases are based on accusations stemming from property disputes or personal or family vendettas.<sup>321</sup> In 2010, in one of Pakistan's most famous blasphemy cases, Christian Asia Bibi was accused of insulting Muhammad after a quarrel with a group of three Muslim women. Bibi was picking berries with the women, and the quarrel began when they refused to drink water she had brought because she was Christian. Bibi is the first female to be sentenced to death for the offence; she remains on death row.<sup>322</sup> In March 2013, a 3,000-strong mob destroyed more than 125 Christian homes and two churches in Lahore after SawanMasih was accused of blasphemy over a property dispute.<sup>323</sup> Individuals continue to spread rumors and accuse their business associates, neighbors, and peers of blasphemy to settle personal and political disputes.<sup>324</sup>

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319 Ibid.

320 "Boy, 10, killed in attempted blasphemy lynching in Pakistan," *The Guardian*, 4 May 2017.

321 *Ghulam Ali Asghar vs. The State & another*, 39 PK 2013, 9 December 2015 (Lahore High Court), 7-8. Available at <http://sys.lhc.gov.pk/appjudgments/2015LHC8087.pdf>

322 "Blasphemy: What you need to know about Asia Bibi's trial," Dawn, 13 October 2016. Available at <https://www.dawn.com/news/1289700>

323 "Pakistan acquits 112 in case of torching Christian homes over blasphemy rumour," *Reuters*, 29 January 2017. Available at <http://www.reuters.com/article/pakistan-blasphemy-idUSKBN15D0Q2?il=0>

324 United States, Department of State, *International Religious Freedom*



The cases in this section shed light on the chilling impact Pakistan's blasphemy law has on the freedom of expression and the rule of law. Conservatives punish calls for reform to the blasphemy laws as harshly as actual blasphemy. There need not be any evidence an individual actually committed blasphemy for courts to convict them of the offense. Those convicted still face vigilante justice in prison. As demonstrated, the blasphemy law is not protecting public order, it is inciting violence and is used increasingly to settle petty disputes.

## ***Conclusion***

While there have been calls over the years to amend the blasphemy laws, the government has made no significant progress toward this end. For decades, the government has been considering amending the law to deter false charges and to punish individuals for false accusations. Progress on these amendments is static.<sup>325</sup> During its Universal Periodic Review process, Pakistan accepted two recommendations to continue efforts to enhance the blasphemy law and prevent its abuse while noting 10 recommendations to either repeal the laws or ensure they are in conformity with the ICCPR. Pakistan noted five and accepted 13 recommendations to protect minorities and prevent discrimination and violence against them.<sup>326</sup>

Pakistan's blasphemy law is against international law. It is used to settle petty disputes and disproportionately impacts religious minorities. While Ahmadis have additional laws restricting their freedom of religion, the blasphemy law negatively impacts all religious minorities (including minority Muslim sects). Hardline Islamic clerics, conservatives, and terrorist organizations use the cover of the blasphemy law to go after religious minorities. This is a result of the increasing influence of the ulama on politics and society, which began early in the

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*Report: Pakistan, 2015.*

<sup>325</sup> Malik Asad, "Govt told to fix punishment for false blasphemy accusers," *Dawn*, 1 April 2017. Available at <https://www.dawn.com/news/1324152>

<sup>326</sup> First session in May 2008 (Session 2) and second session in October 2012 (Session 14). UPR Info, Data available at <https://www.upr-info.org>.

country's history and culminated in General Zia ul-Haq's Islamization program. Pakistan's "growing dependence upon Islamic ideology (at least a branch of it), has opened a door for fundamentalist groups who see minorities as 'foreign agents.'"<sup>327</sup> Dr. Iftikhar H. Malik argues that despite the influence of these groups,

it is unfair to suggest ... that Pakistani society on the whole is intolerant and intent upon eliminating pluralism; a small number of militants exploit the politico-economic frustrations of the rest, and these gather momentum within a non-democratic system. The politics of disempowerment and international or regional geo-political factors further fuel this backlash. It is augmented by prevailing prejudices stemming from ignorance about other religious traditions and by stereotypes of Christians, Hindus, Kalasha, Shias and others.<sup>328</sup>

Pakistan gained its independence in 1947 and spent a significant portion of its existence under military rule. It will take significant effort toward social change to overcome the factors that contribute to the violence against religious minorities in the country. The government must begin by repealing the blasphemy laws and undertaking a multi-level approach to promoting a culture of tolerance.

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327 DrIftikhar H. Malik, "Religious Minorities in Pakistan," 24.

328 Ibid., 22.

## Annex 2: 1999 Resolution on Defamation of Religions



### **Defamation of religions**

### **Commission on Human Rights resolution 1999/82**

*The Commission on Human Rights,*

Recalling that all States have pledged themselves, under the Charter of the United Nations, to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Reaffirming that discrimination against human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations,

Reaffirming also the call of the World Conference on Human Rights for all Governments to take all appropriate measures, in compliance with their international obligations and with due regard to their respective legal systems, to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion,

Alarmed at the serious instances of intolerance, discrimination and acts of violence based on religion or belief, including acts of violence,

intimidation and coercion motivated by religious extremism, occurring in many parts of the world and threatening the enjoyment of human rights and fundamental freedoms,

Underlining the importance of creating conditions to foster greater harmony and tolerance within and among societies and conscious of the importance of education in ensuring tolerance of and respect for religion and belief,

Welcoming the designation by the General Assembly of the year 2001 as the United Nations Year of Dialogue among Civilizations,

Expressing its appreciation in this context of the joint efforts of the member States of the Organization of the Islamic Conference and the United Nations High Commissioner for Human Rights in organizing the seminar entitled “Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights” in Geneva on 9 and 10 November 1998,

Emphasizing that nongovernmental organizations, religious bodies and communities have an important role to play in the promotion of tolerance and the protection of freedom of religion or belief,

1. Expresses deep concern at negative stereotyping of religions;
2. Also expresses deep concern that Islam is frequently and wrongly associated with human rights violations and with terrorism;
3. Expresses its concern at any role in which the print, audio-visual or electronic media or any other means is used to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religion;
4. Urges all States, within their national legal framework, in conformity with international human rights instruments

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\*The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap.I.

to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief;

5. Invites the High Commissioner, in the context of the preparations for the United Nations Year of Dialogue among Civilizations, to consider the holding of seminars to promote a dialogue among cultures, thus contributing to the understanding of the universality of human rights;
6. Calls upon the Special Rapporteur on religious intolerance and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance to take into account the provisions of the present resolution when reporting to the Commission at its fiftysixth session;
7. Decides to remain seized of the matter at its fifty sixth session.

62<sup>nd</sup> meeting

30 April 1999

[Adopted without a vote. See chap. VI.]

# Annex 3: 2011 Resolution 16/18 on Combating Intolerance

United Nations

A/HRC/RES/16/18



General Assembly

Distr. : General  
12 April 2011

**Original: English**

**Human Rights Council Sixteenth session**

**Agenda item 9**

**Racism, racial discrimination, xenophobia and related form of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action**

**Resolution adopted by the Human Rights Council\***

**16/18**

Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief

The Human Rights Council,

Reaffirming the commitment made by all States under the Charter of the United Nations to promote and encourage universal respect for and observance of all human rights and fundamental freedoms without distinction as to, inter alia, religion or belief,

Reaffirming also the obligation of States to prohibit discrimination on the basis of religion or belief and to implement measures to guarantee the equal and effective protection of the law,

Reaffirming further that the International Covenant on Civil and Political Rights provides, inter alia, that every one shall have the right to freedom of thought, conscience and religion or belief, which shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,

Reaffirming the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance,

Deeply concerned about incidents of intolerance, discrimination and violence against persons based on their religion or belief in all regions of the world,

*Deploing* any advocacy of discrimination or violence on the basis of religion or

*Strongly deploring* all acts of violence against persons on the basis of their religion or belief, as well as any such acts directed against their homes, businesses, properties, schools, cultural centres or places of worship,

*Concerned* about actions that will fully exploit tensions or target individuals on the basis of their religion or belief,

*Noting with deep concern* the instances of intolerance, discrimination and acts of violence in many parts of the world, including cases motivated by discrimination against persons belonging to religious minorities, in addition to the negative projection of the followers of religions and the enforcement of measures that specifically discriminate against persons on the basis of religion or belief,

*Recognizing* the valuable contribution of people of all religions or beliefs to humanity and the contribution that dialogue among religious groups can make towards an improved awareness and understanding of the common values shared by all human kind,

*Recognizing also* that working together to enhance implementation of existing legal regimes that protect individuals against discrimination and hate crimes, increase interfaith and intercultural efforts, and to expand human rights education are important first steps in combating incidents of intolerance, discrimination and violence against individuals on the basis of religion or belief,

1. *Expresses deep concern* at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremist organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments;
2. *Expresses its concern* that incidents of religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief, continue to rise around the world, and condemns, in this context, any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, as set forth in the present resolution, consistent with their obligations under international human rights law, to address and combat such incidents;
3. *Condemns* any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual or electronic media or any other means;
4. *Recognizes* that the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred, and is convinced that a continuing dialogue on these issues can help overcome existing misperceptions;
5. *Notes* the speech given by Secretary-General of the Organization of the Islamic Conference at the fifteenth session of the Human Rights Council, and draws on his call on States to take the following actions to foster a domestic environment of religious tolerance,



peace and respect, by:

- (a) Encouraging the creation of collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects in the fields of education, health, conflict prevention, employment, integration and media education;
- (b) Creating an appropriate mechanism within Governments to, inter alia, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation;
- (c) Encouraging training of Government officials in effective outreach strategies;
- (d) Encouraging the efforts of leaders to discuss within their communities the causes of discrimination, and evolving strategies to counter these causes;
- (e) Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
- (f) Adopting measures to criminalize incitement to imminent violence based on religion or belief;
- (g) Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building;
- (h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence;

6. *Calls upon* all States:

- (a) To take effective measures to ensure that public functionaries

in the conduct of their public duties do not discriminate against an individual on the basis of religion or belief;

- (b) To foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society;
  - (c) To encourage their presentation and meaningful participation of individuals, irrespective of their religion, in all sectors of society;
  - (d) To make a strong effort to counter religious profiling, which is understood to be the invidious use of religion as a criterion in conducting questionings, searches and other law enforcement investigative procedures;
7. *Encourages* States to consider providing updates on efforts made in this regard as part of ongoing reporting to the Office of the United Nations High Commissioner for Human Rights;
  8. *Calls upon* States to adopt measures and policies to promote the full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction;
  9. *Calls for* strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs, and decides to convene a panel discussion on this issue at its seventeenth session, within existing resources.

46th meeting

24 March 2011

[Adopted without a vote.]

# Annex 4: The Camden Principles



## The Camden Principles on Freedom of Expression and Equality

April 2009



## ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

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ARTICLE 19 encourages organisations and individuals to endorse *The Camden Principles*. We also encourage feedback about how *The Camden Principles* are being used – please send feedback or endorsements to [endorse@article19.org](mailto:endorse@article19.org), with your name, affiliation and comments.

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*These Principles were prepared by ARTICLE 19 on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009. The Principles represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations.*

*The development of these Principles was motivated by a desire to promote greater consensus globally about the proper relationship between respect for freedom of expression and the promotion of equality. While tensions can arise between competing visions of these rights, the focus globally has been disproportionately on these potential tensions rather than the far more important positive relationship between them. Furthermore, international law provides a basis for resolving the tensions, as outlined in these Principles.*

*We call on individuals and organisations around the world to endorse these Principles with a view to providing authority and support to them. We also call on decision-makers, as well as advocates, to take steps to give effect to these Principles at all levels.*

# Introductory Statement

These Principles are founded on the understanding that freedom of expression and equality are foundational rights, whose realisation is essential for the enjoyment and protection of all human rights. They are also mutually supporting and reinforcing human rights. It is only when coordinated and focused action is taken to promote both freedom of expression and equality that either can effectively be realised.

Pluralism and diversity are hallmarks of freedom of expression. Realisation of the right to freedom of expression enables vibrant, multi-faceted public interest debate giving voice to different perspectives and viewpoints. Inequality results in the exclusion of certain voices, undermining this. The right of everyone to be heard, to speak and to participate in political, artistic and social life are, in turn, integral to the attainment and enjoyment of equality. When people are denied public participation and voice, their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalisation.

Too often, the rights to freedom of expression and equality have been construed as being in opposition to one another, or as being in direct conflict, with attention focused on the potential for tension between them. The Principles assert the affirmative relationship between freedom of expression and equality, identifying the complementary and essential contribution they make to the securing and safeguarding of human dignity, and the fact that together they are key to the indivisibility and universality of human rights. Observed and upheld they enable and strengthen respect for human rights for all.

The Principles also affirm that respect for freedom of expression and equality has a crucial role to play in ensuring democracy

and sustainable human development, and in promoting international peace and security. Security measures, particularly in the areas of counterterrorism and immigration, have undermined individual rights, resulting in illegitimate restrictions on freedom of expression and the stigmatisation of certain ethnic and religious groups. The Principles reject the view that security requires human rights to be compromised. They assert instead that respect for human rights is central to attaining true security.

The Principles highlight States' obligations to take positive steps to promote diversity and pluralism, to promote equitable access to the means of communication, and to guarantee the right of access to information. They affirm the positive role of the State in creating an enabling environment for freedom of expression and equality, while recognising that this brings potential for abuse. Strong democratic structures – including free and fair elections, an independent judiciary and a vibrant civil society – are needed to prevent abuse and to realise more fully the goals of pluralism and equitable access. Although the State has an important role to play, self-regulation, where effective, remains the most appropriate way to address professional issues relating to the media.

The Principles recognise the importance of the media and other means of public communication in enabling free expression and in enabling the realisation of equality, through ensuring equitable access. The traditional media continue to play an important role globally, but they are undergoing significant transformation. New technologies – including digital broadcasting, mobile telephony and the Internet – vastly enhance the dissemination of information and open up new forms of communication, such as the blogosphere. At the same time,

in many media sectors, access to the media, particularly for minority groups, and genuine diversity in the media are threatened by the increasing concentration of media ownership and other market challenges, including market failures.

These changes bring both opportunities and challenges for pluralism and the public interest. Effective policy and regulatory frameworks which protect pluralism and diversity are needed, but these must be grounded in broad social dialogue that stimulates fresh debate about the role of media in society and involves stakeholders from diverse communities as well as representatives of the media, public authorities, government and civil society.

The Principles are based on a wide notion of equality, which includes the rights to equality before the law and to non-discrimination, as well as the idea of substantively equal treatment and status. They recognise that problems of discrimination and negative stereotyping are deeply rooted socio-economic and political phenomena. Their eradication requires sustained and wide-ranging efforts, including in the areas of education, social dialogue and awareness-raising. Limiting debate about contentious issues, including religion, will not address the underlying social roots of the prejudice that undermines equality. In many contexts, restrictions on freedom of expression target disadvantaged groups, undermining rather than promoting equality. Instead of restrictions, open debate is essential to combating negative stereotypes of individuals and groups and exposing the harm created by prejudice.

The Principles recognise, however, that certain speech, for example intentional incitement to racial hatred, is so harmful to equality that it should be prohibited. Rules prohibiting such speech should be narrowly defined to prevent any abuse of restrictions, including for reasons of political opportunism. Effective steps need to be taken to ensure that such rules are applied equitably for the benefit of all protected groups. In this regard, a case-by-case approach which takes into account context and patterns of vulnerability is important, especially on the part of judicial authorities. Such rules should be used only to protect individuals and groups. They should not be invoked to protect particular beliefs, ideologies or religions.

Finally, the Principles recognise that freedom of expression and equality enhance the growth and vitality of civil society organisations which in turn give voice and visibility to vulnerable and disadvantaged groups and strive towards the protection of their rights. The Principles also re-affirm the vision highlighted in the Preamble to the Universal Declaration of Human Rights that every individual and every organ of society shall strive to promote respect for the rights to freedom of expression and equality and secure their universal and effective recognition and observance.

We, the undersigned individuals and organisations,<sup>1</sup> endorse the Principles and recommend that relevant bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, understanding, acceptance and implementation:

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<sup>1</sup> A full list of those who have endorsed these Principles is available on the ARTICLE 19 website, [www.article19.org](http://www.article19.org).

# Principles

## I. Legal protection for equality and freedom of expression

### *Principle 1: Ratification and incorporation of human rights law*

All States should ratify and give effect in domestic law, through incorporation or otherwise, international and regional human rights treaties guaranteeing the rights to equality and freedom of expression.

### *Principle 2: Legal framework for the protection of the right to freedom of expression*

- 2.1. States should ensure that the right to freedom of opinion and expression, through any medium of communication, including the right to information, is enshrined in domestic constitutional provisions or their equivalent, in accordance with international human rights law.
- 2.2. In particular, States should ensure that domestic constitutional provisions set out clearly the scope of permissible restrictions on the right to freedom of expression, including that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest recognised in the constitution, and be necessary in a democratic society to protect that interest.
- 2.3. States should establish a clear legal framework for the protection of the right to information, including the right of access to information held by public bodies, and promote the proactive disclosure of information.

### *Principle 3: Legal framework for the protection of the right to equality*

- 3.1. States should ensure that the right to equality is enshrined in domestic constitutional provisions or their equivalent, in accordance with international human rights law.
- 3.2. Domestic legislation should guarantee that:
  - i. All persons are equal before the law and are entitled to the equal protection of the law.
  - ii. Everyone has the right to be free of discrimination based on grounds such as race, gender, ethnicity, religion or belief, disability, age, sexual orientation, language, political or other opinion, national or social origin, nationality, property, birth or other status.
- 3.3. States should establish a clear legal and policy framework for combating discrimination in its various forms, including harassment, and for realising the right to equality, including in relation to freedom of expression.

### *Principle 4: Access to remedies*

- 4.1. States should ensure the availability of accessible and effective remedies for human rights violations, including violations of the rights to freedom of expression and equality. These should include both judicial and non-judicial remedies, such as before national human rights institutions and/or ombudspersons.
- 4.2. States should ensure that the right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed.

## II. The right to be heard and the right to speak

### *Principle 5: A public policy framework for pluralism and equality*

- 5.1. All States should have in place a public policy and regulatory framework for the media, including new media, which promotes pluralism and equality, in accordance with the following:
  - i. The framework should respect the fundamental principle that any regulation of the media should only be undertaken by bodies which are independent of the government, which are publicly accountable and which operate transparently.
  - ii. The framework should promote the right of different communities to freely access and use media and information and communications technologies for the production and circulation of their own content, as well as for the reception of content produced by others, regardless of frontiers.
- 5.2. This framework should be implemented, among others, through the following measures:
  - i. Promoting universal and affordable access to the means of communication and reception of media services, including telephones, the Internet and electricity.
  - ii. Ensuring that there is no discrimination in relation to the right to establish newspapers, radio and television outlets, and other communications systems.
  - iii. Allocating sufficient 'space' to broadcasting uses on different communications platforms to ensure that, as a whole, the public is able to receive a range of diverse broadcasting services.
  - iv. Making an equitable allocation of resources, including broadcasting frequencies, among public service, commercial and community media, so that together they represent the full range of cultures, communities and opinions in society.
  - v. Requiring the governing bodies of media regulators broadly to reflect society as a whole.
  - vi. Putting in place effective measures to prevent undue concentration of media ownership.
  - vii. Providing public support, whether financial or in other forms, through an independent and transparent process, and based on objective criteria, to promote the provision of reliable, pluralist and timely information for all, and the production of content which makes an important contribution to diversity or which promotes dialogue among different communities.
- 5.3. This framework should also include the following measures:
  - i. Repealing any restrictions on the use of minority languages that have the effect of discouraging or preventing media specifically addressed to different communities.
  - ii. Making diversity, including in terms of media targeting different communities, one of the criteria for assessing broadcasting licence applications.



- iii. Ensuring that disadvantaged and excluded groups have equitable access to media resources, including training opportunities.
- 5.4. Public service values in the media should be protected and enhanced by transforming State- or government-controlled media systems, by strengthening existing public service broadcasting networks, and by ensuring adequate funding for public service media, so as to ensure pluralism, freedom of expression and equality in a changing media landscape.

### ***Principle 6: Role of the mass media***

- 6.1. All mass media should, as a moral and social responsibility, take steps to:
  - i. Ensure that their workforces are diverse and representative of society as a whole.
  - ii. Address as far as possible issues of concern to all groups in society.
  - iii. Seek a multiplicity of sources and voices within different communities, rather than representing communities as monolithic blocs.
  - iv. Adhere to high standards of information provision that meet recognised professional and ethical standards.

### ***Principle 7: Right of correction and reply***

- 7.1. The rights of correction and reply should be guaranteed to protect the right to equality and non-discrimination, and the free flow of information
- 7.2. The exercise of a right of correction or reply should not extinguish other remedies, although it may be taken into account in the consideration of such other remedies, for example to reduce damage awards.
- 7.3. These rights are best protected through self-regulatory systems. No mandatory right of reply or correction should be imposed where an effective self-regulatory system is in place.
- 7.4. The right of correction gives any person the right to demand that a mass media outlet publish or broadcast a correction where that media outlet has previously published or broadcast incorrect information.
- 7.5. The right of reply gives any person the right to have a mass media outlet disseminate his or her response where the publication or broadcast by that media outlet of incorrect or misleading facts has infringed a recognised right of that person, and where a correction cannot reasonably be expected to redress the wrong.

### III. Promoting intercultural understanding

#### *Principle 8: State responsibilities*

- 8.1. States should impose obligations on public officials at all levels, including ministers, to avoid as far as possible making statements that promote discrimination or undermine equality and intercultural understanding. For civil servants, this should be reflected in formal codes of conduct or employment rules.
- 8.2. States should engage in broad efforts to combat negative stereotypes of, and discrimination against, individuals and groups and to promote intercultural understanding and evaluation, including by providing teacher training on human rights values and principles and by introducing or strengthening intercultural understanding as a part of the school curriculum for pupils of all ages.
- iv. Raising awareness of the harm caused by discrimination and negative stereotyping.
- v. Reporting on different groups or communities and giving their members an opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.
- 9.2. Public service broadcasters should be under an obligation to avoid negative stereotypes of individuals and groups, and their mandate should require them to promote intercultural understanding and to foster a better understanding of different communities and the issues they face. This should include the airing of programmes which portray different communities as equal members of society.

#### *Principle 9: Media responsibilities*

- 9.1. All media should, as a moral and social responsibility, play a role in combating discrimination and in promoting intercultural understanding, including by considering the following:
  - i. Taking care to report in context and in a factual and sensitive manner, while ensuring that acts of discrimination are brought to the attention of the public.
  - ii. Being alert to the danger of discrimination or negative stereotypes of individuals and groups being furthered by the media.
  - iii. Avoiding unnecessary references to race, religion, gender and other group characteristics that may promote intolerance.
- 9.3. Professional codes of conduct for the media and journalists should reflect equality principles and effective steps should be taken to promulgate and implement such codes.
- 9.4. Professional development programmes for media professionals should raise awareness about the role the media can play in promoting equality and the need to avoid negative stereotypes.

### *Principle 10: Other actors*

- 10.1. Politicians and other leadership figures in society should avoid making statements that might promote discrimination or undermine equality, and should take advantage of their positions to promote intercultural understanding, including by contesting, where appropriate, discriminatory statements or behaviour.
- 10.2. Civil society organisations should respect pluralism, and promote the rights to freedom of expression and equality in accordance with these Principles. In particular, they should promote intercultural understanding, acknowledge dissenting voices, and support the ability of members of different communities, and particularly marginalised groups, to voice their perspectives and concerns, in a way that recognises the internal diversity of communities.

## **IV. Freedom of expression and harmful speech**

### *Principle 11: Restrictions*

- 11.1. States should not impose any restrictions on freedom of expression that are not in accordance with the standards set out in Principle 2.2 and, in particular, restrictions should be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests.<sup>2</sup> This implies, among other things, that restrictions:
  - i. Are clearly and narrowly defined and respond to a pressing social need.
  - ii. Are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression.
  - iii. Are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.
  - iv. Are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorise.
- 11.2. States should review their legal framework to ensure that any restrictions on freedom of expression conform to the above.

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<sup>2</sup> This is based on Article 19(3) of the International Covenant on Civil and Political Rights.

## ***Principle 12: Incitement to hatred***

- 12.1. All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech).<sup>3</sup> National legal systems should make it clear, either explicitly or through authoritative interpretation, that:
- i. The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
  - ii. The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group.
  - iii. The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
  - iv. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.
- 12.2. States should prohibit the condoning or denying of crimes of genocide, crimes against humanity and war crimes, but only where such statements constitute hate speech as defined by Principle 12.1.
- 12.3. States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech as defined by Principle 12.1.
- 12.4. States should ensure that persons who have suffered actual damages as a result of hate speech as defined by Principle 12.1 have a right to an effective remedy, including a civil remedy for damages.
- 12.5. States should review their legal framework to ensure that any hate speech regulations conform to the above.

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<sup>3</sup> This is based on Article 20(2) of the International Covenant on Civil and Political Rights.

## Appendix A

The following experts (*in alphabetical order*) participated in their personal capacity in the consultations that drafted these Principles. Organisations and affiliations are listed for purposes of identification only. Their listing does not suggest an official endorsement of the Principles.

**Eva Smith Asmussen**, Chair, European Commission against Racism and Intolerance, Strasbourg, France

**Hossam Bahgat**, Director, Egyptian Initiative for Personal Rights, Cairo, Egypt

**Kevin Boyle**, Professor of Law, University of Essex, Colchester, United Kingdom

**Barbora Bukovská**, Senior Director for Law, ARTICLE 19, London, United Kingdom

**Agnès Callamard**, Executive Director, ARTICLE 19, London, United Kingdom

**Sandra Coliver**, Senior Legal Officer, Open Society Justice Initiative, New York, United States

**Anastasia Crickley**, Chairperson, the EU Fundamental Rights Agency, Vienna, Austria

**Cece Fadope**, Programme Officer for Africa, ARTICLE 19, London, United Kingdom

**Bambang Harymurti**, Editor, Tempo Magazine, Jakarta, Indonesia

**Pierre Hazan**, Consultant, Office of the High Commissioner for Human Rights, Geneva, Switzerland

**Sa'eda Kilani**, Director, Arab Archives Institute, Amman, Jordan

**Frank La Rue**, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ciudad Guatemala, Guatemala

**Mark Lattimer**, Director, Minority Rights Group International, London, United Kingdom

**Toby Mendel**, Senior Legal Counsel, ARTICLE 19, London, United Kingdom

**Githu Muigai**, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Nairobi, Kenya

**Mario Oetheimer**, Lawyer, European Court of Human Rights, Strasbourg, France

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**Borislav Petranov**, Programme Director of Civil and Political Rights and Deputy Director, Sigrid Rausing Trust, London, United Kingdom

**Dimitrina Petrova**, Executive Director, the Equal Rights Trust, London, United Kingdom

**Malak Poppovic**, Executive Director, Conectas Human Rights, Sao Paulo, Brazil

**Dubravka Šimonović**, Member, UN Committee on Elimination of Discrimination against Women, Zagreb, Croatia

**Michael Wiener**, Human Rights Officer, Office of the High Commissioner for Human Rights Special Procedures Division, Geneva, Switzerland

**Aidan White**, General Secretary, International Federation of Journalists, Brussels, Belgium

The Camden Principles on Freedom of Expression and Equality are founded on the understanding that freedom of expression and equality are foundational rights. Freedom of expression and equality are mutually supportive rights that play a vital role in safeguarding human dignity, ensuring democracy and promoting international peace and security.

The Camden Principles represent a progressive interpretation of international law and standards, accepted State practice and the general principles of law recognised by the community of nations. The Principles were prepared by ARTICLE 19, in consultation with high-level UN and other officials, and civil society and academic experts. This document was created to promote greater global consensus about the relationship between respect for freedom of expression and the promotion of equality.

# Annex 5: Rabat Plan of Action

United Nations

A/HRC/22/17/Add.4



## General Assembly

Distr.: General  
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### Human Rights Council

Twenty-second session

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **Annual report of the United Nations High Commissioner for Human Rights**

Addendum

**Report of the United Nations High Commissioner for Human Rights on  
the expert workshops on the prohibition of incitement to national,  
racial or religious hatred\* \*\***

#### *Summary*

The Office of the High Commissioner for Human Rights (OHCHR) organized a series of expert workshops on the prohibition of incitement to national, racial or religious hatred, in which legislative patterns, judicial practices and policies in this regard were explored. This report summarizes the results of this initiative. In particular, it provides details on the wrap-up expert meeting organized in Rabat in October 2012, which brought together conclusions and recommendations from the expert workshops and resulted in the adoption by the experts of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which is included in the annex to this report.

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\* The summary of the present report is circulated in all official languages. The report, which is annexed to the summary, is reproduced in the language of submission only.

\*\* Late submission.

**Annex**

*[English only]*

**Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred**

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## I. Introduction

1. In follow-up to the 2008 Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights with regard to freedom of expression and incitement to hatred, the Office of the High Commissioner for Human Rights (OHCHR) organized, in 2011 and 2012, a series of expert workshops on the prohibition of incitement to national, racial or religious hatred, in which legislative patterns, judicial practices and policies in this regard were explored.

2. Over the years, we have witnessed a number of incidents which have sounded alarm bells about the level of hatred and cynicism that has permeated societies. Unfortunately a number of these incidents have led to violent reactions and deaths. Virulent and hate-laden advocacy can trigger the worst of crimes. Suffice it to recall recent examples of post-electoral violence spurred by hatred along ethnic lines; incidents involving extremist groups; abusive and malicious portrayal, online or in traditional media, of certain religions and their followers. It is clear that hatred has many faces and is present in all parts of the world.

3. As the High Commissioner for Human Rights, I have expressed alarm at the often extraordinarily negative portrayal in many countries of migrants, but also of minority groups by the media, politicians and other actors in the society. I have called for measures to curb growing xenophobic attitudes and underlined the need to swiftly denounce hate speech and prosecute those suspected of inciting racial violence and those who have perpetrated racist and violent actions.

4. I have publicly condemned displays of hatred or bigotry towards followers of certain religions and urged religious and political leaders to do their utmost to restore calm. I have condemned the violence, including murders, that has taken place in reaction to such incidents in various parts of the world.

5. While the concept of freedom of expression has been well-established for many centuries in the legal traditions of different cultures, its practical application and recognition are still far from universal. In many parts of the world, freedom of expression still faces formidable resistance from those who benefit from silencing dissent, stifling criticism or blocking discussion on challenging social issues.

6. With a view to enhancing our understanding of the relationship between freedom of expression and incitement to hatred, I took the initiative of organizing a series of expert workshops, in different regions of the world, to examine legislation, jurisprudence, and national policies with regard to the prohibition of national, racial or religious hatred as reflected in international human rights law. In October 2012, OHCHR convened a wrap-up expert meeting in Rabat, Morocco,<sup>1</sup> in which the recommendations of the earlier expert workshops were discussed, resulting in the adoption of the Rabat Plan of Action. The principal aim of the whole exercise was to conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for freedom of expression, as protected by international human rights law.

7. A total of five expert workshops were held in Vienna (9-10 February 2011), Nairobi (6-7 April 2011), Bangkok (6-7 July 2011), Santiago (12-13 October 2011) and Rabat (4-5

<sup>1</sup> For the list of experts who attended the meeting, and background details please see <http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>.

October 2012). We learned that many governments, in response to the challenges outlined above, have reinforced existing laws and introduced new punitive measures. The proceedings shone light on the problem of insufficient national legislation or of new, vague and unclear provisions that have been introduced and are open to misuse. Discussions also showed the uneven and ad hoc application of these laws, compounded often by the absence of dedicated and properly equipped institutions to implement or adjudicate them. Throughout the discussions, examples were provided of the negative impact of anti-blasphemy laws; problems relating to curbing freedom of information and the use of the Internet; harassment of journalists and human rights defenders; or instances where members of minorities are persecuted, with a chilling effect on others, through the abuse of vague or counter-productive legislation, jurisprudence and policies.

8. International expert bodies have a crucial role to play in guiding States in their implementation of provisions of human rights law on incitement to hatred thereby contributing to the progressive development of international law and defusing political tensions. In September 2011, the Human Rights Committee adopted general comment No. 34 on freedom of opinion and expression, and the Committee on the Elimination of Racial Discrimination has commenced consideration of a general recommendation on racist hate speech. Furthermore, joint position papers on the prohibition of incitement to hatred were presented in 2009 and 2011 by the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; freedom of religion or belief; and the promotion and protection of the right to freedom of opinion and expression.

9. Properly balancing freedom of expression and the prohibition of incitement to hatred is no simple task. Let me state clearly that any limitations to this fundamental freedom must remain within strictly defined parameters flowing from the international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination. Article 19, paragraph 3, of the Covenant lays down a clear test by which the legitimacy of such restrictions may be assessed. However, further guidance is needed in the real world when weighing freedom of expression against the prohibition of incitement to hatred.

10. First, one should realize that the question of distinguishing those forms of expression that should be defined as incitement to hatred and thus prohibited is contextual and the individual circumstances of each case, such as local conditions, history, cultural and political tensions, must be taken into account. An independent judiciary is therefore a vital component in the process of effectively adjudicating cases related to incitement to hatred.

11. Second, restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals and communities belonging to ethnic, national or religious groups, holding specific beliefs or opinions, whether of a religious or other nature, from hostility, discrimination or violence, rather than to protect belief systems, religions or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize belief systems, opinions and institutions, including religious ones, as long as this does not advocate hatred that incites violence, hostility or discrimination against an individual or group of individuals.

12. Third, with regard to domestic sanctions, it is essential to make a careful distinction between (a) forms of expression that should constitute a criminal offence; (b) forms of expression that are not criminally punishable, but may justify a civil suit; and (c) forms of expression that do not give rise to criminal or civil sanctions, but still raise concerns in terms of tolerance, civility and respect for the convictions of others.

13. The Human Rights Council, for its part, has also taken decisive action; in March 2011, it adopted unanimous resolution 16/18 that provides a comprehensive road map for a

coordinated national and international effort to ensure that certain rights and freedoms are not misused to undermine the freedom of religion or belief.

14. As the experts highlighted, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence aims to facilitate and reinforce the implementation and protection of human rights in this difficult context. It contains conclusions and recommendations aimed at better guiding all stakeholders, including the national legislator and judiciary, in implementing the international obligation of prohibition of incitement to hatred. It is the result of a bottom-up, multi-stakeholder and consultative process conducted in four regions, and which enjoyed the participation of 45 experts from different cultural backgrounds and legal traditions.

15. It is my hope that this important initiative will indeed boost national efforts, facilitated by international cooperation, towards the full implementation of the relevant international human rights obligations; and that it will assist us all as we strive to counter the escalation of prejudice predicated on ethnic, national or religious divides and break the vicious cycle of hatred and retribution.

## **II. Expert workshops on the prohibition of incitement to national, racial or religious hatred**

16. In 2011, OHCHR organized four regional workshops in Europe (Vienna, 9-10 February 2011), Africa (Nairobi, 6-7 April 2011), the Asia Pacific region (Bangkok, 6-7 July 2011) and the Americas (Santiago de Chile, 12-13 October 2011). Information regarding these events, including reports on the discussions held, can be found at <http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>.

17. By grounding the debate on incitement to hatred in international human rights law, the objective of the series of expert workshops was threefold: to gain a better understanding of legislative patterns, judicial practices and policies regarding the concept of incitement to national, racial or religious hatred, while ensuring full respect for freedom of expression as outlined in articles 19 and 20 of the International Covenant on Civil and Political Rights; to arrive at a comprehensive assessment of the state of implementation of the prohibition of such incitement in conformity with international human rights law; and to identify possible actions at all levels.

18. In October 2012, OHCHR organized a wrap-up expert meeting in Rabat, which marked the culmination of this process, bringing together conclusions and recommendations from the expert workshops and resulting in the adoption of the Rabat Plan of Action by the experts (in appendix).

## Appendix

### **Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>1</sup>**

#### **Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR in 2011, and adopted by experts at the meeting in Rabat, Morocco, on 5 October 2012**

### **I. Preface**

1. In 2011, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized a series of expert workshops, in various regions, on incitement to national, racial or religious hatred as reflected in international human rights law. During the workshops, participants considered the situation in the respective regions and discussed strategic responses, both legal and non-legal, to incitement to hatred.

2. The workshops were held in Europe (Vienna, 9 and 10 February 2011), Africa (Nairobi, 6 and 7 April 2011), the Asia Pacific region (Bangkok, 6 and 7 July 2011) and the Americas (Santiago de Chile, 12 and 13 October 2011).<sup>2</sup> In doing so, OHCHR aimed to conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for freedom of expression as protected by international human rights law. This activity focused on the relationship between freedom of expression and hate speech, especially in relation to religious issues – a matter that has unfortunately created friction and violence among and within diverse communities, and which has come increasingly under focus.

3. The expert workshops in 2011 generated a wealth of information as well as a large number of practical suggestions for better implementation of the relevant international human rights standards.<sup>3</sup> To take stock of the rich results of the 2011 series of workshops, OHCHR convened a final expert workshop in Rabat, Morocco, on 4 and 5 October 2012, to conduct a comparative analysis of the findings of the four workshops; identify possible action at all levels and reflect on the best ways and means of sharing experiences.

4. The four moderators and the experts who participated in all four regional workshops, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the

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<sup>1</sup> Article 20, paragraph 2 of the International Covenant on Civil and Political Rights states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Throughout this document, such incitement will be referred to as “incitement to hatred”.

<sup>2</sup> The four regional expert workshops and the Rabat meeting brought together some 45 experts from different backgrounds, and more than 200 observers participated in the debates.

<sup>3</sup> The High Commissioner’s message to the four expert workshops as well as the background studies, expert papers, contributions from stakeholders and meeting reports are available at [www.ohchr.org/EN/Issues/FreedomOpinion/Articles1920/Pages/Index.aspx](http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles1920/Pages/Index.aspx)

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, a member of the Committee on the Elimination of Racial Discrimination and a representative of the non-governmental organization, Article XIX, attended the Rabat workshop.

5. In line with the practice of the regional workshops, Member States were invited to participate as observers and were encouraged to include experts from their capitals in the delegations. Relevant United Nations departments, funds and programmes as well as relevant international and regional organizations, national human rights institutions and civil society organizations (including academia, journalists and faith-based organizations) could also participate as observers.

6. The following outcome document reflects the conclusions and recommendations agreed upon by the experts who participated in the Rabat workshop.

## II. Context

7. As the world is ever more inter-connected and as the fabric of societies has become more multicultural in nature, there has been a number of incidents in recent years, in different parts of the world, which have brought renewed attention to the issue of incitement to hatred. It should also be underlined that many of the conflicts worldwide in past decades have also – to varying degrees – contained a component of incitement to national, racial or religious hatred.

8. All human rights are universal, indivisible and interdependent and interrelated. Nowhere is this interdependence more obvious than in the discussion of freedom of expression in relation to other human rights. The realization of the right to freedom of expression enables vibrant, multi-faceted public interest debate giving voice to different perspectives and viewpoints. Respect for freedom of expression has a crucial role to play in ensuring democracy and sustainable human development, as well as in promoting international peace and security.

9. Unfortunately, individuals and groups have suffered various forms of discrimination, hostility or violence by reason of their ethnicity or religion. One particular challenge in this regard is to contain the negative effects of the manipulation of race, ethnic origin and religion and to guard against the adverse use of concepts of national unity or national identity, which are often instrumentalized for, inter alia, political and electoral purposes.

10. It is often purported that freedom of expression and freedom of religion or belief are in a tense relationship or even contradictory. In reality, they are mutually dependent and reinforcing. The freedom to exercise or not exercise one's religion or belief cannot exist if the freedom of expression is not respected, as free public discourse depends on respect for the diversity of convictions which people may have. Likewise, freedom of expression is essential to creating an environment in which constructive discussion about religious matters could be held. Indeed, free and critical thinking in open debate is the soundest way to probe whether religious interpretations adhere to or distort the original values that underpin religious belief.

11. It is of concern that perpetrators of incidents, which indeed reach the threshold of article 20 of the International Covenant on Civil and Political Rights, are not prosecuted and punished. At the same time members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. This dichotomy of (1) non-prosecution of "real" incitement cases and (2) persecution of minorities under the guise of domestic incitement laws seems to be

pervasive. Anti-incitement laws in countries worldwide can be qualified as heterogeneous, at times excessively narrow or vague. Jurisprudence on incitement to hatred has been scarce and ad hoc, and while several States have adopted related policies, most of them are too general, not systematically followed up, lacking focus and deprived of proper impact assessments.

12. Holding the four workshops in different regions of the world and the wrap-up workshop in Rabat was a very timely and useful initiative. They enjoyed the full participation of relevant treaty body experts and special procedures mandate holders.

### **III. Implementing the prohibition of incitement to hatred**

13. Against this background, the following conclusions and recommendations constitute the synthesis of this long, transparent and deep reflection by experts. The conclusions – in the area of legislation, judicial infrastructure, and policy – are intended to better guide all stakeholders in implementing the international prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

#### **A. Legislation**

##### **Conclusions**

14. Under international human rights standards, which are intended to guide legislation at the national level, expression labelled as “hate speech” can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights on different grounds, including respect for the rights of others, public order or sometimes national security. States are also obliged to “prohibit” expression that amounts to “incitement” to discrimination, hostility or violence (art. 20, para. 2, of the Covenant and, under some different conditions, art. 4 of the International Convention on the Elimination of All Forms of Racial Discrimination).

15. Discussions in the various workshops demonstrated the absence of a legal prohibition of incitement to hatred in many domestic legal frameworks worldwide, while legislation that prohibits incitement to hatred uses variable terminology and is often inconsistent with article 20 of the Covenant. The broader the definition of incitement to hatred is in domestic legislation, the more it opens the door for arbitrary application of the laws. The terminology relating to offences on incitement to national, racial or religious hatred varies from country to country and is increasingly vague, while new categories of restrictions or limitations to freedom of expression are being incorporated in national legislation. This contributes to the risk of misinterpretation of article 20 of the Covenant and additional limitations to freedom of expression that are not contained in article 19 of the Covenant.

16. Some countries consider incitement to racial and religious hatred as offences, while others consider incitement to hatred along racial/ethnic lines only as offences. Some countries also recognize prohibition of incitement to hatred on other grounds. National provisions vary between civil law and criminal law: in many countries, incitement to hatred is a criminal offence, while in some countries, it is an offence under both criminal and civil law or under civil law only.

17. At the international level, the prohibition of incitement to hatred is clearly established in article 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial

Discrimination. In its general comment No. 34 (2011) on freedoms of opinion and expression, the Human Rights Committee stresses that

“[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith” (para. 48).

18. Article 20 of the Covenant requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such threshold must take into account the provisions of article 19 of the Covenant. Indeed the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.<sup>4</sup>

19. At the national level, blasphemy laws are counterproductive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed. In addition, many blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner. There are numerous examples of persecution of religious minorities or dissenters, but also of atheists and non-theists, as a result of legislation on what constitutes religious offences or overzealous application of laws containing neutral language. Moreover, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule.

### Recommendations

20. In terms of general principles, a clear distinction should be made between three types of expression: expression that constitutes a criminal offence; expression that is not criminally punishable, but may justify a civil suit or administrative sanctions; expression that does not give rise to criminal, civil or administrative sanctions, but still raises concern in terms of tolerance, civility and respect for the rights of others.

21. Bearing in mind the interrelationship between articles 19 and 20 of the International Covenant on Civil and Political Rights, States should ensure that their domestic legal framework on incitement to hatred is guided by express reference to article 20, paragraph 2, of the Covenant (“...advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence...”), and should consider including robust definitions of key terms such as hatred, discrimination, violence, hostility, among others. In

<sup>4</sup> See Article XIX, *Camden Principles on Freedom of Expression and Equality*, (London, April 2009), principle 11.

this regard, legislation can draw, inter alia, from the guidance and definitions<sup>5</sup> provided in the Camden Principles.<sup>6</sup>

22. States should ensure that the three-part test – legality, proportionality and necessity – for restrictions to freedom of expression also applies to cases of incitement to hatred.

23. States should make use of the guidance provided by international human rights expert mechanisms, including the Human Rights Committee and the Committee on the Elimination of Racial Discrimination and their general comment No. 34 (2011) and general recommendation No. 15 (1993) respectively, as well as the respective special procedures mandate holders of the Human Rights Council.

24. States are encouraged to ratify and effectively implement the relevant international and regional human rights instruments, remove any reservations thereto and honour their reporting obligations thereunder.

25. States that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion.

26. States should adopt comprehensive anti-discrimination legislation that includes preventive and punitive action to effectively combat incitement to hatred.

## **B. Jurisprudence**

### **Conclusions**

27. An independent judicial infrastructure that is regularly updated with regard to international standards and jurisprudence and with members acting in an impartial and objective manner, as well as respect for the rules of due process, are crucial for ensuring that the facts and legal qualifications of any individual case are assessed in a manner consistent with international human rights standards. This should be complemented by other checks and balances to protect human rights, such as independent national human rights institutions established in accordance with the Paris Principles.

28. There is often very low recourse to judicial and quasi-judicial mechanisms in alleged cases of incitement to hatred. In many instances, victims are from disadvantaged or vulnerable groups and case law on the prohibition of incitement to hatred is not readily available. This is due to the absence or inadequacy of legislation or lack of judicial assistance for minorities and other vulnerable groups who constitute the majority of victims of incitement to hatred. The weak jurisprudence can also be explained by the absence of accessible archives, but also lack of recourse to courts owing to limited awareness among the general public as well as lack of trust in the judiciary.

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<sup>5</sup> Pursuant to principle 12, national legal systems should make it clear, either explicitly or through authoritative interpretation, that the terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; the term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group; and the term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

<sup>6</sup> These Principles were prepared by ARTICLE 19 on the basis of multi-stakeholder discussions involving experts in international human rights law on freedom of expression and equality issues. The Principles represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations.



32. Due attention should be given to minorities and vulnerable groups by providing legal and other types of assistance for their members.

33. States should ensure that persons who have suffered actual harm as a result of incitement to hatred have a right to an effective remedy, including a civil or non-judicial remedy for damages.

34. Criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations. Civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and remedies should also be considered, including those identified and put in force by various professional and regulatory bodies.

## C. Policies

### Conclusions

35. While a legal response is important, legislation is only part of a larger toolbox to respond to the challenges of hate speech. Any related legislation should be complemented by initiatives from various sectors of society geared towards a plurality of policies, practices and measures nurturing social consciousness, tolerance and understanding change and public discussion. This is with a view to creating and strengthening a culture of peace, tolerance and mutual respect among individuals, public officials and members of the judiciary, as well as rendering media organizations and religious/community leaders more ethically aware and socially responsible. States, media and society have a collective responsibility to ensure that acts of incitement to hatred are spoken out against and acted upon with the appropriate measures, in accordance with international human rights law.

36. Political and religious leaders should refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination; but they also have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech. It should be made clear that violence can never be tolerated as a response to incitement to hatred.

37. To tackle the root causes of intolerance, a much broader set of policy measures is necessary, for example in the areas of intercultural dialogue – reciprocal knowledge and interaction –, education on pluralism and diversity, and policies empowering minorities and indigenous people to exercise their right to freedom of expression.

38. States have the responsibility to ensure space for minorities to enjoy their fundamental rights and freedoms, for instance by facilitating registration and functioning of minority media organizations. States should strengthen the capacities of communities to access and express a range of views and information and embrace the healthy dialogue and debate that they can encompass.

39. Certain regions have a marked preference for a non-legislative approach to combating incitement to hatred through, in particular, the adoption of public policies and the establishment of various types of institutions and processes, including truth and reconciliation commissions. The important work of regional human rights mechanisms, specialized bodies, a vibrant civil society and independent monitoring institutions is fundamentally important in all regions of the world. In addition, positive traditional values, compatible with internationally recognized human rights norms and standards, can also contribute towards countering incitement to hatred.

40. The importance of the media and other means of public communication in enabling free expression and the realization of equality is fundamental. The traditional media

continue to play an important role globally, but they are undergoing significant transformation. New technologies – including digital broadcasting, mobile telephony, the Internet and social networks – vastly enhance the dissemination of information and open up new forms of communication, such as the blogosphere.

41. Steps taken by the Human Rights Council, in particular the adoption without a vote of resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief, which constitutes a promising platform for effective, integrated and inclusive action by the international community. This resolution requires implementation and constant follow-up at the national level by States, including through the Rabat Plan of Action which contributes to its fulfilment.

### **Recommendations to States**

42. States should enhance their engagement in broad efforts to combat negative stereotypes of and discrimination against individuals and communities on the basis of their nationality, ethnicity, religion or belief.

43. States should promote intercultural understanding, including on gender sensitivity. In this regard, all States have the responsibility to build a culture of peace and a duty to put an end to impunity.

44. States should promote and provide teacher training on human rights values and principles, and introduce or strengthen intercultural understanding as part of the school curriculum for pupils of all ages.

45. States should build the capacity to train and sensitize security forces, law-enforcement agents and those involved in the administration of justice on issues concerning the prohibition of incitement to hatred.

46. States should consider creating equality bodies, or enhance this function within national human rights institutions (that have been established in accordance with the Paris Principles) with enlarged competencies in fostering social dialogue, but also in relation to accepting complaints about incidents of incitement to hatred. In order to render such functions efficient, new adapted guidelines, tests and good practices are needed so as to avoid arbitrary practices and improve international coherence.

47. States should ensure the necessary mechanisms and institutions in order to guarantee the systematic collection of data in relation to incitement to hatred offences.

48. States should have in place a public policy and a regulatory framework which promote pluralism and diversity of the media, including new media, and which promotes universal and non-discrimination in access to and use of means of communication.

49. States should strengthen the current international human rights mechanisms, particularly the human rights treaty bodies such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, as well as the special procedures mandate holders, as they provide advice and support to States with regard to national policies for implementing human rights law.

### **Recommendations to the United Nations**

50. The Office of the High Commissioner for Human Rights (OHCHR) should be properly resourced to adequately support the international expert mechanisms working to protect freedom of expression and freedom of religion, and prevent incitement to hatred and discrimination and on related topics. In this regard, States should support the efforts of the High Commissioner for Human Rights with a view to strengthening the human rights treaty

bodies as well as ensuring the provision of adequate resources for the special procedures mechanisms.

51. OHCHR is invited to work together with States that wish to avail themselves of its services in order to enhance their domestic normative and policy framework regarding the prohibition of incitement to hatred. In this regard, OHCHR should consider – inspired by the four regional expert workshops – developing tools, including a compilation of best practices and elements of a model legislation on the prohibition of incitement to hatred as reflected in international human rights law. OHCHR should also consider organizing regular judicial colloquia in order to update national judicial authorities and stimulate the sharing of experiences relating to the prohibition of incitement to hatred which would enrich the progressive development of national legislation and case law on this evolving issue.

52. Relevant human rights treaty bodies and special procedures mandate holders should enhance their synergies and cooperation, including through joint action, as appropriate, to denounce instances of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

53. Various entities of the United Nations system, including OHCHR, United Nations Alliance of Civilizations, and the Office of the Special Advisor on the Prevention of Genocide should enhance their cooperation in order to maximize synergies and stimulate joint action

54. Cooperation and information-sharing (a) between various regional and cross-regional mechanisms, such as the Council of Europe, the Organization for Security and Co-operation in Europe, the European Union, the Organization of American States, the African Union, the Association of Southeast Asian Nations, as well as the Organisation of Islamic Cooperation, and (b) between these organizations and the United Nations Organization should be further enhanced.

55. Consider implementing, at the national level and in cooperation with States, measures to realize the recommendations addressed to States.

#### **Recommendations to other stakeholders**

56. Non-governmental organizations, national human rights institutions as well as other civil society groups should create and support mechanisms and dialogues to foster intercultural and interreligious understanding and learning.

57. Political parties should adopt and enforce ethical guidelines in relation to the conduct of their representatives, particularly with respect to public speech.

58. Self-regulation, where effective, remains the most appropriate way to address professional issues relating to the media. In line with principle 9 of the Camden Principles, all media should, as a moral and social responsibility and through self-regulation, play a role in combating discrimination and promoting intercultural understanding, including by considering the following:

(a) Taking care to report in context and in a factual and sensitive manner, while ensuring that acts of discrimination are brought to the attention of the public.

(b) Being alert to the danger of furthering discrimination or negative stereotypes of individuals and groups in the media.

(c) Avoiding unnecessary references to race, religion, gender and other group characteristics that may promote intolerance.

(d) Raising awareness of the harm caused by discrimination and negative stereotyping.

(e) Reporting on different groups or communities and giving their members the opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.

59. Furthermore, voluntary professional codes of conduct for the media and journalists should reflect the principle of equality, and effective steps should be taken to promulgate and implement such codes.

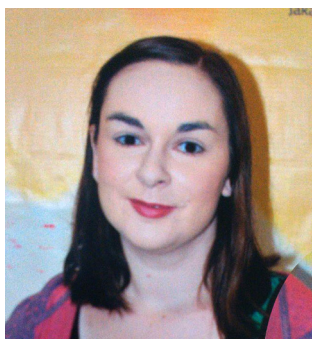
## **IV. Conclusion**

60. While the concept of freedom of expression has received systematic attention in international human rights law and in many national legislations, its practical application and recognition is not fully respected by all countries worldwide. At the same time, international human rights standards on the prohibition of incitement to national, racial or religious hatred still need to be integrated into domestic legislation and policies in many parts of the world. This explains both the objective difficulty and political sensitivity of defining this concept in a manner that respects the freedom of expression.

61. The preceding conclusions and recommendations are steps towards addressing these challenges. It is hoped that they will boost both national efforts and international cooperation in this area.

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# WRITER'S PROFILE



**Allison DiMase** was born in Virginia in the United States. She studied political science and human rights at the University of California, Berkeley. During her undergraduate studies, she spent one year as a Research Apprentice under Professor Leonardo Arriola where she contributed to two projects – one identifying the causal indicators of global electoral violence and another exploring the geographical distribution of electoral violence in the Philippines. At UC Berkeley, Allison focused her personal research on Southeast Asia and wrote her thesis on the human rights implications of decentralization and development in Indonesia. She also had the opportunity to study abroad at Thammasat University in Bangkok, Thailand.

Allison began her graduate studies at the Fletcher School of Law and Diplomacy at Tufts University in Massachusetts in August 2016, where she studies human rights and human security in Southeast Asia. At Fletcher, she worked as a Practicum Researcher on two reports for the United Nations – one analyzing minority issues recommended during the second cycle Universal Periodic Review for the UN Office of the High Commissioner for Human Rights and another identifying best practices for the inclusion of the concerns of minorities and indigenous peoples in the process of achieving sustainable development goals. In May 2017, she was accepted as a Research Fellow at Setara Institute for Democracy and Peace, and this report represents the culmination of her research under the direction of the expert researchers at SETARA.[]



# Profile SETARA Institute for Democracy and Peace

## Pendahuluan

SETARA Institute adalah perkumpulan individual/perorangan yang didedikasikan bagi pencapaian cita-cita di mana setiap orang diperlakukan setara dengan menghormati keberagaman, mengutamakan solidaritas dan bertujuan memuliakan manusia.

SETARA Institute didirikan oleh orang-orang yang peduli pada penghapusan atau pengurangan diskriminasi dan intoleransi atas dasar agama, etnis, suku, warna kulit, gender, dan strata sosial lainnya serta peningkatan solidaritas atas mereka yang lemah dan dirugikan.

SETARA Institute percaya bahwa suatu masyarakat demokratis akan mengalami kemajuan apabila tumbuh saling pengertian, penghormatan dan pengakuan terhadap keberagaman. Namun, diskriminasi dan intoleransi masih terus berlangsung di sekitar kita bahkan mengarah pada kekerasan. Karena itu langkah-langkah memperkuat rasa hormat atas keberagaman dan hak-hak manusia dengan membuka partisipasi yang lebih luas diharapkan dapat memajukan demokrasi dan perdamaian.

SETARA Institute mengambil bagian untuk mendorong terciptanya kondisi politik yang terbuka berdasarkan penghormatan atas keberagaman, pembelaan hak-hak manusia, penghapusan sikap intoleran dan *xenophobia*.

## **Visi Organisasi**

Mewujudkan perlakuan setara, plural dan bermartabat atas semua orang dalam tata sosial politik demokratis.

## **Nilai-nilai Organisasi**

1. Kesetaraan
2. Kemanusiaan
3. Pluralisme
4. Demokrasi

## **Misi Organisasi**

1. Mempromosikan, pluralisme, humanitarian, demokrasi dan hak asasi manusia.
2. Melakukan studi dan advokasi kebijakan publik dibidang pluralisme, humanitarian, demokrasi dan hak asasi manusia
3. Melancarkan dialog dalam penyelesaian konflik
4. Melakukan pendidikan publik

## **Keanggotaan**

SETARA Institute ini beranggotakan individu-individu yang peduli pada promosi gagasan dan praksis pluralisme, humanitarian, demokrasi, dan hak asasi manusia, yang bersifat perorangan dan suka rela.

## **Managemen Organisasi**

### **Dewan Nasional**

Ketua	:	Azyumardi Azra
Sekretaris	:	Benny Soesetyo
Anggota	:	Kamala Chandrakirana M. Chatib Basri Rafendi Djamin

### **Badan Pengurus**

Ketua	: Hendar di
Wakil Ketua	: Bonar Tigor Naipospos
Sekretaris	: Dwiyanto Prihartono
Wakil Sekretaris	: D. Taufan
Bendahara	: Despen Ompusunggu
Direktur Riset	: Ismail Hasani

### **Badan Pendiri**

- |                          |                            |
|--------------------------|----------------------------|
| 1. Abdurrahman Wahid     | 15. Luhut MP Pangaribuan   |
| 2. Ade Rostiana S.       | 16. M. Chatib Basri        |
| 3. Azyumardi Azra        | 17. Muchlis T              |
| 4. Bambang Widodo Umar   | 18. Pramono Anung W        |
| 5. Bara Hasibuan         | 19. Rachlan Nashidik       |
| 6. Benny K. Harman       | 20. Rafendi Jamin          |
| 7. Benny Soesetyo        | 21. Dwiyanto Prihartono    |
| 8. Bonar Tigor Naipospos | 22. Robertus Robert        |
| 9. Budi Joehanto         | 23. Rocky Gerung           |
| 10. D. Taufan            | 24. Saurip Kadi            |
| 11. Despen Ompusunggu    | 25. Suryadi A. Radjab      |
| 12. Hendar di            | 26. Syarif Bastaman        |
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