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Defamation of Religions: International Developments and Challenges on the Ground; SOAS International Human Rights Clinic Project

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Section 1: Introduction[1]

One grave consequence of the 2001 terrorist attacks on the United States of America (USA) was the rise in the negative stereotyping of Muslims throughout much of the west, with anti-Muslim sentiment increasingly identifiable on various levels of social, civil and political expression. Islamic states have registered their concerns through international mechanisms, most prominently on the United Nations (UN) platform. The main recourse of Islamic states during the past decade has been via the concept of 'defamation of religion' – a claim of damage and disrepute being done to Islam – which was formally introduced in the UN as a draft resolution by the Organisation of Islamic Conference (OIC) in 1999. A resolution was passed, setting the concept on a course towards international customary law. It has been regularly discussed, debated and amended since.

Sectors of civil society, along with various states, have expressed alarm at the formalisation of the concept of defamation of religion, which they have condemned as being unclear, prohibitively restrictive and liable to impinge on other formally recognised rights and freedoms. These dissenting voices have argued that provisions to protect individuals from religious discrimination already exist in UN treaties, and that the solution to the problem is in their implementation, not in the creation of new laws. This debate has led to the examination of the defamation and blasphemy laws already in use in various Islamic states, both the manner of their use and misuse.

This paper aims to provide a general overview of the current debate on religious defamation laws internationally, and to research and analyse the use and impact of the 'defamation of religion' concept and blasphemy laws on freedom of expression in three OIC member states. Part I of the paper will explore the evolution of the concept within the UN in three sections: Section One looks at the positions held by the OIC since the introduction of the initial resolution on defamation of religion at the UN; Section Two explores the counter positions held by NGOs and states in disagreement; and Section Three examines the treatment of this concept in other UN reports, namely from its committees and independent experts, as a measure of the current international consensus. Part II of this project is a study of three selected OIC member states: Algeria, Syria and Pakistan. In this section we present the national laws on religious defamation and blasphemy in each country, including amendments and contemporary moves towards reform. We then follow with a series of recent cases that have employed these laws in each of the three countries, and analyse the use of each in relation to the impact it had on freedom of expression, and other rights and freedoms enshrined in human rights law. By doing so we aim to identify whether the *de facto* prohibition of defamation relating to religion falls within the spirit of, or conversely is repugnant to each state's obligations under international human rights law.

[1] This report was researched and drafted by Julia Alfandari, Jo Baker and Regula Atteya, members of the School of Oriental and African Studies (SOAS) 2010/2011 Human Rights Clinic in London (Lynn Welchman, Director), under the supervision of the Cairo Institute for Human Rights Studies (CIHRS). Julia Alfandari (julia.alfandari@gmail.com) is a post graduate student of International Law and has previously worked as a project manager for the Israeli Committee Against House Demolitions (ICAHD) in Jerusalem; Jo Baker (jobaker2000@hotmail.com) is a post graduate student of International Human Rights Law and formerly ran the Urgent Appeals Programme at the Asian Human Rights Commission/Asian Legal Resource Centre in Hong Kong; Regula Atteya is a post graduate student of International Human Rights Law and an LLB

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Section 2: Defamation of religions at the UN

2.1 The OIC on defamation of religions

The OIC is the leading actor in the international discourse around the concept of defamation of religions, insisting that defamation of religions must be actively combated by the international community. The OIC's activism stems from its concerns about the rise of Islamophobia in western countries,[2] and it consequently aims to protect Muslim communities outside Muslim states. The OIC uses several fora to actively promote the debate around the concept of defamation of religions at the UN, including submissions of draft resolutions at the Human Rights Council (HRC) and General Assembly (GA), and within the Ad Hoc Committee on the Elaboration of Complementary Standards (the Ad Hoc Committee). The OIC ultimately aims for the establishment of an international legally binding instrument to combat what it considers to be the defamation of religions, as will be elaborated in the paragraphs below.

2.1.1 The OIC's position, goals and proposals in relation to the defamation of religions

Islamophobia is of great concern to the OIC and holds a prominent place within the organisation. According to the OIC, Islamophobia 'signifies the contemporary proliferation of discrimination against Muslims and distortion of Islam'.[3] The organisation has argued that Islamophobia is a 'manifestation of racial discrimination that runs contrary to the fundamental values of mankind and principles of human rights, which provide safeguards against discrimination and intolerance'.[4] This racism manifests itself against the external, physical signifiers of Muslim persons and their religion and cultural beliefs. According to the OIC, Islamophobia is prevalent in many western societies in areas such as mainstream politics, the media, the educational system, research reports, articles and publications of reputed institutions and academics and in legislation. Hence the formation of a collective misrepresentation about Islam and Muslims has resulted, along with the dissemination of an open hostility and entrenchment of hatred against them, which targets Muslims' identity, honour, self-worth, and self-confidence. Therefore, according to the OIC and its supporters, the defamation of Islam profoundly jeopardises every Muslim's essential human rights. According to this understanding, the OIC concludes that Muslims are in need of special protection and that Islamophobia has the potential to endanger global peace and security, and therefore requires the intervention of the international community.

The importance that the OIC attaches to Islamophobia is demonstrated in its political agenda. Combating Islamophobia is part of the OIC Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century (the Ten-Year Plan) that was put together at the Third Extraordinary Session of the Islamic Summit Conference (held on 7 and 8 December 2005 in Makah,

2 The OIC is not consistent with the terminology, refeering to both 'non-Islamic countries' and 'Western countries',see for example A/61/981 S/2007/ 656 Annex III to letter dated 30.5.2007 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General; GA Draft Res. 31 October 2005, A/C.3/60/L.29.

3 Second Observatory Report on Islamophobia, p. 5 ff., http://www.oic-oci.org/page_detail.asp?p_id=182. See also definition of Islamophobia by HRC 2 September 2008 A/HRC/9/12, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances, Doudou Diene, on the manifestations of defamations of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights, page 8 paragraph 19: 'This term refers to a baseless hostility and fear vis-à-vis Islam, and as a result a fear of and aversion towards all Muslims or the majority of them. It also refers to the practical consequences of this hostility in terms of discrimination, prejudices and unequal treatment of which Muslims (individuals and communities) are victims and their exclusion from major political and social spheres. The term was invented in response to a new reality: the increasing discrimination against Muslims which has manifested itself in recent years.'

4 First OIC Observatory Report on Islamophobia, http://www.scribd.com/doc/4994369/First-OIC-Islamophobia-Report; Second Observatory Report on Islamophobia, http://www.oic-oci.org/page_detail.asp?p_id=182.

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Saudi Arabia).[5] The extraordinary session was organised in response to the Mohammed Cartoon controversy.[6] The Ten-Year Plan tasked the OIC to establish the Observatory on Islamophobia (the Observatory) to counter Islamophobia by monitoring all its forms, and to initiate a structured dialogue in order to project the true values of Islam as a religion of moderation, peace and tolerance.[7] To achieve this, the Observatory produces a monthly bulletin that reports incidences of Islamophobia in the west, as well as an annual report that covers all the relevant developments, the efforts and achievements of the OIC during the period under review. With these means, the Observatory aims to raise awareness of the threat posed by Islamophobia to peace, security and peaceful coexistence amongst individuals and nations. To date, the Observatory has published three reports.[8]

Consequential to the OIC's understanding of Islamophobia, and more generally of defamation of religions, the OIC's goal is the establishment of a legally binding institutional instrument to combat defamation of religions. Faced with the criticism that the criminalisation of this concept could lead to an undue restriction of the freedom of expression, the OIC argues that it is neither against the criticism of religion nor is it calling for a banning of criticism of religions.[9] While on the one hand the OIC argues that the normative framework to combat defamation of religions, both in the international contexts, does exist, it holds however that full use and implementation are needed.[10] On the other hand, within its own publication and public statements the OIC has repeatedly called for a legally binding instrument, particularly in its first observatory report and more recently at the Conference of the Foreign Affairs Ministers in September 2010.[11] On such occasions it has given minimal elaboration on the modalities of such an instrument and its implementation.[12] However its proposals for a legally binding instrument at the Ad Hoc Committee on the elaboration of complementary standards are more concrete and is discussed in more detail in section 2.1.3.

2.1.2 Draft resolutions by the OIC at the UN on the defamation of religions

The issue of 'defamation of religions' was first brought to the attention of UN member states when the OIC submitted its first draft resolution in 1999 to the UN Commission of Human Rights (UNCHR). It then submitted draft resolutions every year to the UNCHR (from 2006), and to its

5 OIC Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century, paragraph VII Combating Islamophobia, http://www.oic-oci.org/ex-summit/english/10-years-plan.htm.

6 The Danish newspaper Jyllands-Post published on 30 September 2005 12 cartoons most of which depicted the Prophet Mohammed. The most infamous cartoon depicted the Prophet with a bomb on his head. The publication led to great international controversy and massive demonstrations across the Muslim world, which also resulted in violence. See also Human Rights Watch, 'Questions and Answers on the Danish Cartoons, when speech offends', 24 February 2006, http://www.hrw.org/legacy/english/docs/2006/02/15/denmar12676_txt.htm.

7 OIC Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century, paragraph VII (2) Combating Islamophobia, http://www.oic-oci.org/ex-summit/english/10-years-plan.htm.

8 First OIC Observatory Report on Islamophobia http://www.scribd.com/doc/4994369/First-OIC-Islamophobia-Report; Second and Third Observatory Report on Islamophobia, http://www.oic-oci.org/page_detail.asp?p_id=182.

9 Danish Daily Jyllands Posten, 28.10.2008. Interview with the Secretary General of the OIC, http://www.oic-oci.org/page_detail.asp?p_id=168.

10 This is the position that the OIC holds with his submissions of draft resolutions as will be further elaborated below in section 2.1.2.

11 Declaration by the Annual Coordination Meeting of Ministers of Foreign Affairs of OIC member states on Countering Islamophobia, 24 September 2010, http://www.oic-oci.org/page_detail.asp?p_id=182.

12 First Observatory Report, http://www.scribd.com/doc/4994369/First-OIC-Islamophobia-Report, p. 31,'a) There is a need for a legal instrument on the "Elimination of Religious Discrimination and Intolerance" with a Committee to implement it and monitor it. This should take into consideration the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Proclaimed by General Assembly resolution 36/55 of 25 November 1981 and UN General Assembly and Human Rights Council resolutions on defamation of religions. b) Victims of Islamophobia must be encouraged and given necessary help to file complaints under the 1503 Human Rights Council Complaint Procedure.' The call for a legally binding instrument at the Foreign Affairs Conference was not further elaborated. At the same conference the OIC also called upon the UN High Commissioner for Human Rights to set up an observatory at her office aimed at monitoring and documenting acts that lead to incitement to religious hatred, hostility and violence.

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predecessor, the Human Rights Council (HRC), and since 2005 every year to the GA.[13] The resolutions have been consistently adopted.[14]

The first draft resolution was submitted in 1999 under the title of 'defamation of Islam'.[15] With the second draft resolution in 2000, the OIC changed the title to 'defamation of religions'.[16] Since 2002, draft resolutions have been entitled 'combating defamation of religions'. While the most recent draft resolution is still entitled 'combating defamation of religions', in the text of the resolution the term defamation of religions has been substituted with vilification of religions.[17] Despite the change in the terminology used in the draft resolutions, the content has changed little. While the OIC has adapted the title to more general terms since the first submission, the content has stayed focused on the defamation of Islam. Islam and Muslims were the only religion and religious group specifically mentioned in the submissions until the most recent draft resolution which incorporated Christianophobia and Judophobia as well.[18] The change from defamation of religions to vilification of religions is understood to be an attempt by the OIC to gain more positive votes for its draft resolution. However the efforts have yielded few results; support for the resolutions has continued to decrease, as we report in detail later in this report.

While the first draft resolutions from the OIC to the UN stated that defamation of religions leads to human rights violations, the drafts initially did not refer to the International Covenant on Civil and Political Rights (ICCPR).[19] In the draft resolution to the GA in 2006 the OIC first began to argue that defamation of religions is in violation of the right enshrined in Article 19 of the ICCPR, but did not directly refer to its concept. Article 19 of the ICCPR protects the freedom to hold opinions and the right to freedom of expression. Paragraph 3 of the Article restricts the scope of protection as follows:

> The exercise of the rights provided in paragraph 2 of this article freedom of expression 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

13 CHR Draft Res. 20 April 1999, E/CN.4/1999/L.40; CHR Rev. Draft Res. 5 April 2000, E/CN.4/2000/L.65; CHR Draft 11 April 2001, E/CN.4/2001/L.7/; CHR Draft Res. 12 April 2001, E/CN.4/2001/L.7/Rev. 1; CHR Draft Res. 3 April 2002, E/CN.4/2002/L.9; CHR Draft Res. 8 April 2003, E/CN.4/2003/L.16; CHR Draft Res. 24 March 2004, E/CN.4/2004/L.5; CHR Draft Res. 7 April 2005, E/CN.4/2005/L.12; GA Draft Res. 31 October 2005, A/C.3/60/L.29; GA Draft Res. 2 November 2006, A/C.3/61/L.28; GA Draft Res. 2 November 2007, A/C.3/62/L.35; GA Draft Res. 30 October 2008, A/C.3/63/L.22; GA Rev. Draft Res. 12 November 2008, A/C.3/63/L.22/ Rev. 1; HRC Draft. Res. 20 March 2008, A/HRC/7/L.15; HRC Draft. Res. 11 March 2009, A/HRC/10/L.2; HRC Rev. Draft. Res. 26 March 2009, A/HRC/10/L.2/ Rev.1; GA Draft Res. 29 October 2009, A/C.3/L.27; HRC Draft Res. 11 March 2010, A/HRC/13/L.1; GA Draft Res. 28 October 2010, A/C.3/65/L.46; GA Draft Res. 19 November 2010, A/C.3/65/L.46. Rev.1.

14 CHR Res. 1999/82, 22 March – 30 April 1999, E/CN.4/1999/167; CHR Res. 200/84, 26 April 2000, E/CN.4/RES/2000/84; CHR Res. 2001/4, 18 April 2001, E/CN.4/RES/2001/4; CHR Res. 2002/9, 15 April 2002, E/CN.4/RES/2002/9; CHR Res. 2003/4, 14 April 2003, E/CN.4/RES/2003/4; CHR Res. 2004/6, 13 April 2004, E/CN.4/RES/2004/6; CHR Res. 2005/3, 12 April 2005, E/CN.4/RES/2005/3; GA Res. 60/150, 20 January 2006, A/RES/60/150; HRC Dec. 1/107, 30 June 2006, A/HRC/DEC/1/107; GA Res. 61/164, 21 February 2007, A/RES/61/164; HRC Res. 4/9, 30 March 2007, A/HRC/RES/4/9; GA Res. 62/154, 6 March 2008, A/RES/62/154; HRC Res. 7/9, 27 March 2008, A/HRC/RES/7/19; GA Res. 63/ 171, 24 March 2009, A/RES/63/171; HRC Res. 10/22, 26 March 2009, A/HRC/RES/10/22; GA Res. 64/156, 8 March 2010, A/RES/64/156.

15 CHR Draft Res. 20 April 1999, E/CN.4/1999/L.40.

16 CHR Rev. Draft Res. 5 April 2000, E/CN.4/2000/L.65.

17 GA Draft Res. 19 November 2010, A/C.3/65/L.46. Rev.1. The OIC has used the term 'vilification of Islam' before, in its First Observatory Report on Islamophobia.

18 International Service for Human Rights (ISHR), 25 November 2010,'Support for 'defamation of religions' continues to decline; draft resolution passes by only 12 votes', http://www.ishr.ch/general-assembly/964-support-for-defamation-of-religion-continues-to-decline-draft-resolution-passes-by-only-12-votes?utm_source=ISHR+Publications+and+News&utm_campaign=5bea21d79e-NEWYORK_RSS_EMAIL_CAMPAIGN&utm_medium=email. The usage of the term 'Judophobia' by the OIC has led to some controversy, since it differs from the usual terminology of the UN that uses anti-Semitism.

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

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security or of public order (ordre public), or of public health or morals.

Since 2006 the draft resolutions have emphasised that the right to freedom of expression carries with it such special duties and responsibilities and may therefore be subject to such limitations as are provided for by law and are necessary for the respect of the rights or reputations of others, the protection of national security or of public, health or morals. According to the OIC, it must be understood that defamation of religions constitutes a limitation as provided by the law according to Article 19 (3) (a) and (b) of the ICCPR, based on two perceptions. Firstly to the OIC's understanding, as elaborated above, defamation of religions violates the human rights of the individual and therefore constitutes a restriction under Article 19 paragraph 3 (a). Secondly, defamation of religion endangers global peace and security, which therefore also constitutes a restriction under Article 19 paragraph 3 (b).

The OIC has also utilised Article 20 of the ICCPR to support the recognition of defamation of religions. With its draft resolution to the HRC in 2008 the OIC connected defamation of religions to 'incitement to racial and religious hatred, hostility or violence', referring to the prohibitions of Article 20 of the ICCPR without directly naming it.[20]

The draft resolution to the GA in 2009 refers directly to Articles 19 and 20 of the ICCPR for the first time, as well as to 19 and 29 of the Universal Declaration of Human Rights (UDHR).[21] The change in the terminology used by the OIC in the latest draft resolution to 'vilification of religions' did not alter the OIC's argument in relation to these Articles, but simply conferred the same arguments to the new language.

It is important to note that the OIC's draft resolutions do not call for a legally binding international instrument to prohibit the defamation or the vilification of religions, but argues that the concept is already prohibited within the existing international human rights framework, in the Articles mentioned above. Nevertheless the OIC ultimately aims for such an instrument to combat defamation of religions. The reason for the absence for such a strong demand in the draft resolution may lie in the continuing decrease of favourable votes for the resolutions during recent years. Such a strong demand could risk the continuous adoption of the 'combating defamation of religions' resolutions, which the OIC is unlikely to want to jeopardise. Resolutions, even without the content that demands the establishment of a new legal instrument, are in the interest of the OIC. While resolutions are not legally binding, over time and as a result of states' practice upholding the concepts of resolutions, such concepts may develop and formalise into customary international law. Therefore this could lead to the formation of the concept of defamation of religions into customary international law.[22]
Meanwhile the OIC has transferred its battle for a new legal instrument to combat defamation of religions to the Ad Hoc Committee.

2.1.3 The OIC's contribution to the Ad Hoc Committee on the Elaboration of Complementary Standards

The Ad Hoc Committee on the Elaboration of Complementary Standards (Ad Hoc Committee) was founded by HRC decision 3/103 and was tasked with the elaboration of complementary standards in accordance with paragraph 199 of the Durban Declaration and Programme of Action which 'recommends that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia

20 HRC Draft. Res. 20 March 2008, A/HRC/7/L.15.
21 HRC Draft. Res. 11 March 2009, A/HRC/10/L.2.
22 Steiner, Alston, Goodman, *International Human Rights in Context,* 3rd edn, (Oxford, Oxford University Press, 2007) p. 75ff.

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and related intolerance in all their aspects'.[23] The complementary standards can be in the form of a convention, or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

In the first Ad Hoc Committee session, held in 2008 from 11 to 21 February and from 15 to 19 December, the delegate of Pakistan, on behalf of the OIC, argued that the Ad Hoc Committee must elaborate on specific proposals for complementary standards in the form of a binding legal instrument. Despite objections from several western countries such as Switzerland, Lichtenstein and Austria to the need for a new legal instrument or such discussions,[24] Pakistan responded by arguing that the need for the elaboration was not to be questioned, as this had been clearly stipulated in paragraph 199 of the Durban Programme of Action.[25] It was supported by comments from other OIC countries such as Egypt and Syria. The first session ended with no agreement on new complementary standards.

The second session of the Ad Hoc Committee was held from 19 to 30 October 2009. The session was marked by the extremely divergent views of states on the necessity, content and format of future international standards.[26] Pakistan, on behalf of the OIC, together with Nigeria on behalf of the African Group, argued that it was time to move away from expert consultations and general comments to the designing of specific proposals for complementary standards. Western states such as the USA, Norway and Sweden (the latter on behalf of the EU) rejected the elaboration of an optional protocol, arguing that the existing legal framework provided sufficient protection against discrimination. Pakistan, together with Nigeria, proposed specific provisions for an optional protocol to the ICERD in relation to the defamation of religions, including a proposal for a provision governing incitement to racial, ethnic or religious hatred.[27] This attempt to include the concept of defamation of religions largely failed since non-Islamic, mainly western and several Latin American states, rejected this concept altogether. The second session ended with no agreement on new complementary standards.

The third session was initially planned for November 2010 but was then postponed to 2011. No date has yet been set.[28]

2.2 Counter positions of human rights organisations and UN member states

As described in the earlier section, the issue of defamation of religions has tended to split the international community between predominantly Western European and North American states, which oppose the concept, and a large proportion of the developing world, which has supported resolutions on the issue.[29] However since 2008, and especially since the Durban Review Conference in April 2009, a clear change of discourse has become apparent among UN member states from Latin

23 Durban Declaration and Programme of Action, www.un.org/durbanreview2009/pdf/DDPA_full_text.pdf.

24 HRC, 24 February 2009 A/HRC/10/88, p.17.

25 Ibid. p. 47.

26 HRC, 17 February 2009 A/HRC/13/CRP.1.

27 HRC, 21 January 2010 A/HRC/13/58 ,'States parties shall immediately undertake to adopt positive measures designed to eliminate all incitement to racial, ethnic or religious hatred or discrimination and, to this end, shall commit themselves, inter alia: To strengthen their legislation or adopt necessary legal provisions to prohibit and suppress racist and xenophobic platforms and to discourage the integration of political parties who promote such platforms in government alliances in order to legitimize the implementation of these platforms.' In addition, Pakistan, on behalf of the OIC, added the following two proposals: '(a)To declare an offence punishable by law all dissemination of ideas aimed at discrimination or hatred, as well as all acts of violence or incitement to such acts against any particular group of persons; (b)To declare illegal and prohibit organizations, and also organized and all other propaganda activities, which encourage and incite racial, ethnic or religious hatred or discrimination, and shall declare participation in such organizations or activities as an offence punishable by law; (c) Not to permit national or local public authorities to incite racial hatred or discrimination; (d) Not to permit political parties to incite racial hatred or discrimination.'

28 Welcome Desk, Latest Human Rights Council news, http://www.welcomedesk.org/index.php?lang=en.

29 International Humanist and Ethical Union (IHEU), Speaking Freely about Religion: Religious Freedom, Defamation and Blasphemy, 2 November 2009, http://www.iheu.org/UN-blasphemy-report.

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America or Africa, which have begun to slowly distance themselves from the OIC agenda. Those changes have resulted partially from pressure exerted by a number of western states, such as the USA, Canada, Australia and all members of the European Union.[30] A further force engaged in lobbying work against the resolutions is composed of international and local NGOs. The Cairo Institute for Human Rights Studies (CIHRS), the Becket Fund for Religious Liberty, ARTICLE 19 and the International Humanist and Ethical Union (IHEU) are just some of the NGOs that have been actively engaged in the debate.

2.2.1 The failings of resolutions on defamation of religions in light of international human rights law

The main concern expressed by dissenting actors has been that the resolutions presented by OIC member states to UN bodies do not adequately deal with the core problem: the rise in incidents of physical as well as socio-economic discrimination against individuals and groups based on their religion, specifically against those of Muslim background.[31] There is a general consensus among actors of the international community that the rise of Islamophobia is threatening, and needs to be addressed. However human rights advocates and several western states argue that the approach pursued by OIC member states does not counter the alarming problem adequately but rather crucially undermines the fundamental principles of human rights law. The call by human rights organisations and states, such as Belgium, Germany, the Czech Republic and the USA[32] has also been joined by some UN Special Rapporteurs[33] emphasising that the right to freedom of religion or belief as protected under international human rights law is primarily concerned with 'the individual and, to some extent, the collective rights of the community concerned but it does not protect religions and belief *per se*'.[34] However, as discussed below in greater depth, previous resolutions on defamation of religions have called on the need to protect and respect systems of beliefs and religious institutions, while placing a particular emphasis on the protection of Islam.

i. Defining the concept of defamation of religion in international law

Opposing voices have highlighted the ambiguous nature of the concept defamation of religions, and the lack of a clear definition in any of the OIC submitted resolutions. The discussed concept was scrutinised in a joint declaration in 2008 by Frank La Rue (UN Special Rapporteur on freedom of opinion and expression), Miklos Haraszti (OSCE Representative on freedom of the media), Catalina Botero (OAS Special Rapporteur on freedom of expression), and Faith Pansy Tlakula (ACHPR Special Rapporteur on freedom of expression) entitled 'Defamation of Religions and Anti-Terrorism and Anti-Extremism Legislation'. This declaration concluded that 'defamation' referred to the reputation of individuals, but when applied to a collective it may easily become subject to abuse in favour of a certain interest or idea, thereby suppressing the right to freedom of expression. 'Religion' on the other hand does not have a reputation on its own (like any other ideology or opinion) and therefore the 'defamation' of it severely contradicts international standards.[35] The concept of

30 PANGEA – Model UN Conference, Combating Defamation of Religion, http://hickoryinternationalcouncil.com/modelun/human-rights-commission/#religion.

31 GA, 20-24 April 2009, A/CONF.211/L.1.

32 ISHL, 'Human Rights Council continues to be divided over 'defamation of religions'', 4 October 2010, http://www.ishr.ch/council/921-human-rights-council-continues-to-be-divided-over-defamation-of-religions; and ISHL, 'Human Rights Council: heavy criticism against Special Rapporteur on freedom of expression', 3 September 2009, http://www.ishr.ch/archive-council/523-human-rights-council-heavy-criticism-against-special-rapporteur-on-freedom-of-expression.

33 See subsequent section 2.3.1.

34 HRC, 29 August 2008, A/HRC/9/NGO/15. and HRC, 20 September 2006, A/HRC/2/3, para 38.

35 International Mechanisms for Promoting Freedom of Expressions, Joint Declaration on Defamation of Religions and Anti-Terrorism and Anti-Extremism Legislation, 15 December 2008, http://www.osce.org/node/35639. IHEU, *Speaking Freely About Religion: Religious Freedom, Defamation and Blasphemy*, 2 November 2009, p.10, http://www.iheu.org/UN-blasphemy-report: regarding the difficulties attached to combined concept, '[j]udicial standards of truth are notoriously difficult to apply to

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defamation of religions is subsequently not only shifting the focus of the individual towards a system of belief, but NGOs such as ARTICLE 19 and CIHRS have stressed that the concept's vague nature could allow the ruling body to implement policies that conflict with international standards. Particular attention is drawn to blasphemy laws in many OIC member states, such as Saudi Arabia and Pakistan.[36] In a policy paper produced by IHEU in 2009, the NGO explicitly warns that 'blasphemy laws continue to be used to protect politically dominant religions from dissent, to prosecute objections to human rights abuses in the name of religion, and to exempt powerful religious institutions from scrutiny and criticism'.[37]

Apart from UN member states in the west that have persistently rejected past resolutions, some abstaining states such as India or Colombia have also expressed their concern at the ambiguous nature of the resolution. In a vote by the Social, Humanitarian Cultural Affairs Committee (Third Committee) in November 2009, Colombia for instance justified its decision to abstain by arguing that the failure to clearly define the concept defamation of religions in resolutions 'could give rise to diverse interpretations and might limit freedom of expression'.[38] India on the other hand, which contains the second largest Muslim population after Indonesia, has also maintained its right to abstain. In the November 2009 vote India abstained due to the narrow focus advocated in resolutions on one religion – Islam. India also complained that the resolution appeared to conflate race and religion:
'[O]ur concerns remain on this resolution as it continues to focus on a single religion. We believe that all religions face negative stereotyping in one situation or another in varying degree. We feel that this issue is best addressed under the rubric of either religious intolerance or the abuse of the freedom expression. We also have reservations at attempts to link this issue with racism.'[39]

ii. International legal frameworks and defamation of religions

The resolutions adopted by the GA, the UN Commission on Human Rights (until 2006) or the UNHRC (since 2006) are not binding; however as previously mentioned in this paper, over the course of time and as a result of states' practice upholding concepts encapsulated in OIC resolutions, the resolutions may pave the way for the formation of customary international law.[40] In an attempt to reduce the likelihood of establishing defamation of religions as a norm in customary international law, NGOs and Special Rapporteurs have repeatedly emphasised the need for states to properly implement and further strengthen existing international standards in order to effectively counter the rising trend of discrimination based on religion or incitement to religious hatred.

Articles 19 and 20 of the ICCPR compose the core elements of the legal framework in the debate. Special Rapporteurs (see subsequent section) and NGOs have assumed a decisive role in articulating the importance and sufficiency of the ICCPR. In coalitions as well as individually, NGOs have frequently criticised OIC resolutions as well as the national legislation of OIC member states for not adequately complying with international standards on freedom of expression. In a recent letter signed by a coalition of 47 human rights organisations, UNHRC member states were urged not to adopt any resolution on 'combating defamation of religions' that were contrary to Article 19 and 20 of the ICCPR,

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questions of faith. Opinions on religion, or artistic interpretations, or even satire of religion, are often susceptible to being proven true or false. Thus, the so called 'truth defence' would not be readily available to anyone accused of defamation of religion'.

36 HRC, 29 August 2008, A/HRC/9/NGO/15. The statement draws attention to the application of blasphemy laws justified through laws criminalizing defamation of religions. It warns that 'blasphemy laws in many countries are used to prevent any criticism of religions, religious leaders and religious institutions, in clear breach of international guarantees of freedom of expression.'

37 IHEU, '*Speaking Freely About Religion: Religious Freedom, Defamation and Blasphemy*', 2 November 2009, http://www.iheu.org/UN-blasphemy-report.

38 GA, 12 November 2009, GA/SHC/3966, http://www.un.org/News/Press/docs/2009/gashc3966.doc.htm.

39 Third Committee, 12 November 2009, A/C.3/64/L.27, http://www.eyeontheun.org/documents-item.asp?d=8151&id=11240.

40 Thirlway, H. 'The Sources of International Law', Evans, M.D. (3rd ed.), 2010, Oxford University Press: New York.

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and to vote against complementary standards to the ICERD. One of the main issues debated in statements as well as written and oral interventions to the UN relates to the question of 'hate speech'. Terminology applied in OIC draft resolutions is argued to re-define the limits to hate speech aimed at safeguarding religions. Those terms include 'negative' or 'deliberate stereotyping', 'intolerance', or 'identifying Islam with terrorism'.[41] By conflating the concept of defamation of religions with Article 20(2) of the ICCPR, which defines the limits between freedom of expression and protection of equality, dissenting voices fear that defamation of religions may fall into the category of incitement to hatred and can therefore no longer be protected by provisions set out in Article 19 on freedom of expression.[42]

The CIHRS has rejected such reasoning by claiming that none of the proposed conditions that are encapsulated in the OIC drafts and resolutions adopted by the UNGA are compatible with the criteria that constitute incitement to discrimination, hostility or violence as laid out in Article 20(2) of the ICCPR. Moreover, given that the OIC resolutions particularly aim towards the protection of a belief system and not the individual believers, the provisions contained in international human rights frameworks may not actually apply. Paragraph 2 of a recent resolution on 'combating defamation of religions' adopted by the HRC in March 2010 illustrates one of many examples describing the resolutions' focus: '[The OIC] expresses deep concern at the negative stereotyping and defamation of religions and manifestations of intolerance and discrimination in matters of religion or belief still evident in the world, which have led to intolerance against the followers of these religions.'[43]

In the above mentioned letter addressed to UNHRC member states, organisations warned that 'laws prohibiting defamation of religions are often counterproductive and prone to being abused against religious minorities that they purport to protect'. NGOs therefore advised the UNHRC that inter-cultural and inter-religious understanding can only be fostered through open debate and dialogue in a pluralist setting.[44] Also, states such as Sweden (on behalf of the European Union) have expressed grave concern at the suggested resolutions on 'combating defamation of religions' as a response to discrimination, and have warned that 'it would limit freedom of expression and might endanger the atmosphere of tolerance that would enable people of different religions or beliefs to coexist without fear'.[45] Together with the USA, Sweden has reiterated the need to apply existing legal frameworks in order to remain consistent with international human rights law. In concurrence with this view is Brazil, which has so far abstained from its vote due to its concern that 'the challenges for human rights identified in the resolution need to be addressed in a context that is not detrimental to the protection of other fundamental rights and freedoms, such as the freedom of expression.'[46]

Brazil argued that the concept of defamation of religions was not in line with international human rights standards and that Articles 19(3) and 20(2) of the ICCPR and existing frameworks were more

41 HRC, Res. 13/16, 25 March 2010, A/HRC/RES/13/16.

42 Article 20 ICCPR, http://www2.ohchr.org/english/law/ccpr.htm#art20.
Conflation between defamation of religions and incitement to religious hatred and violence first appeared in a draft resolution of March 2008 (HRC Draft. Res., A/HRC/7/L.15) and since 2009 direct reference to Article 19 and 20 of the ICCPR had been incorporated in OIC resolutions. HRC Resolution of March 2010 (A/HRC/RES/13/16) illustrates a recent example of the conflation between the two terms 'Stressing that defamation of religions is a serious affront to human dignity leading to a restriction on the freedom of religion of their adherents and incitement to religious hatred and violence.'

43 HRC, Res. 13/ 16, 25 March 2010, A/HRC/RES/13/16, para 2.

44 UNHRC, Civil Society Organisations to State Representatives on 'Defamation of Religions', 11 March 2010, www.article19.org/.../letters/letter-from-civil-society-organizations-to-state-representatives-defamation-.pdf ; GA, Adaptation of the Final Documents and the Report of the Durban Review Conference, 20-24 April 2009, A/CONF.211/L.1

45 Third Committee, November 12, 2009, A/C.3/64/L.27, http://www.eyeontheun.org/documents-item.asp?d=8149&id=11238 and http://www.un.org/News/Press/docs/2009/gashc3966.doc.htm.

46 Third Committee, 12 November 2009, A/C.3/64/L.27, http://www.eyeontheun.org/documents-item.asp?d=8152&id=11241.

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effective in dealing with incitement to hatred or discrimination based on religious grounds.[47]

2.2.2 Developments in discourse: Language and voting pattern

As a result of persistent pressure applied by western states and NGOs on other states to reject the OIC drafts, a clear change in states' behaviour among countries in the developing world has become apparent. In 2006 South Korea joined the dissenting group of predominantly western states. Since then South Korea accounts for the only state in Asia that has consecutively rejected proposed OIC-sponsored resolutions. Japan initially rejected the resolution while acknowledging the changes applied to the resolution in recent years and continuing to stress the importance of freedom of speech it has switched to abstaining on subsequent resolutions in the course of 2007.[48] A significant change in the discourse was however marked by the Durban Conference in April 2009. During the conference the concept of defamation of religions received substantial attention, resulting in a final compromise that any reference to the concept of defamation of religions was to be omitted in the Final Outcome Document.[49]

The Final Outcome Document recaptured the focus towards the protection of individual believers rather than the belief system itself. Particular emphasis was placed on the significance of freedom of expression in the struggle against racism, xenophobia and related intolerance.[50] Paragraph 13 marked an initial departure from a previous exclusive focus on Islam as highlighted in OIC drafts, by introducing concepts of anti-Semitism, Christianophobia and anti-Arabism into the discourse.[51] Nevertheless, in a joint statement by NGOs, a sharp critique was voiced, disagreeing with the exclusive nature of the 'new' approach as the protection of believers of other religions or non-believers was simply ignored.[52]

The overall progress however and shift towards a debate embedded within existing international standards was also reflected in a resolution on the Right to Freedom of Expression, which was presented by the USA and Egypt in September 2009. The focus of the resolution was clearly centred on the rights and protection of individual believers rather than a belief system.[53] States and NGOs greatly welcomed these new advancements, and yet ARTICLE 19 expressed some reservation by commenting on the vagueness of paragraph four, which refers to 'negative racial and religious stereotyping'. ARTICLE 19 warned that this needed to be more clearly defined in order to ensure the exclusive protection of the believer and not the protection of the system of belief. In the statement, the organisation therefore suggests that in order to refrain from any misunderstandings, the specific wording should be changed to 'negative stereotyping of individuals or groups on the basis of their religion or race'.[54]

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47 Human Rights First, 'Focus Paper on Defamation of Religions', March 2010: www.humanrightsfirst.org/wp.../090429-FD-hrf-working-defam-relig.pdf; position reiterated in General Assembly's Third Committee vote on 24 November 2010: http://www.ishr.ch/general-assembly/964-support-for-defamation-of-religion-continues-to-decline-draft-resolution-passes-by-only-12-votes.

48 A/62/439/Add.2, 18 December 2007.

49 Please refer to section 2.3.3. for a detailed discussion on all significant changes included in the Final Outcome Document.

50 ARTICLE 19, UN Human Rights Council: Beginning of the End for Defamation of Religions?, 23 September 2009, http://www.article19.org/pdfs/press/un-human-rights-council-beginning-of-the-end-for-defamation-of-religions-.pdf Paragraph 58 of the Durban Final Outcome Document, April 21, 2009: 'Stresses that the right to freedom of opinion and expression constitutes one of the essential foundations of a democratic, pluralistic society and stresses further the role these rights can play in the fight against racism, racial discrimination, xenophobia and related intolerance worldwide.'

51 Durban Final Outcome Document, Section One, para 12, http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.

52 Article 19, CIHRS, the Egyptian Initiative for Personal Rights and Human Rights Watch, 22 October 2009, http://www.article19.org/pdfs/press/open-letter-to-the-un-ad-hoc-committee-for-the-elaboration-of-complementary-.pdf.

53 HRC, 30 September 2009, A/HRC/12/L.14/Rev.1.

54 Article 19, 'UN Human Rights Council: Beginning of the End for Defamation of Religions?', 23 September, 2009, http://www.article19.org/pdfs/press/un-human-rights-council-article-19-calls-on-hrc-members-to-vote-against-prop.pdf.

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In addition to a change in terminology, a clear change in states' behaviour became visible in the overall voting behaviour in the UN. Lobbying work carried out by critical voices over the years seemed to have finally shown some effect. In a vote by the GA in December 2009, a group of Latin American countries including Mexico, Chile, Panama and Uruguay voted for the first time against the resolution. Brazil continued to abstain but strongly encouraged the necessity to maintain the debate within the existing legal framework, including Article 19 and 20.[55]

The lack of support now found in the current discourse, which is elaborated on in the following section, is reflected in the OIC's changes to its 2010 draft resolution to the GA. The OIC has dropped the restrictive terminology of 'combating religious defamation' in favour of 'combating religious hatred and vilification of religions' in the hope of obtaining votes from abstaining states.[56] However, this new and seemingly softer approach has already received heavy criticism from NGOs asserting that the resolution continues to fail to address the protection of the individual. Like the concept of defamation of religions, vilification of religions has never been defined in any of the resolutions of UN human rights bodies and is therefore prone to abuse by restricting freedom of expression. In a 2010 joint statement, ARTICLE 19 and the CIHRS have argued that like the previous resolutions on defamation of religion, the new draft resolution is also primarily concerned about the protection of religion itself.[57] Paragraph 22 for instance 'calls upon all states to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that places of worship, religious places, sites, shrines and religious symbols are fully respected and protected.'[58] While states' behaviour slowly seems to be departing from the concept advocated by OIC resolutions, the latest changes applied to the resolution might vary in language, but contain the same flaws as previous resolutions.

2.3 Defamation of religions at the UN: The current consensus

As now established, international support for the OIC-sponsored resolutions has been waning since a high point in 2006, despite the minor concessionary changes in language.[59] This section aims to establish the present consensus on the concept at the UN, both in the reception of the resolutions in the past year and through the expressions of official opinion via various other UN fora.

The 2010 resolution at the HRC in March 2010 saw its lowest margin yet, placing it just four votes from defeat: 20 states in favour and 17 against.[60] Argentina and Zambia voted against the resolution for the first time, and according to the UN monitoring group, International Service for Human Rights (ISHR), Chile, Argentina and Mexico made strong statements during the vote that voiced their commitment to upholding the freedom of expression while combating all forms of intolerance.[61] In November 2010 at

55 ISHR, 'Support for 'defamation of religion' continues to decline; draft resolution passes by only 12 votes', 25 November 2010, http://www.ishr.ch/general-assembly/964-support-for-defamation-of-religion-continues-to-decline-draft-resolution-passes-by-only-12-votes.

56 UN GA, 19 November 2010, A/C.3/65/L.46. Rev.1.

57 ARTICLE 19 and CIHRS, UN member states should vote against proposed resolution on 'vilification of religions, 19 November 2010, http://www.article19.org/pdfs/press/un-ga-un-member-states-should-vote-against-proposed-resolution-on-vilificati.pdf.

58 UN GA, 19 November 2010, A/C.3/65/L.46. Rev.1.

59 The Becket Fund, '*UN efforts to pass a Binding International Blasphemy Law*, 2010',Spring 2010, www.becketfund.org/files/international%20blaspemy%20memo.pdf.

60 HRC, Res. 13/16, 15 April 2010, A/HRC/RES/13/16, in favour: Bahrain, Bangladesh, Bolivia, Burkina Faso, China, Cuba, Djibouti, Egypt, Indonesia, Jordan, Kyrgyzstan, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal and South Africa (20). Against: Argentina, Belgium, Chile, France, Hungary, Italy, Mexico, Netherlands, Norway, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom, United States of America, Uruguay and Zambia (17). Abstaining: Bosnia and Herzegovina, Brazil, Cameroon, Ghana, India, Japan, Madagascar and Mauritius (8). Angola and Gabon were absent at the vote.

61 ISHR 'Human Rights Council: changing dynamics on 'defamation of religions', April 14, 2010, http://www.ishr.ch/archive-council/735-human-rights-council-changing-dynamics-on-defamation-of-religions.

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the UN's Third Committee the draft resolution was also passed by a 12-vote margin (81 to 55 with 43 abstentions), which was much lower than the previous year's 26 (76 to 64 with 42 abstentions), and was upheld in December's GA.[62] Although a small number of states moved to abstain after holding positions against the resolution, no new states chose to support it.

Both 2010 resolutions express 'deep concern that Islam is frequently and wrongly associated with human rights violations and terrorism' and directly reference the 'special duties and responsibilities' and thus the possible legal limits of free expression as contained in Articles 19 and 20 of the ICCPR. Yet as noted earlier, they do not call for the criminalisation of defamation, as requested by the OIC at the second session of the Ad Hoc Committee in 2009. According to the bulletin released by the Department of Public Information in November 2010, the issues raised in the Third Committee tracked similar fault lines from previous debates through the decade: there were requests from several delegations that there be less focus on Islam in particular.[63] Albania and India expressed disapproval that the text continued to promote research into the link between defamation and racism; and various states expressed concerns for the harm the resolution could do to free expression. Focus was again brought to the ICCPR and also, by Finland, to the ICESCR in its appeal to states to ratify the treaties and consider their optional protocols. In turn, OIC states, represented by Syria, continued to stress the increase in 'demonic' portrayals of Islam and Muslims and anti-Muslim legislation, such as the restrictions being imposed on the construction of places of worship, and to lobby for stronger legal and administrative measures in response. They bolstered this appeal with references to the United Nations Global Counter-Terrorism Strategy and other international law provisions, including the joint statement by the Secretaries-General of the United Nations and the OIC, and the High Representative for Common Foreign and Security Policy of the European Union in Doha, on 7 February 2006, in which they underscored the need for sensitivity to the issue. [64]

Nevertheless the outlook for the resolution was largely unfavourable for the OIC and its supporting states, as reported widely by media and independent UN monitoring agencies such as the ISHR, which noted:

> Diminishing support for the draft resolution ironically followed more open and transparent negotiations this year. Though many states praised the Moroccan-led negotiations, the US deemed the outcome worse in terms of substance from previous years. And despite the EU and US urging states to find common ground through other means than the divisive resolution, the OIC said it would pursue the issue 'relentlessly', including bringing the resolution to the Assembly again next year.[65]

2.3.1 UN Special Procedures on defamation of religions

As noted briefly above, the work of independent experts within the UN has been building an influential body of opinion on the subject of defamation of religions since the concept was first proposed in 1999. The issue has featured prominently in the reports and studies of three Special Rapporteurs in particular: on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; on freedom of religion or belief; and on the promotion and protection of the right of freedom of opinion and expression. Although each has explored the issue in relation to his or her mandate, their findings and opinions have tended to align and overlap in main areas.

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62 GA, 23 November 2010, GA/SHC/4001.

63 Ibid.

64 GA, Res. 61/49, 12 February 2006, A/RES/61/49.

65 ISHR, 'Support for 'defamation of religion' continues to decline; draft resolution passes by only 12 votes', 25 November 2010, http://www.ishr.ch/general-assembly/964-support-for-defamation-of-religion-continues-to-decline-draft-resolution-passes-by-only-12-votes.

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i. On the relationship between defamation of religions and the freedom of expression

In 2006, for example, when the defamations resolution was at the height of its support, the Special Rapporteur on freedom of religion or belief reported on the potential threat to free expression, warning that 'any attempt to lower the threshold of Article 20… would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance',[66] while in 2008 the Special Rapporteur on freedom of expression reiterated that protections within this article relate 'not only to comfortable, inoffensive or politically correct opinions, but also to ideas that offend, shock and disturb'. He also noted that laws under Article 20(2) should be clearly and narrowly defined, should not intrude on freedom of expression, and should be applied by an independent judiciary.[67] By using Article 20 to draw the parameters of the provisions, the experts who have held three rapporteur positions during the past decade have consistently recommended that they be interpreted in light of Articles 18 and 19 of the ICCPR, as laid out in General Comment 10 from the HRC.[68] Each Special Rapporteur has also expressed concerns – which have been echoed and reinforced by many NGOs – that the terminology and implications of the resolutions on defamation in relation to religion are unclear. The Special Rapporteur on freedom of expression in particular, has cited concerns that Article 20 is meant to protect individuals, not belief systems.

In 2008 the Special Rapporteur on racism, Githu Mugai, delivered a report by his predecessor Doudou Diene that called on member states to replace 'defamation' with the legal concept of 'incitement to national, racial or religious hatred', a concept which is already grounded in international legal instruments.[69] Muigai maintained focus on the theme during his tenure, as seen during the Durban Review Conference in which he: 'reiterate[d] the recommendation of his predecessor to encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred'.[70] In a second report on the same platform Muigai stressed the need for states to strike a balance between the right to freedom of expression and their moves to counter extremist political parties, movements and groups.[71]

The continuity of this opinion was recently confirmed by the new Special Rapporteur on the freedom of religion or belief Heiner Bielefeldt. In his first interactive dialogue with the GA's Third Committee in October 2010 he referred to the 'chilling effect' that new legal provisions, as urged by OIC representatives, could have on the freedom of expression. The phrase is one used frequently by UN Rapporteurs to express particularly strong concern.

> It is important that any limitations on freedom of expression deemed necessary to prohibit incitement to religious hatred be defined with the utmost diligence, precision and precaution. The threshold for any limitations must be very high in order not to have a chilling effect on the exercise of freedom of expression or other human rights. Such precaution is also in the interest of freedom of religion or belief, because a societal atmosphere of openness enhances the chances of dispelling stereotypes and prejudices. At the same time, freedom of religion or belief does not include the right for one's religion or belief to be free from criticism or all adverse comment.[72]

66 HRC, 20 September 2006, A/HRC/2/3, para 50.
67 HRC, 28 February 2008, A/HRC/7/14, para 66.
68 ICCPR General Comment No. 10: Freedom of expression (Art. 19), 29 June 1983.
69 HRC, 1 July 2009, A/HRC/12/38.
70 Ibid, para 7.
71 HRC, 16 April 2010, A/HRC/14/45.
72 A statement by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief, 65th session of the General Assembly, Third Committee, 21 October 2010.

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ii. On religious discourse

Experts serving under those three UN mandates have also shared concerns for the negative impact that the defamation concept may have on religion. Their reports have often concluded with recommendations for states to promote unrestricted dialogue within and among religions. This is a cause most strongly advocated by the Special Rapporteur on the freedom of religion, such as the often-made observation by previous mandate-holder Asma Jahangir, that 'the recognition, respect and practice of religious pluralism . . . encompasses criticism, discussion and questioning of each other's values',[73] and that the concept of defamation of religions is dangerous because it can be used to legitimize blasphemy laws that 'punish members of religious minorities, dissenting believers and non-theists or atheists.'[74]

This position was reflected in the terms of the mandate itself, which was heavily debated before it was renewed at the Human Rights Council in 2010; the changes made upon its renewal have since been referred to by states in various bids to restrict and redirect the mandate holder.[75] Although the terms of the mandate now include the condemnation of incidents of incitement to religious hatred, discrimination, intolerance and violence, as requested by Pakistan, consensus was not found on the calls for the Special Rapporteur to examine incidents of religious intolerance and to ensure respect for places of worship.[76] This is not the only time the debate has been taken into the terms of a Special Rapporteur's mandate. As noted by a 2008 report from the Quaker United Nations Office:

> [A] contentious thematic mandate was the Special Rapporteur on Freedom of Expression. This was linked to the question of religion since the controversy revolved around the limits to freedom of expression in relation to religion (ie, the 'cartoons' issue). The mandate was amended by vote (27-13-3) to include reporting 'abuse of the right to freedom of expression that constitutes an act of racial or religious discrimination, taking into account Articles 19(3) and 20 of the International Covenant on Civil and Political Rights, and General Comment No. 15 of the Committee on the Elimination of Racial Discrimination… This amendment led to many of the original co-sponsors withdrawing their co-sponsorship: the resolution as amended was adopted by vote (7/36; 32-0-15).[77]

The importance of dialogue among religions has featured in the work of the other Special Rapporteurs. In a report on religious defamation, shortly after the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, Special Rapporteur on racism Doudou Diene urged states to promote dialogue between cultures, civilizations, and religions, and to ensure that any efforts to combat discrimination addressed religions equally.[78] In a joint statement issued a few years later at the Durban Review Conference, Jahangir, Maigui and La Rue warned that to legalise the concepts of defamation and blasphemy would make them more open to abuse.

> Whereas some have argued that defamation of religions could be equated to racism, we would like to caution against confusion between a racist statement and an act of 'defamation of religion'… There are numerous examples of persecution of religious minorities or dissenters, but also of atheists and non-theists, as a result of legislation on religious offences… The right to freedom of expression constitutes an essential aspect of

73 HRC, 20 September 2006, A/HRC/2/3, para 65.
74 GA, 20 August 2007, A/62/280.
75 HRC Res. 14/11, 23 June 2010, A/HRC/RES/14/11.
76 These terms were brought up in the 2010 interactive dialogues with the special procedures on racism and on freedom of religion and belief at the Third Committee, in which Ms. Jahangir's understanding of the defamations concept was critcised and her successor reminded of the new terms of his mandate by Pakistan.
77 Quaker United Nations Office: *Digging Foundations or Trenches? UN Human Rights Council: Year 2*, August 2008.
78 GA, 21 August 2007, A/HRC/6/6.

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> the right to freedom of religion and belief ... essential to creating an environment in which a critical discussion about religion can be held. [79]

They later elaborated, at the same session:

> Several religions are characterised by truth claims – or even by superiority claims – which have been traditionally accepted as part of their theological grounds. Consequently, the elements that constitute a racist statement may not be the same as those that constitute a statement 'defaming a religion' as such. To this extent, the legal measures, and in particular the criminal measures, adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religions.[80]

iii. On religious intolerance

Despite their reluctance to fully support proposals from the OIC member states on defamation of religions, independent experts at the UN have prominently recognised the rise of certain types of negative religious stereotyping in their work, and the need to urgently address this via state policy. For example, in the concluding recommendation of Special Rapporteur on racism, Doudou Diène's report at the Durban Review Conference Report to the GA on defamation of religions and the implications of Islamophobia, he stresses:

> […] the need to pay particular attention and vigilance to maintain a careful balance between secularism and the respect of freedom of religion. A growing anti-religious culture and rhetoric is a central source of defamation of all religions and discrimination against their believers and practitioners. In this context governments should pay a particular attention to guaranteeing and protecting the places of worship and culture of all religions.[81]

Asma Jahangir has similarly emphasised that although intolerant behaviour does not necessarily constitute a human rights violation it still tends to polarize religious groups and affect social cohesion, and that the judiciary should play a role in assessing whether incidents amount to violations.[82] In her final report as Special Rapporteur on the freedom of religion in 2010, she reiterated her opinion that the advocacy of religious hatred should be prohibited by law,[83] and although she consistently defined the parameters of legal action according to the provisions in existing international treaties (noting that she sees them as a positive alternative to blasphemy laws), the Rapporteur recommended that their interpretation be revisited, notably via the HRC's General Comment No. 11 (1983) on Article 20 of the ICCPR.[84]

However, expressed in this way, the Special Rapporteurs' support for explorations into defamation as a legal concept has been modest in comparison to the proposals made by OIC member states and their supporters. The past two Special Rapporteurs on racism have promoted further examinations on Article 20 in their reports, stressing that the concept of incitement to religious hatred could be identified within an effective legal framework; they have also, perhaps more robustly, backed the discussions on the development of complementary standards through the CERD.[85] The Special

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79 Read by the Rapporteurs at a UN-organised side-event at the Durban Review Conference, 22 April 2009.

80 Joint statement by the three Special Rapporteurs in summarising the conclusions of the 2008 OHCHR 'Expert Seminar on the Links between Articles 19 and 20 of the ICCPR', convened by the UN High Commissioner for Human Rights, 22 April 2009.

81 HRC, 21 August 2007, A/HRC/6/6, para 78.

82 In the Rapporteur's report to the HRC at its tenth session in 2009.

83 GA, 29 July 2010, A/65//207.

84 GA, 20 August 2007, A/62/280; HRC, 7 February 2008, A/HRC/7/10/Add.3.

85 ,HRC, 2 September 2009, A/HRC/9/12.

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Rapporteur on expression has restricted his recommendations to improving the implementation of existing provisions of the ICCPR and the ICERD.

Like many of the NGOs involved in this debate, the three UN-based experts have united in their call for states to take a holistic approach to the discouragement of hate speech and discrimination, and to draw on education, community and inter-faith dialogue, and initiatives within the media, rather than legislation. In the two latest reports from Githu Maigui, released mid-2010 – one specifically concerned with the implications of Islamophobia – the Special Rapporteur on racism concluded that the most effective way to combat religious intolerance is to implement policy measures that deal with the 'root causes' of intolerance, which reflects his predecessor's opinion in 2007 on 'the need to complement legal strategies with an intellectual and ethical strategy relating to the processes, mechanisms and representations which constitute those manifestations over time' due to their 'historical and cultural depth'.[86] As mentioned, religious intolerance has been an established issue of concern at the UN since a declaration was first drafted on the issue in 1981, and this is regularly renewed;[87] it also frames much of the mandate of the Special Rapporteur on Religion.[88]

2.3.2. The High Commissioner on Human Rights and the Secretary General

Supporting the work of these three mandates has been that of the UN High Commissioner on Human Rights (HCHR) and the UN Secretary General (SG) who have initiated various surveys and expert consultations on religious defamation in the latter half of the past decade. A significant contribution by the HCHRs (firstly by Louise Arbour, and from September 2008, Navanethem Pillay) were special studies of laws and practices on defamation as requested by the Human Rights Committee, which in 2006 led to Arbour calling for a unified understanding of incitement norms in the ICCPR and ICERD, due to the lack of clarity on key elements such as the definitions of 'incitement', 'hostility', and 'hatred'.[89] Reporting to the HRC in 2007, the HCHR stressed the need for enhanced cooperation and stronger political will by member states in combating defamation of religions', and this led to further consultations and reports. A 2008 survey among states led the HCHR to confirm that their understandings of the term 'defamation' addressed 'somewhat different phenomena and appl[ied] various terms such as contempt, ridicule, outrage and disrespect to connote defamation'.[90] The Commissioner's work has highlighted the grey areas that remain between the criticism of religion, the persecution of religious persons and the concept of religious defamation.

The call for holistic measures has been recently amplified meanwhile, by the SG, who rather than recommending legal responses to defamation, has chosen to root the debate in the wider theme of religious intolerance, and to back recommendations by UN Independent Experts.[91] In a July 2009 report to the GA the SG noted that '[i]n order to tackle the root causes of intolerance, a much broader set of policy measures needs to be addressed covering the areas of intercultural dialogue as well as education for tolerance and diversity'. This call for holistic measures has boosted the UN's attempt to address the issue of religious intolerance via a global programme of seminars and workshops such as one held in June 2009 entitled 'Unlearning Intolerance' which addressed the dangers of 'cyberhate' and 'digital demonisation'.[92] The SG's report on defamation listed the interaction of the HCHR with the issue in various fora during the past few years, such as a press release expressing regret at

86 GA, 21 August 2007, A/HRC/6/6 , para 78

87 Such as Resolution 64/164 adopted in the Human Rights Council on 17 March 2010.

88 The mandate title was originally UN Special Rapporteur on Religious Intolerance, and was changed to the UN Special Rapporteur on Freedom of Religion or Belief by the UN Human Rights Commission and the UN General Assembly in 2000.

89 HRC, 20 September 2006, A/HRC/2/6.

90 HRC,12 September 2008, A/HRC/9/7, para 67; see also HRC, 5 September 2008, A/HRC/9/25.

91 GA, 31 July 2009, A/64/209.

92 These and others are listed in the report of the UN HCHR on 'The implementation of Human Rights Council resolution 10/22 entitled 'Combating defamation of religions', HRC, 11 January 2010 A/HRC/13/57.

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Switzerland's ban on minarets, and an address expressing concern at the discriminatory nature of profiling at the Counter Terrorism Committee of the Security Council. He and the HCHR have also noted that jurisprudence has also been building in the Human Rights Committee regarding the Optional Protocol to the ICCPR and ICERD, and the latest report of the HCHR features various cases taken by claimants alleging incitement to discrimination, hostility or violence. Although most claims have failed, there have been dissenting opinions.[93]

2.3.3 The Durban Review Conference and the Ad Hoc Group

As well as being reflected in the language of UN resolutions, this body of opinion has been influential in the drafting of other reports, such as the Outcome Document of the April 2009 Durban Review Conference and the Draft Resolution on the right to freedom of expression, co-sponsored by the USA and Egypt and passed later that same year.[94] Both saw the marked softening of language relating to incitements and defamation proposed by the OIC, instead invoking terms such as 'negative stereotyping', drawn from the ICCPR. UN experts, among them the Special Rapporteur on racism and the HCHR, have opined that the consensus reached in the Outcome Document was a satisfying balance, reaffirming both the importance of freedom of expression and the need to curb hate speech. The HCHR has recommended that the language of the document be used by policymakers to define domestic measures.[95] Nevertheless the Outcome Document was recognised as having given particular weight to the issue in the eight references it made to incitement, and in the Intergovernmental Working Group that was established at the close of the conference to look into the content and scope of a possible Optional Protocol to the ICERD, and which gave rise to the Ad Hoc Committee on Complementary Standards. Although its meeting in late 2009 was reported as being more constructive than its first session, progress was minor, and EU states continue to oppose OIC states on the need for complementary standards. A third meeting planned for the end of 2010 has been postponed until early 2011.

2.3.4. General Comment 34 on Article 19

This debate continues among the drafting committee members of the Human Rights Committee's General Comment No. 34 on Article 19 of the ICCPR (hereafter General Comment 34), to further safeguard the right to freedom of opinion and expression.[96] The first draft, completed in October 2010, discusses the acceptable limitations on the right to expression, stressing that to criminalise the holding of an opinion violates human rights norms. In general terms, draft General Comment 34 notes that any limitations must be justified and with proof of a clear threat, that imprisonment is never an appropriate penalty for any form of defamation and that all such criminal laws should be repealed unless they are applicable under Article 20. It also draws attention to anti-discrimination content in the Committee's General Comment No. 22, urging states to base their action 'on principles not deriving exclusively from a single tradition' when citing actions taken in the protection of morals.[97] The committee is brief in its reference to blasphemy, listing the international legal limitations on its criminalisation without further interpretation, and stressing that any criminal law provisions that do not comply with Article 20 should be repealed. It does note that blasphemy laws should apply to adherents of all religions equally, and should not be used to prevent commentary on religious doctrine.

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93 Ibid. The report refers to cases such as *Vassilariat al V. Greece*, Communication No. 1570/2007, CCPR/C/95/D/1570/2007 (2009); and *Kasem Said Ahmad and Asmaa Abdol-Hamid v. Denmark,* Communication No. 1487/2006, which both invoked Article 20 of the ICCPR.

94 See Sections 1 and 2.2

95 HRC, 1 July 2009, A/HRC/12/38.

96 HRC, 25 November 2010, CCPR/C/GC/34/CRP.5.

97 UN CCPR General Comment No. 22, ' The right to freedom of thought, conscience and religion (Art. 18)', adopted on 30 June 1993, CCPR/C/21/Rev.1/Add.4.

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General Comments are a way for the UN committees to assist and promote the article of the covenant, ease conflicts of interpretation and highlight de facto insufficiencies that may have come to light in reports to the body, and are cited by organisations and in judicial decisions.[98] As it stands, General Comment 34 reflects agreement with the recommendations made by UN independent experts and a lack of support for moves to prohibit forms of defamation relating to religion. However this language will likely be challenged, and may see some change when the draft is put to state parties in 2011.

98 Boyle, 'Soft Law in International Law-making' in Evans (ed) *International law*, Oxford University Press, Oxford; New York: 2006

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Section 3: Case studies from three OIC States

3.1. The Islamic Republic of Pakistan

The Islamic Republic of Pakistan has a majority Muslim population and has passed some of the world's strictest national laws on blasphemy and the defamation of religion. Its provisions are established in the Pakistan Penal Code (PPC), its Criminal Procedure Code (CrPC) and its constitution. Many of these provisions were introduced or strengthened between 1977 and 1988 during the reign of military dictator Zia ul-Haq, who is known for his 'Islamisation' of the country, mostly under martial law.[99] Under General Zia, Shari'a Benches were established in the high courts and the Supreme Court (which had the jurisdiction to examine the compliance of domestic laws with Islamic law, even if no complaint was brought before them), and new ordinances reset the parameters of punishment for various offences, including expressions of disrespect to Islamic symbols, the prophet Muhammad, and his family members and companions.[100] One ordinance in particular, Ordinance XX of 1984, amended the PPC to single out the unorthodox Muslim minority group, the Ahmadis, for particular punishment should they 'outrage the religious feelings of [Pakistan's mainstream] Muslims'.[101] Few amendments have been made since, and attempts to do so have been met with strong and often aggressive opposition from the state's powerful conservative religious organisations, as mentioned later in this report. Non-Muslim judges are rare in the state, although there have been exceptions, such as the appointment of Hindu acting Chief Justice of Pakistan, Rana Bhagwandas, in 2007 (now retired) and of a Christian high court judge, Jamshaid Rehmatullah, in 2009.[102]

The following section on Pakistan will present an overview of the state's laws on religious defamation and blasphemy, including recent amendments and aspects of the national debate on the repeal of the legislation. It will then examine the use of these laws in five recent cases, while analysing the extent to which the freedom of expression and other fundamental rights and freedoms are protected. The section aims to identify whether Pakistan's laws comply or conflict with its obligations under international human rights law.

3.1.1. Legislation

The Constitution

Blasphemy laws in the PPC are constitutionally supported by a number of articles in the 1973 Constitution of Pakistan among them Article 2, which declares that 'Islam shall be the state religion of Pakistan' and Article 31 which provides for an 'Islamic way of life'. [103] It should be noted that Article 33, though brief, requires that 'the state shall discourage parochial, racial, tribal, sectarian and provincial

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99 'Muhammad Zia ul-Haq' in GlobalSecurity.org (a US-based source of background information and developing news stories in the fields of defense, space, intelligence, WMD, and homeland security).

100 Ḥaqqānī, *Pakistan: between mosque and military*, Carnegie Endowment for International Peace, Lahore, Vanguard Books, 2005.

101 Ordinance No. XX of 1984, which was passed 'to amend the law to prohibit the Quadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities' included the addition of new section 298C to The Pakistan Penal Code Act XLV of 1860, as featured in the following section. www.pakistani.org

102 ASSIST News Service (ANS), 'Christian lawyer appointed as High Court Judge following efforts of Pakistan Minorities Minister', 28 February 2009, http://www.assistnews.net/Stories/2009/s09020176.htm.

103 Article 3 states:

Islamic way of life: (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The state shall endeavour, as respects the Muslims of Pakistan, :

(a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

(b) to promote unity and the observance of the Islamic moral standards; and

(c) to secure the proper organisation of zakat, [ushr,] auqaf and mosques.

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prejudices among the citizens.'

The Penal Code 1860 and the Criminal Procedure Code 1898

The PPC lays down the nature of offences under the law, along with their punishments, while the CrPC is largely procedural, providing machinery for the punishment. The two codes are read together.

Chapter XV of the PPC relates to 'offences relating to religion' and two of its articles cover blasphemy and defamation of Islam: 295 addresses the defiling or 'defaming' of sacred texts, symbols or persons, with each crime defined by the wrongdoer's action and intent. Article 295-C, however, specifically reserves the harshest punishment against those who make derogatory remarks against the Prophet; Article 298 governs derogatory remarks against persons holding religious office, and the misuse or 'misrepresentation' of the faith, particularly by non Orthodox Muslims.[104]
They read as follows:

> 295-A. Injuring or defiling place of worship, with Intent to insult the religion of any class:
> Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction damage or defilement as an insult to their religion shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
>
> 295-B. Defiling, etc, of copy of Holy Quran:
> Whoever will fully defiles, damages or desecrates a copy of the Holy Quran or of an extract there from or uses it in any derogatory manner or for any unlawful purpose shall be punishable for imprisonment for life.
>
> 295-C. Use of derogatory remarks, etc; in respect of the Holy Prophet:
> Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to fine.
>
> 298. Uttering words, etc., with deliberate intent to wound religious feelings:
> Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.
>
> 298-A. Use of derogatory remarks, etc..., in respect of holy personages:
> Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly defiles a sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (PBUH), or any of the righteous caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet description for a term which may extend to three years, or with fine, or with both.
> Misuse of epithet, descriptions and titles, etc. Reserved for certain holy personages or places.
> Any person of the Qadiani group or the Lahori group (who call themselves Ahmadis or by any

104 296 and 297 are not related to blasphemy, but provide for the interruption of religions events and the trespassing on religious property, respectively.

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other name) who by words, either spoken or written or by visible representation:
refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Mohammad (PBUH), as "Ameerul Momneen", "Khalifat-ul-Momneen", "Khalifat-ul-Muslimeen", "Sahaabi" or "Razi Allah Anho";
refers to or addresses, any person, other than a wife of the Holy Prophet Mohammed (PBUH), as Ummul-Mumineen;
refers to, or addresses, any person, other than a member of the family (Ahle-Bait) of the Holy Prophet Mohammed (PBUH), as Ahle-Bait; or
refers to, or addresses, any person, other than a member of the family (Ahle-Bait) of the Holy Prophet Mohammed (PBUH), as Ahle-Bait; or
refers to, or names, or calls, his place of worship as Masjid; shall be punished with imprisonment or either description for a term which may extend to three years, and shall also be liable to fine.
Any person of the Qadiani group or Lahore group, (who call themselves Ahmadis or by any other names), who by words, either spoken or written, or by visible representations, refers to the mode or from of call to prayers followed by his faith as "Azan" or redites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

298-C. Persons of Qadiani group, etc, calling himself a Muslim or preaching or propagating his faith:
Any person of the Qadiani group or the Lahori group (who call themselves Ahmadis or any other name), who directly or indirectly, posses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representation or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.[105]

International Treaties

Pakistan holds a seat on the UN Human Rights Committee and has ratified most of the core international human rights treaties. It newly ratified the ICCPR in June 2010, though with reservations which declare that the provisions of Articles 3, 6, 7, 18 and 19 shall be applied to the extent that they are not repugnant to the provisions of the Constitution of Pakistan and the Shari'a laws. It did not ratify the Optional Protocol. Pakistan is also party to the ICERD, the Convention Against Torture (CAT; also recently acceded to in June 2010), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).[106]

3.1.2 Amendments to the law

In October 1990 the Federal Shari'a Court (FSC), which rules on the conformity of laws with the injunctions of Islam, ruled that Section 295-C of the PPC was repugnant to the religion because it did not deliver the death penalty for acts of contempt against the Prophet. The FSC ruled that 295-C would be amended by the ruling unless the president took action to have the law amended by April of the following year.[107] The only appeal to the Supreme Court, by a Christian bishop in 1990, was addressed

105 Pakistan Penal Code (Act XLV of 1860), Act XLV of 1860, 6 October 1860, www.pakistani.org.
106 HRC, 26 March 2008, A/HRC/WG.6/1/DZA/2.
107 Rebecca J. Dobras, 'Is the United Nations Endorsing Human Rights Violations? An Analysis of the United Nations' Combating Defamation of Religions Resolutions and Pakistan's Blasphemy Laws', 37 Ga. J. Int'l & Comp. L. 340 2008-2009; The Indian, 'Pak SC rejects petition-challenging death as the only punishment for blasphemy', 22 April 2009, http://www.thaindian.com/newsportal/south-asia/pak-sc-rejects-petition-challenging-death-as-the-only-punishment-for-

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and dismissed by the Shari'a Appellate Bench of the court in 2009 because the appellant was no longer alive. The death sentence thus stands, however no judicial executions have yet taken place under this law due to a combination of delay, appeals, and pardons. [108] Since his election President Zardari has made use of his constitutionally authorised power to pardon accused persons, and he and his party, The Pakistan People's Party (PPP) are seen as moderately sympathetic to religious minorities. However as noted by critics, [109] the arbitrary use of presidential pardons is no replacement for the repeal of weak or discriminatory laws, and should by no means be used as a legal safeguard.[110]

There have been various attempts to lighten this sentence since, due to claims – detailed in the analysis and cases below – that they are frequently misused, yet these have been met by fierce and largely effective political and popular resistance from powerful conservative religious organisations (as has the use of presidential pardons). One criminal law amendment was successfully passed in 2004, which increased the responsibility of the police to investigate the legitimacy of a charge under 295-C.[111] Under this amendment no case of blasphemy can be legally filed without a thorough investigation by an officer ranking no lower than the superintendent of police [see Annex I]. [112]

3.1.3. Implementation

According to data collected by the National Commission for Justice and Peace (NCJP),[113] a human rights body patronised by the Pakistan Catholic Bishops' Conference, at least 964 persons have been charged with violating these anti-blasphemy clauses between 1986 and August 2009 in Pakistan, while more than 30 such persons were killed extra-judicially.[114] Approximately half of those charged were minorities – Christian, Hindu and Ahmadi – which only make up about 3% of the population, [115] leading to the strong and often cited accusations that the laws are used as a tool of persecution by civilians and officials. The law has been criticised for being too general and requiring too little proof, with procedures that are disproportionate to the severity of the sentence, and little regulation to ensure that correct procedures are followed. Extreme concerns have been put forward from minority rights defenders, including NGOS such as Human Rights Watch and experts within the UN.[116] While

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blasphemy_100183053.html.

108 BBC Online, 'Pakistani Christian Asia Bibi has price on her head', 7 December 2010, http://www.bbc.co.uk/news/world-south-asia-11930849 and Dobras, 'Is the United Nations Endorsing Human Rights Violations? An Analysis of the United Nations' Combating Defamation of Religions Resolutions and Pakistan's Blasphemy Laws', 37 Ga. J. Int'l & Comp. L. 340 2008-2009.

109 As noted by Asif Aqeel and Shaheryar Gill; respectively the Executive Director of European Center for Law and Justice's (ECLJ) office in Lahore, Pakistan and Associate Counsel with the American Center for Law and Justice (ACLJ) based in Virginia; in' Presidential Pardon to Pakistani Blasphemy Convict Not the Answer' published by the European Centre for Law and Justice. 29 November 2010; http://www.eclj.org/Releases/Read.aspx?GUID=ea238c6b-3963-4e21-906e-9a016fe4bc68&s=innws.

110 Article 45 of the constitution says, 'The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.'

111 Act 1 of 2005 The Criminal Law Amendment ACT 2004, published in Pakistan Law Journal (PLJ) 2005 Federal Shriat Court, p. 207 (see Annex I).

112 As referenced in 'Sherry Rehman: "I believe the repeal option is still the best one, but…"' The News, December 2010, http://www.jinnah-institute.org/issues/205-sherry-rehman-qi-believe-the-repeal-option-is-still-the-best-one-butq, and in and 'Is the United Nations Endorsing Human Rights Violations? An Analysis of the United Nations' Combating Defamation of Religions Resolutions and Pakistan's Blasphemy Laws', Rebecca **J.** Dobras,, 37 Ga. J. Int'l & Comp. L. 340 2008-2009 '.

113 The NCJP was formed in 1985 by the Pakistan Catholic Bishops' Conference: http://www.ncjppk.org/

114 Huffington Post, 'Institutionalized discrimination against religious minorities', 10 December 2010, http://www.huffingtonpost.com/rebecca-buckwalterpoza/pakistans-institutionaliz_b_794230.html.

115 340 Ahmadis, 119 Christians and 14 Hindus; cited in 'Joint written statement submitted by Franciscans International, non-governmental organization in general consultative status; Pax Christi International-International Catholic Peace Movement, Pax Romana (the International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students), Dominicans for Justice and Peace – the Order of Preachers, non-governmental organizations in special consultative status', to the Human Rights Council, A/HRC/12/NGO/14, 4 September 2009.

116 Human Rights Watch, 'Pakistan: Massacre of Minority Ahmadis', 31 May 2010, http://www.hrw.org/en/news/2010/05/31/pakistan-massacre-minority-ahmadis, Human Rights Watch commented that the blasphemy law and the government's failure to address religious persecution by extremist groups effectively enables atrocities against minorities.

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visiting Pakistan in 1995, the Special Rapporteur on freedom of religion or belief declared: '[…] 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 to jeopardize human rights especially those of minorities'[117] Similarly, the Committee on the Elimination of Racial Discrimination, in response to a Pakistan state party report in 2009, 'expressed its concern about reported infringements of the right to freedom of religion and the risk that blasphemy laws may be used in a discriminatory manner against religious minority groups, who may also be members of ethnic minorities' and 'recalled state party's obligations on freedom of thought, conscience and religion'.[118]

However many non-minority Muslims have begun to be accused and jailed via this law, often amid claims of personal grievance and property disputes (which also often accompany minority cases). In media reports from 2010 the Federal Minister for Human Rights, Syed Mumtaz Alam Gilani, reported an increase in Muslims using the laws to settle scores with fellow Muslims while chairperson Dr. Mehdi Hasan of the Human Rights Commission of Pakistan (HRCP), an NGO, has said that around 80% of blasphemy charges are false and have arisen 'because of property issues or other personal or family vendetta'.[119] This was a major reason for the 2004 amendment to the criminal law cited above, which places stricter conditions on arrest procedures for blasphemy. Yet human rights organisations such as Human Rights Watch and the AHRC claim that these are rarely observed, and that police officers continue to bow to pressure from religious conservatives, particularly in rural areas, as indicated by the cases listed below.[120]

Finally it is important to know that vigilantism is of extreme concern in the Pakistan context, as demonstrated in the number of extra judicial deaths and unprosecuted murders of persons on trial for blasphemy, often during mob violence. As previously mentioned, at least 30 persons connected with cases of blasphemy have been murdered since 1986. This challenges one of the main arguments in support of the amendment of 295-C: that it would prevent private citizens from taking the law into their own hands and killing blasphemy suspects.[121] State protection for suspected blasphemers is often inadequate and although they are routinely detained in separate cells to protect them from cell mates, several people accused of blasphemy have been killed in jail. The death toll has also included relatives of the accused and even members of the judiciary involved in blasphemy cases. NGOs report that those who have served sentences or been acquitted of blasphemy charges are usually forced into hiding, or will claim asylum (Ahmadis make up a substantial proportion of successful asylum claims from Pakistan, often on claims of religious persecution). Impunity is common for Muslim civilians or police officers who harass, threaten or harm persons accused of blasphemy, and the slandering of blasphemy victims by other civilians, even when illegal – such as cases in which the loud speakers of Mosques are illegally used, or when death threats are published in newspapers – receives little or no

117 CHR, 2 January 1996, E/CN.4/1996/95.Add.1, Para 82.

118 CERD, 16 March 2009, CERD/C/PAK/CO/20, Para 19.

119 The Express Tribune, 'Blasphemy laws: 58% of women booked are Muslims', 1 December 2010, http://tribune.com.pk/story/84133/blasphemy-laws-58-of-women-booked-are-muslims.

120 Human Rights Watch, 'Pakistan: Repeal Blasphemy Laws', 23 November 2010; http://www.hrw.org/en/news/2010/11/22/pakistan-repeal-blasphemy-law; AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

121 Jinnah Institute, 'Briefing Pack' on: Amendments to the Blasphemy Laws Act 2010, http://www.jinnah-institute.org/images/ji%20briefing%20pack%20amendments%20to%20the%20blasphemy%20laws.pdf; 'Blasphemy Law Revisted' by I.A. Rehman, The Dawn, 29 July 2010, forwarded by the Asian Human Rights Commission:

> 'In a preface to 'Namoos-i-Risalat', an account of the making of 295-C by Advocate Ismail Qureshi, (Al Faisal Publishers, Lahore, 1994), former Supreme Court judge and former president Rafiq Tarar declared: 'If this law is not there the doors to courts will be closed on the culprits and the petitioners provoked by them, and then everyone will take the law in his own hands and exact revenge from the criminals. As a result anarchy will prevail in the country.' The article also noted that in 1994 the Lahore High Court declared that if Section 295-C of the PPC were struck down, 'the old system of killing a culprit on the spot could be revived'.

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attention from police, though they commonly precede deadly attacks.[122]

i. Current developments

In November 2010 parliamentarian Shehrbano 'Sherry' Rehman proposed the Amendments to the Blasphemy Laws Act 2010 in the National Assembly of Pakistan, citing Article 25 of the Pakistan Constitution, which aims for equal protection of all citizens under the law. [123] The Act details sweeping, strong amendments to the two statutory codes, the PPC and CrPC, which would firstly lighten the penalties of blasphemy, and secondly, increase the responsibility of the complainant and allow for the punishment of 'those making false or frivolous allegations' under section 295' or who give rise to 'any advocacy of religious hatred that constitutes incitement to discrimination or violence an offence.' Expressing concerns about the strength of Pakistan's Session Courts, Rehman also suggested that complaints be tried by high courts to 'strengthen the possibility for justice… under a higher degree of public scrutiny.'[124] Other amendments include the suggestion that a ten-year sentence be reduced to two years under Section 295-A, and that imprisonment to life be reduced to a sentence of up to five years or a fine.[125]

Rehman proposes that the amendments will act as a safeguard against the misuse of the laws, and ensure the protection of Pakistan's minorities and 'vulnerable citizens, who routinely face judgments and verdicts at the lower courts where mob pressure is often mobilized to obtain a conviction'. She also used, as further justification, the fact that the laws were 'man-made' and introduced via 'a dictator's Ordinance, without parliamentary consultation or public debate.' [126] Ordinances in Pakistan are temporary legal devices.

In November 2010, the Minister for Minorities Shahbaz Bhatti announced that although the repeal of the laws was not being considered, 'we are considering changing it so that misuse of the law should be stopped.' [127] However in early December, member of parliament, Aziz Baig, submitted a citizen's petition which argued that lawmakers did not have the constitutional right to amend laws that related to religion, and Judge Khwaja Mohammad Sharif has ordered the bill to be frozen while the court assesses the legislative authority of parliament over blasphemy laws.[128] The response from many of the country's orthodox religious groups has also been extremely strong, with **t**en religious parties organizing a nationwide protest against any possible amendment of the blasphemy laws, in December 2010.[**129**] Rehman herself has been named in various fatwas since she proposed the amendment to the

122 Section 3 of Loud Speaker Act 1965 bans all types of speeches other than Azan (the call to prayer) and the Friday sermon in Arabic, as noted by the AHRC, 'PAKISTAN: The killing of two Christian brothers is the result of the negligence and bias of the Punjab government and police,' 20 July 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2693/.

123 The Amendments to the Blasphemy Laws Act 2010 can be read at the Jinnah Institute's website: http://www.jinnah-institute.org.

124 'Sherry Rehman: 'I believe the repeal option is still the best one, but…' The News, December 2010, http://www.jang.com.pk/thenews/dec2010-weekly/nos-12-12-2010/dia.htm#5.

125 Ibid.

126 Ibid.

127 All Voices media (online media outlet), 'Pakistani Government will not repeal blasphemy law: minister for Minorities', November 23 2010, http://www.allvoices.com/contributed-news/7416694-pakistani-government-will-not-repeal-blasphemy-law-minister-for-minorities/images.

128 South Asia News, 'Pakistani court blocks government drive to relax blasphemy laws', 6 December 2010, http://wwrn.org/articles/?place=pakistan.

129 The Dawn, 'Religious parties to strike against amendment in blasphemy law', 19 December 2010, http://www.dawn.com/2010/12/19/religious-parties-to-strike-against-amendment-in-blasphemy-law.html: 'Speaking at a press conference, Secretary General of Jamaat-e-Islami, Liaquat Baloch, said that a nationwide strike will be observed on 31 December. Baloch said that a rally and protest will also observed in Karachi on 9th January. He said that a calculated conspiracy is on the way to change the Islamic law in the country. Secretary information, of Jamiat Ulema Islam (F), Maulana Amjad Khan said that the president and prime minister should take action against Sherry Rehman for the amendment bill against the blasphemy law in the national assembly.'

Electronic copy available at: https://ssrn.com/abstract=1896164

Act.[130]

Although human rights and minorities rights advocates have welcomed the move to amend the laws, the proposed reforms do not extend to the explicit criminalisation of Ahmadi activities (298-B and C). Furthermore many argue that repealing the laws will not be enough to ensure lasting change. As one commentator, journalist and documentary film maker Beena Sarwar opined in an article published by the AHRC:

> The fanatical and misguided mindset cultivated over the past few decades will not disappear by simply repealing 295-C, although this must be done. Embarking on a sensible education policy is also a long-term step that must be taken to stop the rot …The political leadership is responsible for providing police with the training, means and the orders to prevent such violence.[131]

3.1.4. Cases

A. The case of Aasia Bibi

Ms. Aasia Bibi, 45, of Ittan Wali in Sheikhpura district, Punjab province, was sentenced to death by a district and session court judge in Nankana on 8 November 2010 on charges of committing blasphemy in violation of Section 295-B and 295-C of the Pakistan Penal Code; she was also fined Rs300,000.[132] Aasia is a Christian and the case has been strongly taken up by Christian and other minority activists in campaigning against the misuse of the blasphemy laws, as well as by orthodox Muslims who support it.[133] The Governor of Punjab, Salman Taseer, was assassinated on 4 January 2010 allegedly due to his public support of her case and opposition to blasphemy laws, as detailed in the following section.

The defendant, an allegedly illiterate farm worker and part of the only Christian family in her village, was accused of having defamed the Prophet Muhammad on 14 June 2009 in front of Muslim neighbours. According to details of the case as reported widely in the media, the women were involved in a dispute over the collection of water, as well as a small but longer running property dispute.[134] Five days after the incident a local Muslim leader, Qari Salim, began to publicly announce that Aasia had committed blasphemy, and reportedly used the loudspeakers of his mosque to disseminate this judgement and incite a vigilante attack, which though illegal, was not responded to by police.[135] Following this, Aasia alleged that she was badly beaten by other civilians in the village.[136] Although she was initially taken by the Saddar police into protective custody from the scene of the

130 Daily Times, 'Proposing amends in blasphemy laws', 9 January 2011, http://www.dailytimes.com.pk/?page=2011\01\09\story_9-1-2011_pg1_1.

131 The Asian Human Rights Commission (AHRC), 'Blasphemy laws - Stopping the rot', 16 November 2010, http://www.humanrights.asia/opinions/columns/AHRC-ETC-040-2010.

132 From various news reports, among them Spero News, 'Pakistan: Concern grows for Christian accused of blasphemy', 25 November 2010, http://www.speroforum.com/a/43899/Pakistan-Concern-grows-for-Christian-accused-of-blasphemy.

133 On 9 December 2010 the details of this case were narrated and used by Pakistan Christian Congress leader, Dr. Nazir Bhatti, speaking at a Human Rights Day event at the National Press Club in Washington, to call for the repeal of Pakistan's blasphemy laws, and to urge the 'UN General Assembly member states and their representatives in United Nations Human Right Council UNHRC to re-consider their stance on 'Defamation of Religion' resolution, presented by Pakistan on behalf of Organization of Islamic Countries, prepared by Egypt and seconded by U.S.A., in present situation of religious minorities in Islamic States because Pakistan wants to globalize blasphemy law', http://www.pakistanchristiancongress.org/contents.php?section_id=44.

134 Ibid.

135 Section 3 of the Loud Speaker Act 1965 prohibits the use of mosque loudspeakers for anything other than Section 3 of the Loudspeaker Act 1965 bans all types of speeches other than Azan (the call to prayer) and the Friday sermon in Arabic, as noted in AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

136 BBC, 'Pakistani Christian Asia Bibi 'has price on her head', 7 December 2010.

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beating, charges of blasphemy (295 B and C) were filed against her in a First Information Report (FIR; a procedural requirement for a criminal case to proceed to court) on 19 June 2010 by the Imam, and no action was taken against her assailants. Aasia has since claimed that she did not meet with any lawyers in jail, and was not accompanied by a lawyer on the day of her verdict.[137]

On 1 November 2010, after Aasia had been in remand (mostly at a prison in Sheikhupura) for more than a year, Judge Naveed Iqbal at the court of Sheikhupura, Punjab, "totally ruled out" the possibility of false implication, saw "no mitigating circumstances", and sentenced her to death by hanging, also imposing a fine of the equivalent to US$1,100.[138] Her lawyer, SK Shahid, filed an appeal at the Lahore High Court on 19 November and requested a pardon from the Office of the President; President Asif Ali Zardari reportedly asked for a review of the facts of the case from the Pakistani Minister for Minority Affairs Shahbaz Bhatti. [139] On 29 November Khawaja Mohammad Sharif, the chief justice of the Lahore High Court, issued an interim order ruling that while the matter is pending before it, the president may not issue a pardon for Asia Bibi.[140]

Critics such as the AHRC have noted that the case relied only upon Muslim witnesses for the prosecution, and that the investigation was carried out by a low ranking Assistant Sub-Inspector, rather than at least a Superintendent of Police (SP), as required by criminal procedural law since 2004.[141] Pakistan's National Commission on the Status of Women has also expressed shock over the sentence. Referring to the claim, by Aasia's lawyers, that the 'eyewitnesses' were not present at the time of the allegedly blasphemous incident, Rana Sanaullah, the Punjab Minister of Law, stated that 'in cases like this of false witnesses, once proof of bad faith has been established, the same penalty should be imposed as that suffered by the innocent victims of false charges.'[142]

Aasia is currently in isolation in Sheikhupura prison, facing threats against her life inside and outside of the prison. Asylum has reportedly been offered to her by the Canadian and Italian governments.[143]

Additional information:

An aggressive public campaign in support of a guilty verdict and death sentence was waged outside the court house throughout the trial, reportedly led by Qari Yaqub, of Jamaat-ud-Dawa (which DOHI News and other media sources have reported as being blacklisted by the UN for suspected terrorist links); this involved the public offer of a reward by a Muslim cleric for the defendant's assassination, which was widely carried by media but reportedly not credibly investigated by police.[144] At least one daily national newspaper, Nawa-i-Waqt has written an editorial in support of his proposal.[145] It has been

137 Spero News, 'Pakistan: Concern grows for Christian accused of blasphemy', 25 November 2010.

138 Agence France-Presse, 'Christian Woman Sentenced to Death', 11 November 2010ㅂhttp://timesofindia.indiatimes.com/world/pakistan/Christian-woman-sentenced-to-death-for-blasphemy-in-Pakistan/articleshow/6909757.cms.

139 CNN, 'Pakistan's president will pardon Christian woman, official says', 23 November 2010, http://articles.cnn.com/2010-11-23/world/pakistan.christian_1_blasphemy-law-christian-woman-zardari?_s=PM:WORLD.

140 Ibid.

141 Pakistan Daily Times, 'Blasphemy cases only after SP's investigation', 31 July 2004, http://www.dailytimes.com.pk/default.asp?page=story_31-7-2004_pg7_17.

142 Door of Hope International, DOHI-News, 'Imam calls for beheading of Asia Bibi No Presidential pardon', 2 August 2010, http://www.dohi.org/us/printableproddetail.asp?prod=120810.

143 Ibid.

144 AHRC, 'PAKISTAN: Muslim leaders who issued decree to kill a Christian woman should be prosecuted ', 8 December 2009, http://www.ahrchk.net/ua/mainfile.php/2010/3606. According to the Asian Human Rights Commission and various media sources, Maulana Yousef Qureshi, a hard line Pakistani Islamic cleric of Mosque Mahabat Khan (reportedly the oldest and largest in the Khyber Pakhtoon Kha), told a rally in the north-western town of Peshawar that his mosque would give Rs500,000 (US$5,700) to anyone who killed Aasia Bibi.

145 The editor announced and supported the 'reward' for the assassination in the 'Sar-e-Raahay' or editor's note on 5 December 2010, which was reprinted in a critical report by Muhammad Amjad Rashid on 20 December 2010 in syndicated blog, by the

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reported that representatives of religious organisation Aalmi Majlas-e-Tahuffuz-e-Khatm-e-Nabuat (AMTKN) have threatened the government with a countrywide protest if the accused is shown any clemency by the presidency, and if there are any moves to amend the blasphemy laws.[146]

Critics of the decision, among them the AHRC and Asma Jahangir, who is the president of Supreme Court Bar Association and the former UN Special Rapporteur on freedom of religion or belief, have noted that the judge in this case appeared to be courting popularity with his comments throughout the hearing and the verdict.[147] The late Governor of Punjab, Salman Taseer, initially met Aasia in jail after her sentencing and assured her that he would take her case before the president of Pakistan, advocating her pardon. He then reported harassment by pro-blasphemy law groups such as the country's most influential Sunni Muslim alliance, the Sunni Ittehad Council,[148] shortly before his assassination on 4 January in Lahore; he is the most high profile figure to be murdered in Pakistan since former leader Benazir Bhutto was killed, and is believed to have been killed by a member of his state appointed security team because of his public stand against the blasphemy laws.[149] His death has sparked both angry riots and strong messages of public support; Time Magazine reports that a Facebook fan page was set up for his suspected killer shortly after the incident. When Pakistan's Minister for Minorities, Shahbaz Bhatti, raised the issue six months ago, he also claims that he was threatened with death.[150] Debates within the provincial assembly of Punjab have reportedly given a greater platform for rhetoric that supports Section 295 of the PPC, and much less space for dissenting opinion.[151] This mirrors the path of the blasphemy laws themselves, as recently noted by local news editor, Qurat ul ain Siddiqui who states that: 'with the international community ramping up pressure on the government to pardon Aasia and to eventually repeal the blasphemy laws, certain otherwise antagonistic clerics from the Barelvi and Deobandi schools of thought have come together to caution President Asif Ali Zardari over going ahead with the pardon saying the move may lead to "untoward repercussions".'[152] The defendant's husband and children went into hiding after having been chased, harassed and threatened in their community, and have not been provided with protection from the state.[153]

'Critical Supporters of Pakistan People's Party' (CSPPP), under the title 'Nawa-i-Waqt is promoting religious extremism' , http://criticalppp.com/archives/32157.

146 Spero News, 'Pakistan: Concern grows for Christian accused of blasphemy', 25 November 2010, http://www.speroforum.com/a/43899/Pakistan-Concern-grows-for-Christian-accused-of-blasphemy.

147 Andhra News.net, 'Asma Jahangir assails LHC stay order against presidential pardon for Aasia Bibi', 1 December 2010, http://news.oneindia.in/2010/12/01/asmajahangir-assails-lhc-stay-order-against-presidentialpa.html: 'If they want to get popular there are other ways to do it. Do not twist the laws as court verdicts become precedence,' she remarked, while speaking at a seminar on 'The blasphemy laws: a call for review', organised by Jinnah Institute, a think-tank launched by former information minister Sherry Rehman.'

148 The Dawn, 'Sunni Ittehad Council warns of anarchy if Aasia pardoned', 26 November 2010, http://www.dawn.com/2010/11/26/sunni-ittehad-council-warns-of-anarchy-if-asia-pardoned.html.

149 TIME Magazine, 'Murder in Islamabad: Pakistan's Deepening Religious Divide', 4 January 2011, http://www.time.com/time/world/article/0,8599,2040735,00.html.

150 BBC, 'Pakistani Christian Asia Bibi has price on her head', 7 December 2010, http://www.bbc.co.uk/news/world-south-asia-11930849.

151 Asian Human Rights Commission, 'Muslim leaders who issued decree to kill a Christian woman should be prosecuted', 8 December 2010, http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-177-2010, 'When Mr. Shara, a minority member of the assembly, wanted to discuss the issue of Aasia and her punishment, the speaker, Rani Iqbal Ahmad, refused to allow Shara to speak on the issue, describing it as 'sensitive'. Protesting against the speaker's attitude, legislators belonging to minority communities walked out of the House. However, when Ali Haider Noor Niazi of the Jamiat Ulema-e-Pakistan party began speaking emotionally on the same issue, the speaker did not stop him. Niazi began shouting within the assembly as he criticised those who were trying to defend the woman. Niazi criticised Punjab governor Salmaan Taseer for raising his voice in favour of Asia Bibi. 'The governor has no right to make efforts for Asia's pardon,' he said. Niazi was also of the view that those demanding the woman's release are blasphemers.'

152 Dawn newspaper blog, 'An instrument of abuse?', 26 November 2010, http://www.dawn.com/2010/11/26/an-instrument-of-abuse.html.

153 BBC, 'Pakistani Christian Asia Bibi 'has price on her head', 7 December 2010, http://www.bbc.co.uk/news/world-south-asia-11930849.

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The path of this case demonstrates the distinct lack of safeguards in place in Pakistan which throws the chance of a fair trial for a minority defendant is thrown into severe doubt, namely due to the failure to ensure the protection of the judiciary, lawyers and policy makers from popular pressure and any accompanying aggression. Although as of January 2011 the defendant has been imprisoned in isolation in remand prison for her safety, she remains extremely vulnerable, as do her family. By failing to legally address the mob violence perpetrated against Aasia Bibi, to investigate the public calls for her death by individuals and in the media, or to arrange for official state protection for her family, the state is being seen to extend impunity for these crimes, which will serve to encourage vigilante attacks against accused blasphemers and minorities. By doing so Pakistan fails in its positive obligations under the ICCPR and other international instruments to prevent, punish and protect citizens from discrimination and religious persecution, as detailed in the conclusion to this section. [154]

B. The case of Rashid and Sajid Emmanuel

Rashid and Sajid Emmanuel were shot dead by unknown assailants on the grounds of a Faisalabad courthouse in Punjab on 19 July 2010 during their trial on blasphemy charges, while in handcuffs and in police custody. The men, members of the minority Christian community, had been assigned minimal police protection despite the escalating violence of riots in the area that had called for their execution. The case became a rallying cry for Christian and minority rights activists, many calling for the repeal of the blasphemy laws.

Rashid Emmanuel, 32, was a pastor and his younger brother was an MBA student; both men were Christian and lived in a largely Christian community, Daud Nagar in Warispura. On 2 July Rashid was arrested by at least ten uniformed policemen and taken to the Civil Lines Police Station, where he was accused of having published a four-page handwritten pamphlet that criticised Islam and the Prophet Muhammad.[155] The photocopy that he was shown appeared to bear his and his younger brother's signatures along with their personal details, including their cell phone and national identity card numbers.[156] A complaint had been filed at the station by a Mohammad Khurram Shehzad, a local printer, who reported to have seen the brothers handing out the pamphlets. On this basis the police officers immediately filed an FIR.[157] However the correct procedure was not followed by the Civil Lines police, who since the revision of the procedure under the blasphemy laws in 2004, are obliged to have any blasphemy complaints thoroughly investigated by a superintendent before the filing of an FIR.[158] A sub inspector and an assistant superintendent had been assigned to this case. When a local leader of the Christian community challenged this, he reported that he was told by the Station House Officer (SHO) that the rules had been relaxed due to pressure from conservative religious groups in the area.[159]

On 3 July the police took Rashid to the Anti Terrorist Court (ATC) for police remand. The ATC did not have jurisdiction over the crime; the case was therefore refused and he was taken to duty magistrate

154 'It was designed as an instrument of persecution,' says Ali Hasan Dayan, of Human Rights Watch in Pakistan. 'It's discriminatory and abusive', Ibid.

155 AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

156 Ibid.

157 Ibid.

158 Pakistan Daily Times, Blasphemy cases only after SP's investigation', July 31, 2004, http://www.dailytimes.com.pk/default.asp?page=story_31-7-2004_pg7_17.

159 AHRC, PAKISTAN: 'The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010. Mr. Atif Jamil Pagan, the Chief of Pakistan Minorities Democratic Harmony Foundation, reported to local NGOs that the sub inspector involved in the investigation, a Mr. Mohammad Hessian, informed him that the accused was being detained without evidence against him because the case was a 'sensitive' one.

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Mr. Aamir Habib in the Civil Lines jurisdiction.[160] Habib agreed to his two-day remand in police custody, despite the breach of procedure.[161] During this time Sajid Emmanuel, 30, voluntarily submitted to police detention in the presence of a Bishop Joseph Couetts of Faisalabad (as a safeguard against the abuse of police power). Handwriting samples were taken, but the Lahore-based experts brought into the case stated that they could not assess the original evidence because they were photocopied. According to the Asian Human Rights Commission (AHRC), during the court proceedings the investigating officer told the court that there was no evidence of blasphemy by the brothers, and that therefore the police had no cause to further remand them in custody. Despite the apparent danger, the court ordered that the two men be held in judicial custody until another court appearance in which further orders would be issued.[162]
The brothers reported threats from co-detainees while in detention. Greater threats were issued from outside the prison where groups of organised orthodox Muslim activists began hold marches against the brothers, and later against all Christians in the area. These escalated into street violence and riots, which appear to have been slowly and inadequately addressed by officials in the town, as detailed below. Despite calls for greater protection for the brothers from local concern groups and wider national and regional NGOs, both were fatally shot by unknown assailants as they emerged from the courthouse on 19 July 2010. One officer was also shot and critically injured.[163]

According to local media reports, the Inspector General of Police (IGP) in Punjab suspended both Muhammad Haneef, the Superintendent of the Police (Investigation Branch), and the Deputy Superintendent of the Police due to their 'failure maintain law and order', and Prime Minister Syed Yousaf Raza Gilani personally phoned the Chief Minister of Punjab for an appraisal of the situation.[164]On 22 July the Chief Justice of Lahore High Court, Khawaja Mohammad Sharif, took the exceptional step of *suo moto* action, ordering a judicial inquiry on the request of the Punjab government, to be submitted to the high court, and appointing a district and sessions judge of the Labour Court in Faisalabad, Sheikh Muhammad Yousaf, as the inquiry judge.[165] In a report to the Chief Justice, Regional Police Officer Faisalabad Aftab Ahmad Cheema admitted that police officers had been negligent despite directions to ensure adequate security for the detainees.[166] This was later supported by documents obtained by national newspaper, *The Dawn,* including reports from various meetings between the RPO, the district intelligence Committee and the Police Commissioner to discuss the gravity of the case, ensure adequate security and avoid sectarian violence, promising 'all possible measures'.[167] The meetings also reportedly discussed the consequences of a poor investigation into

160 Ibid.

161 Crimes relating to religion were previously under the authority of the ATC before the addition of clause 780 of the Anti Terrorist Act (ATA) in 1997.

162 AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

163 Ibid.

164 Christian News Service, ASSIST NEWS, http://www.sloppynoodle.com/wp/murder-of-christian-brothers-sparks-riots-in-pakistan/. Titel missing

165 The Nation,'D&SJ ordered to hold judicial inquiry', 22 July 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Lahore/22-Jul-2010/DSJordered-to-hold-judicial-inquiry.

166 Ibid.

167 In 'Poor security led to murder of Emannuels' in *The Dawn*, 3 August 2010, it was noted: 'Subsequently, the RPO convened a meeting of his subordinates on July 13 to discuss the law and order situation in the wake of the blasphemy issue to avoid widespread violence. Documents of the meeting (10650/PA), dated July 14, read that pursuant to the commissioner's meeting, the following observations were made: "The issue has been hanging for the last 13 days which is required to be resolved on a priority basis. The RPO emphasised that all possible measures should be taken to pacify the tense situation in the district. All such issues should be taken seriously and handled tactfully." SP investigation Muhammad Hanif, who was later transferred to the IG office after the killing of the Christian brothers, was directed to finalise the investigation on merit and DSP Ashiq Husain and inspector Mohammad Husain would assist the investigator in carrying out investigation. 'It was also discussed that in case of poor investigation, the issue may create a sectarian rift disturbing the law and order situation. The officers concerned will be held responsible if this happened and stern action will be initiated against them.' http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/poor-security-led-to-murder-

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the case on the community.

Additional Information:
Therefore despite decisions taken by high ranking officers to protect the Emmanuel brothers and conduct a credible investigation into the blasphemy charges against them, the detainees were still not afforded adequate protection, nor were they speedily acquitted. This case exposes the challenges of adequately administrating the blasphemy laws and preventing its abuse, particularly in areas of frequent sectarian conflict.

Faisalabad is the third largest city in Pakistan, after Karachi and Lahore, and is well within the reach and influence of senior law enforcers and policy makers, yet remains a place in which politicians inflame ethnic tensions, and where religious minorities regularly experience high profile persecution yet are afforded minimal protection in the face of mainstream hostility.[168] The city has one of the country's largest Christian communities, with approximately 100,000 Christians living in the Warispura slum.[169]

As noted by the AHRC and local NGO and media commentators, the security provisions for the two men were minimal: just three police officials, including the investigation officer, were assigned to produce the accused brothers at the court, although the Christian community had already asked the local administration for greater police protection.[170] Prior to the men's deaths groups of organised Muslim activists had started to rally against the brothers in public, with loudspeakers from a number of mosques used illegally to incite violence against local Christians, along with various other acts of aggression.[171] On 7 July a procession in Warispura included the chanting of slogans against Christians – one of which called for the hanging of Rashid and Sajid –and the windows and doors of a Catholic church were attacked and broken; on 10 July the violence had escalated to the burning of tyres and a call for Christians to be driven from Warispura, and as many left that night with their belongings they were harassed by men on motorbikes. The AHRC claimed that efforts by the local government to quell the protest and mediate with its key leaders reportedly began in the evening of 10 July and were largely ineffective, with a large rally forming the following day, led by Muslim leaders from various religious and political parties (among them Khatme-e-Nabowat, Jamiat Ulema-ePakistan and Namoos-e-Risalat) which reportedly reiterated death threats against the brothers.[172] Commentators also noted that security staff at the gate of the Sessions Court Faisalabad usually confiscate small weapons such as knives and nail-cutters, raising questions has to how guns were allowed inside the court premises.[173]

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of-emanuels-480.

168 ASSIST News Service, 'Gojra Martyrs remembered', 1 August 2010, http://www.assistnews.net/Stories/2010/s10080002.htm. In 2009 a deadly attack on Christians 50km away in Korian village, Tehsil Gojra, Faisalabad saw six people set alight and burned to death. The suspected perpetrators were members of Sipah-e-Sahaba, a banned Muslim organization, and the reason given for the violence was that a Christian had defiled a Quran. Solidarity actions and protests have since taken place between Christians from this village and from Daud Nagar in Warispura.

169 UPI, 'Tensions rise after Christian deaths', 21 July 2010.

170 AHRC, 'PAKISTAN: The killing of two Christian brothers is the result of the negligence and bias of the Punjab government and police,' 20 July 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2693/.

171 Section 3 of the Loud Speaker Act 1965 prohibits the use of mosque loudspeakers for anything other than Azan (the call to prayer) and the Friday sermon in Arabic, as noted in AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010. http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

172 Speakers at the meeting announced that a set of gallows had been set up at in the centre of Faisalabad, in preparation for the hanging of blasphemous Christians, according to AHRC, 'PAKISTAN: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy', 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

173 As noted by Naveed Walter, President of the Human Rights Focus Pakistan, in various media reports, including UPI, 'Tensions rise after Christian deaths', 21 July 2010.

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In July 2010 *The Dawn* reported that a case under Section 155-C of the Police Order has been registered against the investigation officer and District Superintendent of Police, who was taken into custody, where he secured bail.[174] It also reported that the Federal Minister for Minorities Affairs Shahbaz Bhatti told *The Dawn* that a communication had been sent to all provincial governments to protect those under trial for blasphemy, inside and outside of jail.[175] The same report noted that there were plans to introduce amendments to the blasphemy laws to prevent its misuse, noting that those who level false charges should also be punished.

Among those condemning the government's handling of the case was the country's Human Rights Commission, which declared it 'a sad reflection on the state's obligation to protect the lives of all citizens'.[176] Demands by NGOs included the setting up of an inquiry commission headed by a former judge of the Supreme Court, a bill to be tabled aimed at repealing the blasphemy laws on the recommendations of Parliamentary Standing Committees on Minorities, Religious Affairs and Human Rights, and the founding of an autonomous Commission on Minorities under the Prime Minister, rather than under the Ministry of Religious Affairs or Minority Affairs.[177] Rallies were also coordinated by the All Pakistan Minorities Alliance (APMA), the National Director of the Justice and Peace Commission.[178]

C. The case of Zaibun Nisa

According to reports from the media and human rights organisations, Zaibun Nisa, 55 (in July 2010 as reported by Reuters, and aged 60 as reported by the BBC), from Maari Danish Mandan village in Suhala area, was arrested on 16 October 1996 by Sahala police, near Islamabad after a Muslim cleric filed a complaint against her for desecrating a copy of the Quran under Section 295-B of the PPC.[179] Contrary to most English-language media reports, which noted that Nisa then spent the next 14 years in the remand section of a mental hospital in Lahore, a recent interview with the victim in Pakistan's Express Tribune reports that she remained in jail for nine years and then spent a further five years at the Punjab Institute of Mental Health after a judge in a Rawalpindi sessions court was informed that she had been diagnosed with chronic schizophrenia.[180]

The complainant, Qari Mohammad Hafeez, claimed to have found torn pages of the Quran thrown in a drain, however before the Lahore High Court in 2010, Hafeez stressed that his complaint had been registered against 'unknown offenders'. Media reports claim that a police official had admitted that Nisa had been arrested to 'defuse the tension', after which she had been forgotten about. Nisa's sister Azizun Nisa informed media that the victim was a divorcee, dependent on her nephews, and that they had arranged for her arrest; Azizun Nisa had been told that her sister had died while police were

174 The section deals with misconduct by police officers who are guilty of 'any wilful breach or neglect of any provision of law or of any rule or regulation or any order which [they are] bound to observe or obey,' with the maximum punishment of three years in prison, with or without a fine, http://www.epakistannews.com/prime-suspect-sho-rana-ilyas.html as mentioned in Dawn, 'LHC orders judicial inquiry into Christians' murder, 21 July 2010', http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/44-lhc-orders-judicial-inquiry-into-faisalabad-killings-fa-01

175 The Dawn, 'LHC orders judicial inquiry into Christians' murder, 21 July 2010, http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/44-lhc-orders-judicial-inquiry-into-faisalabad-killings-fa-01

176 Christian Solidarity Worldwide, 'Pakistan: Protests against misuse of blasphemy laws', 26 July 2010, http://dynamic.csw.org.uk/article.asp?t=press&id=1016.

177 Demands publicised by the Pakistan Chapter of Women's Action Forum, as reported in The Dawn, 'Christian brothers' murder condemned' 27 July 2010, http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/local/islamabad/christian-brothers-murder-condemned-770.

178 Christian Solidarity Worldwide, 'Pakistan: Protests against misuse of blasphemy laws', 26 July 2010, http://dynamic.csw.org.uk/article.asp?t=press&id=1016.

179 BBC Online, 'Mentally-ill Pakistan 'blasphemer' is released', 23 July 2010, http://www.bbc.co.uk/news/world-south-asia-10739623.

180 Express Tribune, 'Wronged victim in blasphemy case tries to lead a normal life', 28 July 2010, http://tribune.com.pk/story/31881/wronged-victim-in-blasphemy-case-tries-to-lead-a-normal-life/

Electronic copy available at: https://ssrn.com/abstract=1896164

informed that she did not have relatives.[181] Lawyer Aftab Ahmed Bajwa discovered Nisa and took up her case in 2009, and filed a petition for her release. He claims that an examination had been carried out by a medical board shortly after her arrest that certified her as mentally ill. He has also stated that no evidence was ever produced that linked her to the crime.[182]

This case shows the extent to which the minimal safeguards already built into Pakistan's blasphemy laws are neither followed nor sufficient, leaving them wide open to abuse by those with authority against those who have none, for various non-judicial ends. In this incident we see the law being arbitrarily used as a tool by those ill equipped to exercise their authority, against an 'easy target'. As a divorced, mentally disabled woman, financially dependent on her male relatives, Zaibun Nisa is among the most vulnerable social demographic groups in Pakistan. The case illustrates that the blasphemy laws is particularly dangerous in countries without strong, well supported and accountable administrative and legal systems, and in a society in which persons feel too vulnerable to acts of vigilante justice to themselves approach and use the law. This is highlighted by the fact that few if any of those acquitted by the law ever file for damages.[183]

D. The case of the Layahh Ahmadi

Four teenage students and an adult from the Ahmadi minority Muslim sect were arrested on 28 January 2009 in Kot Sultan, a village in the Layyah district, Pujab, on the charge that they had written the name of Prophet Muhammed on the walls of a toilet in the Gulzare Madina Mosque, in village 172/TDA.[184] The complaint, filed by Liaquat Ali, a mainstream Muslim from village 172/TDA, led to the arrest of Mubashar Ahmed, 50; Muhammad Irfan, 14; Tahir Imran, 19; Tahir Mehmood, 19 and Naseeb Ahmed, 16, by Kot Sultan police. The boys were students from grades nine and ten of the Superior Academy in village 172/TDA.[185]

According to local and regional NGOs, among them the Human Rights Commission of Pakistan (HRCP) and the AHRC, police neglected to follow due process in the arrests, with no investigation conducted by a high ranking officer beforehand, and no proof presented that could link the accused to the graffiti.[186] Charges were filed under Section 295-C of the PPC after the detainees had spent approximately four hours in custody. The reasoning and investigation of the FIR were found to be insufficient by a HRCP fact finding team in a report published in February 2009.[187] The report directly cited the reasoning in the FIR as follows:

> A few days prior to the lodging of the FIR, Mr. Muhammad Safdar – a resident of Chak 173/TDA – saw the name of Prophet Muhammad (PBUH) written in the mosque's toilet. He told the

181 Express Tribune, 'Wronged victim in blasphemy case tries to lead a normal life', 28 July 2010, http://tribune.com.pk/story/31881/wronged-victim-in-blasphemy-case-tries-to-lead-a-normal-life/

182 The Express Tribune, 'Pakistan: 80% accused of blasphemy are falsely implicated,' December 2010, http://southasia.oneworld.net/todaysheadlines/pakistan-80-accused-of-blasphemy-are-falsely-implicated.

183 As noted in The Express Tribune, 'Blasphemy laws: 58% of women booked are Muslims', 1December 2010, http://tribune.com.pk/story/84133/blasphemy-laws-58-of-women-booked-are-muslims/, a series of women charged and acquitted with blasphemy charges, including Nasreen Bibi of Kabirwala, and Naseem Bibi, who was also mentally challenged, did not follow through with claims for compensation.

184 HRCP, *Fact-finding report: Filing of blasphemy charges against 5 Ahmadis in Layyah district*, 1 February 2009, http://www.hrcp-web.org/showfact.asp?id=11; AlphaTrade Finance, 'Children Charged for Blasphemy as the persecution of Ahmadis in Pakistan Escalates', 3 February 2010.

185 Ages taken from Human Rights Commission of Pakistan, *Fact-finding report: Filing of blasphemy charges against 5 Ahmadis in Layyah district*, 1 February 2009, though variations have been reported, http://www.hrcp-web.org/showfact.asp?id=11. The HRCP is an independent, voluntary, non-political, non-profit making, non-governmental organisation, registered under the Societies Registration Act (XXI of 1860), with its Secretariat office in Lahore.

186 Human Rights Commission of Pakistan, 'Ahmadis held without any evidence of blasphemy', 12 February 2009, signed by former organisation chairperson Asma Jahangir, http://www.hrcp-web.org/showprel.asp?id=58.

187 Ibid.

Electronic copy available at: https://ssrn.com/abstract=1896164

> prayer leader, Qari Muhammad Saeed, about the writing. The prayer leader said he knew about the writing and was probing the matter. The prayer leader scratched the name from the toilet's walls. Thereafter, an employee of Government High School Chak 172/TDA, Shahbaz Qasim, also saw the writing in the toilet. Qasim told his father Noor Elahi Kaulachi who contacted Union Nazim Syed Ghazanfar Abbas. The nazim asked his secretary Mr. Ehsan to probe the matter. Kaulachi, who is a retired teacher, along with residents of villages 171/TDA, 172/TDA, 173/TDA and 174/TDA contacted Syed Iqbal Shah who made a telephone call to police station in-charge who visited the village. When Hakeem Muhammad Hanif, Safdar Mahr and Shahbaz Qasim tried to probe the incident they learned that four students from the Ahmadiyya community -- Mohammad Irfan, Tahir Imran, Tahir Mehmood and Naseeb Ahmed – used to offer prayers in the mosque and used the toilets there. Mubasher Ahmed, another Ahmadi, was also seen offering Friday prayers in the mosque. Shahbaz Qasim stopped the Ahmadis from offering prayers in the mosque, due to which they [the accused] tried to create trouble. We [the complainant and other villagers] suspect since these Ahmadis are the only non-Muslims coming to the mosque, therefore they must have committed the offence.

The AHRC, on questioning police officers at Kot Sultan Police Station, also reported that officers admitted to being under the threat of strikes, public aggression and agitation from fundamentalist groups in the neighbourhood, and that they did not begin their investigation for more than a month after the arrests.[188] The HRCP noted that Station Head Officer Khalid Rauf:

> […] conceded that the law requires that an inquiry by a superintendent of police (SP) must be conducted about the occurrence before the registration of a case on charges of blasphemy. However, he added that an SP Investigation had not been appointed to the district for over two years, therefore, an investigation prior to the registration of the case could not be conducted. Now, the SP Investigation of Rajanpur district has been assigned to oversee the investigation of the case. SHO Khalid Rauf said he had visited the village and examined the place of occurrence. He said he found no eyewitnesses or any other evidence in the case and the FIR was based on suspicion about the accused. He said he saw reason in the stance of the complainant and the local residents that no Muslim can write the name of Prophet Muhammad (PBUH) on a toilet's walls. When asked if an Ahmadi could do such a thing, he refused to answer.

Families of the boys also reported that raiding police had promised to detain the boys for just 24 hours to ease the pressure of Muslim fundamentalists in the area, and that they were given similar reasoning by phone by the district police officer (DPO) of Layyah Police Station, Dr Muhammad Azam, shortly after the charges were filed.[189] The relatives told NGOs that Azam claimed that 'the group had threatened to close down the whole city and attack the houses of Ahmedi sect members' and that he was worried about civilian deaths.[190] Shortly after their arrest the accused were transferred from Kot Sultan to Saddar Police Station in Layyah city, before being confined to the judicial wing of the Dera Ghazi Khan district prison on 4 February 2009, where, according to information directly received from Jamaat Ahmadiyya Pakistan, Pakistan's main Ahmadi community organisation – they remained until 24 April 2010.

During the detention of the suspects the senior superintendent of police (SSP) of Rajanpur, Mr. Pervez Rathore was assigned to conduct the investigation in the neighbouring district and prepare a report

188 AHRC, 'PAKISTAN: Four children and one man have been arbitrarily arrested and charged with blasphemy at the request of Muslim radicals', 30 January 2009, http://www.ahrchk.net/ahrc-in-news/mainfile.php/2009ahrcinnews/2498/.

189 Ibid.

190 Ibid.

Electronic copy available at: https://ssrn.com/abstract=1896164

that would allow police to submit a *challan* (case diary) in court. The SSP's report found that the case had no base and recommended that the accused persons be released, and the report was sent to the Punjab Ministry of the Interior at the end of March 2009, where it remained for a considerable length of time. In May of that year the AHRC wrote claiming that the process had been afflicted by administrative confusion, and was being stalled. [191] The AHRC stated that 'on the instruction of the first class magistrate, Layyah, the provincial police have to submit the *challan* on April 28. However, it was again deferred to May 12. The local police say that they could not submit *challan* as they are waiting for instructions from the government of Punjab.'[192] At this stage the complainant and his supporters were still reportedly adamant that the Ahmadis be punished on the basis of presumption, while police officers were reportedly reluctant to release the detained boys and man for concerns over their safety in the community. The court found the accused not guilty and released them in July, according to Saleem Ud Din, the director of public affairs and spokesperson for the Jammat Ahmadiyya Pakistan, who informed the authors of this paper that:

> A bail petition before Additional Session Judge was moved on their behalf on June 13 2009 which was rejected. Subsequently another bail application was filed with the High Court and the same was accepted on July 07 2009, and after completion of other legal formalities they were released on bail. They joined the court proceeding to face the trial at Layyah where fanatic opponents created [an] adverse and terrible situation for them. Feeling unsafe and danger to the corporus of the accused their lawyer moved an application before the High Court for the transfer of their case to another place. The learned High Court thus transferred their case to Multan where the case proceedings commenced on 03-09-2009 and during various dates of hearing the procedure as laid down in law was completed and finally all the accused who were already on bail were acquitted on 24-04-2010.[193]

Aama notes that it has not been possible for the former accused to return to their neighbourhoods 'due to the 'poor law and order situation'.

Additional information:
During the fact finding mission, HRCP members found that around half a dozen families of the Ahmadiyya community lived in 172/TDA, and had done so peacefully for many years. However earlier that year the principal of the village's Superior Academy had received permission from the prayer leader at Gulzar-e-Madina mosque for the Ahmadi students to offer prayers there. Within a week a villager, Qasim Shahbaz (employed by the local government high school) had objected and obstructed the students, and they had not returned. Approximately ten days after this incident the blasphemy complaint was filed, instigated by Syed Iqbal Shah, who is a 'local influential and a relative of a National Assembly member from the area' according to the fact finding report, who 'preferred to believe the version of the local residents who back his family in the elections.' The report then emphasises that the Ahmadi minority members are not registered as voters.[194]

In its concluding paragraphs this report later notes that a press conference held by the complainant and his supporters from various illegal religious organisations, 'shows that undue influence was

191 AHRC, 'PAKISTAN: Government of Punjab kept four teenagers and a man in illegal detention on Blasphemy charge', 6 May 2009, http://www.ahrchk.net/ua/mainfile.php/2009/3150/.
192 Ibid.
193 By written communication with the author of this report.
194 As determined by the Conduct of General Elections Order of 2002, http://www.nrb.gov.pk/publications/conduct_of_general_elections_2002.pdf, Ahmadis must vote in a separate electoral role that declares them 'non-Muslims'; many decline to do so.

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exerted by religious and political elements to pressure the police into registering a case' and that 'almost all the extremists urging action against the Ahmadis are not natives of the village'. NGOs reported that at least one of the students, Mukhtar Ahmed, 15**,** fell ill with typhoid due to the conditions in remand, and that the boys were denied visits by family.

Various media reports claimed that the Ahmadi population in Kot Sultan was besieged following the incident, with individual acts of harassment, inflammatory posters, calls in the community for their social and economic boycott and public threats by extremists groups of arson of Ahmadi homes. Asma Jahangir, former United Nations Special Rapporteur on freedom of religion and, at the time, Chair of the Human Rights Commission of Pakistan, described the arrests as 'heinous.'[195]

The case is a clear example of the extent to which law enforcement and the judicial process can be held hostage, weakened and warped by religious and political agitators in Pakistan. Blasphemy laws here remain a tool for those who wish to inflame ethnic tension and persecute minorities, often for their own ends, and Pakistan's own history of using the blasphemy laws against Ahmadis is well established. For a law that carries a death penalty this is of particularly deep concern. As noted by Ahmadi News Outlet, *The Ahmadiya Times*:

> […] successive democratically elected governments have failed to respond to the nationwide persecution of minorities. Since coming to power in 2008, the current Pakistan People's Party (PPP) government has announced on three occasions that the blasphemy laws will be reformed. It was only after the Lahore attacks against Ahmadis that PPP politicians began drafting legislation that called for harsh punitive measures against those who accuse others of blasphemy without sound proof. Though welcome, such legislation is a disappointing reminder that more radical changes to the constitution, which are needed, will not be effected in the foreseeable future.[196]

Such laws in an apparently ill regulated system can afford no effective national protection for vulnerable persons, and no reliable safeguards other than the repeal of the laws themselves. As noted in the conclusion, the laws again prove contrary to Pakistan's obligations to protect vulnerable persons under various treaties and obligations under international law.

E. The case of Naushad Valyani

Muslim doctor, Naushad Valyani, was arrested on charges of committing blasphemy on 10 December by police from Cantt police station in Hyderabad, Sindh province. According to the AHRC, Valyani was working in his surgery on 9 December when he was accused of blasphemy by Mohammad Faizan, a medical representative of Pfizer Pharmaceuticals. In reporting the doctor's account of the incident the AHRC relates that, since the doctor was receiving patients and could not entertain the visitor at the time, he placed his business card in a box beside his desk, however Faizan left the office and shouted that the doctor had committed blasphemy, since the name of the Prophet was written on the business card and the doctor had thrown it in the rubbish bin. Media accounts claims that it is the complainant's own name 'Mohammad' that he referred to, rather than there being a specific mention of the Prophet on the card. According to the AHRC, witnesses at the scene were reportedly satisfied that the box was not a rubbish bin.

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195 Alpha Trade Finance, 'Children Charged for Blasphemy as the persecution of Ahmadis in Pakistan Escalates', 3 February 2010, http://www.ahrchk.net/ahrc-in-news/mainfile.php/2009ahrcinnews/2508/.

196 Ahmadiya Times, 'Faith and common sense: Pakistan's blasphemy laws need reforming', 30 June 2010, http://ahmadiyyatimes.blogspot.com/2010/06/faith-and-common-sense-pakistans.html.

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Other local media reports have issued a variation of this incident, in which Faizan first issued his blasphemy accusations in an incident the following day on his return to the doctor's surgery with colleagues, which resulted in a 'violent quarrel'.[197] The AHRC reports that this group comprised medical representatives from various local and multinational pharmaceutical companies, and that they held a protest demanding the arrest of the doctor on charges of blasphemy. The Commission alleges that the doctor was not well-liked among the representatives due to his support of natural remedies.

The Cantt police complied with the protest demands, Valyani was arrested and his clinic cordoned off. The AHRC notes that the police then neglected to follow the correct legal procedure, or observe the safeguards written into the blasphemy laws, with a junior police officer (an Assistant Sub Inspector of Police) rather than a Senior Superintendent of Police being assigned to investigate the case.[198] The complaint under Section 296-C of the PPC, was publically supported by local religious leaders and, if convicted the doctor would have faced a death sentence. [199] However according to the Centre For Legal Aid Assistance and Settlement (CLAAS), [200] the investigation did not uncover evidence of intention to blaspheme and, thanks in part to pressure from civil society organisations, the doctor was released on 13 December 2010 and has returned to his practice.

The case was cited in media reports as another example of the lax, ludicrous and selective handling of blasphemy laws in Pakistan, since the complaint was subject to an unreasonably broad interpretation of the law, and clear personal motive. As noted by various media and human rights commentators, a vast proportion of the country's men are called Mohammad and the name is printed daily on items that are later discarded without religious or legal consequence. The arrest of the accused on such tenuous charges, without evidence or a credible investigation, violates his right to freedom from arbitrary arrest under international law, as enshrined in the ICCPR. It should be noted that Dr. Valyani is from the Ismaili Muslim community, which is a minority religious sect of Shiite origin,[201] and as a member of a religious minority he has rights to be free from persecution and all forms of harassment (which would include legal harassment), under both the ICCPR and the ICERD.

3.1.5. Conclusion

Each case study above clearly demonstrates the ways in which laws that criminalise the defamation of religion, when considered in practice, stand in strong conflict with international human rights standards. As a party to the ICCPR, Pakistan is obliged to uphold the right to free expression and the freedom of religion as detailed in Section One, which includes the positive obligation to prevent rights violations, protect citizens from such violations and to punish those who carry out such violations. Although the state has made reservations to Articles 18 and 19, these reservations do not allow it to go against the purpose and spirit of the Covenant.

As seen in the course of these recent cases, blasphemy laws are commonly misused as a tool of repression: whether against Ahmadi students who wished to worship in a local mosque or a Muslim doctor who wanted to run his practice in a particular, legitimate way. By allowing these laws to be

197 Continental News, 'Pakistan's Controversial Blasphemy Law Used Yet Again', 21 December 2010, http://continentalnews.net/christian-news/pakistan%E2%80%99s-controversial-blasphemy-law-used-yet-again-4194.html.

198 Pakistan Daily Times, 'Blasphemy cases only after SP's investigation', 31 July 2004, http://www.dailytimes.com.pk/default.asp?page=story_31-7-2004_pg7_17.

199 Karachi News.Net, 'Pakistan's archaic blasphemy laws claim doctor', 13 December 2010, http://www.karachinews.net/story/719217.

200 According to communications with Nadeem Anthony, Research Officer at CLAAS, http://claas.org.uk/blasphemy-campaigns.aspx

201 Fides News Agency, 'Blasphemy in a "frenzy": a Muslim doctor incriminated', 15 December 2010, (Fides describes itself, in its website, as a missionary agency of the order of the Council Superior General of the Pontifical Society for the Propagation of the Faith), http://www.fides.org/aree/news/newsdet.php?idnews=28008&lan=eng.

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liberally applied the state is failing to uphold its positive obligations. By failing to provide adequate protection to victims and defendants and allowing vigilante actions to be carried out without investigation or prosecution, the state appears to sanction the violence. In many of these cases the significant malfunctioning of the law enforcement authorities led to the arbitrary detention of these persons, which violates Article 9 of the ICCPR.

As party to the ICERD and according to Article 20 of the ICCPR, Pakistan is obliged to protect its subjects from racial or religious hatred. This is an obligation also enshrined in its own constitution,[202] yet cases of blasphemy are predominantly and arbitrarily taken against minority persons,[203] suggesting a systematic form of persecution and legal harassment, waged by the lower levels of the state hierarchy and condoned by the higher levels. Rather than being assessed and dismissed in the initial stages of prosecution (as provided for by the rarely-used 2004 amendment to criminal procedure), many such cases are overturned at the highest levels of the judiciary. Each of these has resulted in the traumatisation of the accused (including their subjection to extreme physical danger), and the wasting of national resources. Indeed members of the police force and the lower judiciary themselves appear to be susceptible to prejudices and political interference, which throws strong doubt upon the ability of the judicial system to fairly try such cases, many of which are met with the death penalty.[204] The results of this study make a strong case for the repeal of the laws and their replacement with a campaign of educational programmes promoting religious tolerance and freedom of expression.

202 As noted earlier in the section, Article 33 of the Pakistan Constitution requires that 'the State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens.'

203 As covered in section 3.1.2

204 Though as noted in section 3.1.2, a judicial execution has yet to be carried out.

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3.2. Algeria

3.2.1. Legislation

Algeria has a population of 36 million that is 99 percent Sunni Muslim.[205] There are only estimates of the population that belongs to other Muslims sects, Christians and Jews.[206] Estimates of the Christian and Jewish population vary between 12,000 and 50,000.[207] Islam is the state religion of Algeria as stated in the preamble of the Constitution, 'Algeria, being a land of Islam, …', as well as in Article 2, 'Islam is the religion of the state'. Even so the Constitution guarantees in its Article 36 freedom of religion ('Freedom of creed and opinion is inviolable'). 'Freedom of expression and association and meeting is guaranteed' by Article 41 of the Constitution. [208] Blasphemy laws in Algerian legislation can be found in three different sets of laws: in the Algerian Penal Code, in the Information Code of 1990 and in Ordinance 06-03 of 2006.

Article 144 bis 2 of the Penal Code

The relevant Article of the penal code is Article 144 bis 2 which bans insults against Islam, the Prophet Mohammed or any of the messengers of God or denigrating the dogma or precepts of Islam.[209] The Article specifies that such insults can be committed by writing, drawing, or any other means.[210] The punishment can be from three to five years of imprisonment and a fine of 50,000 to 100,000 Algerian dinars ($ 670-1'340).[211] Most blasphemy cases are brought under this provision.[212]

Ordinance 06-03 of 2006

Ordinance 06-03 of 2006[213] (hereinafter 'the Ordinance'), enforced since February 2008,[214] regulates religious associations other than Islam (Article 1). The Ordinance provides for the freedom of practising religions other than Islam, in the scope provided by the Ordinance, the Constitution and other laws and regulations and provides that public order, morality, and the rights and basic freedoms of others shall be respected (Article 2). The Ordinance legislates administrative requirements on non-Muslim religious associations, obliging them to register places of worship and limiting worship to registered sites. Article 11 of the ordinance prohibits proselytizing among Muslims on behalf of other religions and the distribution of materials aimed at 'shaking the faith of a Muslim'.[215]

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205 US Department of State, *2010 Report on International Religious Freedom -Algeria*, p.1, http://www.state.gov/g/drl/rls/irf/2010/148812.htm.

206 Ibid.

207 Ibid.

208 The Constitution of the of the People's Democratic Republic of Algeria, Revised Constiution approved by the Referendum of November 28th, 1996, Translation undertaken by the services of the Direction of Documentation of the Constitutional Council, http://www.algeria-un.org/default.asp?doc=-const.

209 Article 144 bis 2: 'Est puni d'un emprisonnement de trios (3) à cinq (5) ans et d'une amende de 50.000 DA à 100.000 DA, ou de l'une de ces peines seulement, quiconque offense le prophète (paix et salut soient sur lui) et les envoyés de Dieu ou dénigre le dogme ou les préceptes de l'Islam, que ce soit par voie d'écrit, de dessin, de déclaration ou tout autre moyen. Les poursuites pénales sont engagées d'office par le ministère public.'Algerian Penal Code of 1979 (as amended by law no. 01-09 of June 26, 2001), http://www.droit.mjustice.dz/legisl_fr_de_06_au_juil_08/code_penal_avec_mod_06.pdf.

210 Ibid.

211 Ibid.

212 Freedom House, '*Policing Belief the impact of Blasphemy laws on human rights'*, October 2010, page 13, www.freedomhouse.org/uploads/special_report/95.pdf.

213 Ordonnance n° 06-03 du 29 Moharram 1427 correspondant au 28 février 2006 fixant les conditions et règles d'exercice des cultes autres que musulman (rectificatif), http://collectifalgerie.free.fr/fr/?page_id=16. Unofficial english translation from Collectif Algérie - Pour la défense des Croyants autres que musulmans en Algérie available at: http://collectifalgerie.free.fr/english/?page_id=4.

214 Department of State, *2010 Report on International Religious Freedom -Algeria*, p.2, http://www.state.gov/g/drl/rls/irf/2010/148812.htm.

215 Art . 11: 'Sans préjudice des peines plus graves, est puni d'un emprisonnement de deux (2) ans à cinq (5) ans et d'une amende de 500.000 DA à 1.000.000 DA quiconque :
1 - incite, contraint ou utilise des moyens de séduction tendant à convertir un musulman à une autre religion, ou en utilisant à cette fin des établissements d'enseignement, d'éducation, de santé, à caractère social ou culturel, ou institutions de formation,

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According to Algerian government officials the Ordinance is designed to apply to non-Muslims the same constraints that the penal code imposes on Muslims. In effect the Ordinance and the penal code enable the government to shut any informal religious service that takes place in private homes or in a secluded outdoor setting.[216]

The Information Code of 1990

The Information Code of 1990 governs the media. Article 26 and Article 77 of the code prohibit blasphemous publications. Article 26 prohibits publications that are 'contrary to Islamic morals, national values, human rights'. Article 77 prohibits insults against Islam and other 'heavenly religions' - that is Christianity and Judaism.[217] However, blasphemy cases based on Article 26 and or Article 77 of the Information Code are not known.[218]

International treaties

Algeria has ratified several of the core international human rights treaties. It is party to the ICCPR, the UN Convention Against Torture, the UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).[219] Algeria also holds a seat on the UN Human Rights Committee, whose members have to commit to uphold and protect human rights.[220]

3.2.2 Cases

The following cases illustrate how the Algerian blasphemy legislation violates the state's Constitution as well as international human rights standards.[221] The main underlying reason for this is the vague terminology of Algeria's blasphemy legislation, that allows police officials and judges to impose their own religious perspective on society, and to give their version of Islamic practice the force of law.[222]

A. The case of Hocini and Fellak

Hocine Hocini and Salem Fellak were arrested on 13 August 2010 for breaking the fast during the holy month of Ramadan.[223] Hocini and Fellak both converted to Christianity, Hocini in 2002 and Fellak in 2009.[224] The accused were taking a break and eating on the construction site in Ain El-Hammam, where they both work, when the police arrested them.[225] At the Police station in Ain El-

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ou tout autre établissement, ou tout moyen financier,
2 - fabrique, entrepose, ou distribue des documents imprimés ou métrages audiovisuels ou par tout autre support ou moyen qui visent à ébranler la foi d'un musulman.'
Ordonnance n° 06-03 du 29 Moharram 1427 correspondant au 28 février 2006 fixant les conditions et règles d'exercice des cultes autres que musulman (rectificatif), http://collectifalgerie.free.fr/fr/?page_id=16.

216 US Department of State, *2010 Report on International Religious Freedom -Algeria*, p.2, http://www.state.gov/g/drl/rls/irf/2010/148812.htm.

217 Freedom House, *'Policing Belief the impact of Blasphemy laws on human rights'*, October 2010, page 13, www.freedomhouse.org/uploads/special_report/95.pdf.

218 Freedom House, '*Policing Belief the impact of Blasphemy laws on human rights'*, October 2010, page 95, www.freedomhouse.org/uploads/special_report/95.pdf.

219 HRC, 26 March 2008, A/HRC/WG.6/1/DZA/2.

220 OHCHR, Human Rights Committee – Members, http://www2.ohchr.org/english/bodies/hrc/members.htm.

221 Very limited information on cases is available and most of the English resources refer back to the *Report on International Religious Freedom* which is published annually by the US Department of State, http://www.state.gov/g/drl/irf/rpt/index.htm.

222 Freedom House, October 2010, '*Policing Belief the impact of Blasphemy laws on human rights',* p. 15-16, www.freedomhouse.org/uploads/special_report/95.pdf.

223 ABC news, 'Christians tried for breaking Ramadan fast', 22.09.2010, http://www.abc.net.au/news/stories/2010/09/22/3018315.htm.

224 Amnesty International, Public Statement, ' Algeria: Drop charges against men accused of breaking Ramadan fast', 1.10.2010, http://www.amnesty.org/en/library/info/MDE28/011/2010/en

225 Spiegel Online, 'Christlichen Fastenbrechern droht mehrjährige Haftstrafe', 21.09.2010,

Electronic copy available at: https://ssrn.com/abstract=1896164

Hammam they were interrogated about breaking the Ramadan fast.[226] When brought before the deputy prosecutor Hocini and Fellak explained that they were Christians and therefore do not observe Ramadan. Hocini and Fellak reported to Amnesty International that the deputy prosecutor stated that Algeria is a Muslim country, and that Christians should go to Europe, and therefore questioned how the men could be both Algerian and Christian at the same time.[227] On 26 September 2010 the prosecution demanded a sentence for both men of three years in prison because of 'threatening the precepts of Islam'[228] on the bases of Article 144 bis 2 penal code.[229] At the trial on 5 October 2010 both men were acquitted.[230]

This very recent case exemplifies how the vague wording of Article 144 bis 2 penal code can lead to the arbitrary imposition of individual interpretation of the law on the part of police officials and prosecution officials. Interpreting the breaking of the Ramadan fast, notably by two Christians, as 'threatening the precepts of Islam' is not within an acceptable scope of Article 144 bis 2 penal code, as affirmed by the acquittal of both men. Even if the two men were Muslim, there is no specific provision in the Algerian legislation that that criminalises not fasting.[231] This practice violates Algeria's constitution that grants freedom of religion in its Article 36 as well as their international human rights obligations under Article 18 ICCPR. The reported remark by the deputy prosecutor constitutes an additional violation of the freedom of religion.

B. The case of Djamila Salhi and her cousin

On 9 September 2009 the Algerian newspaper *EL-Watan* reported the following story.[232] Djamila Salhi and her male cousin were eating a sandwich in their car during the Ramadan while parking in Ben Aknoun on 1 September 2009 when two policemen in civilian dress approached them. The policemen questioned them about their religion, they are both Muslim, and subsequently asked Salhi and her cousin to accompany them to the police station in Draria in order to verify their identity.[233] At the police station the policemen reportedly first tried to make them admit to drinking alcohol in the car. Subsequently the policemen changed their mind and accused them of eating in public in the presence of pedestrians. The police commanded Salhi to sign a statement in this regard in Arabic, a language she does not know how to speak and write. Salhi and her cousin had to undergo a medical exam and spend the night at the police station. In the morning of 3 September 2009 the cousins were brought in handcuffs to the district attorney. The district attorney charged them on the bases of Article 144 bis 2 because of 'denigrating the dogma or precepts of Islam'[234] and ordered their transfer to the El Harrach prison. At El Harrach prison Salhi had to spend the night on the floor because there was no free bed in the women's section. In the night of 3 September Salhi and her cousin were unexpectedly released after the intervention of a 'senior official'; all charges were dropped and the case was effectively erased from police files.[235] While Salhi and her cousin were formally arrested and

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http://www.spiegel.de/panorama/gesellschaft/0,1518,718782,00.html.

226 Amnesty International, Public Statment, 'Algeria: Drop charges against men accused of breaking Ramadan fast', 1.10.2010, http://www.amnesty.org/en/library/info/MDE28/011/2010/en.

227 Ibid.

228 'ont porté atteinte aux préceptes de l'Islam', El-Watan, 'Le relaxe pour les non - jeûneurs de Ain El Hammam: La mobilisation a triomphé', 6.10.10, http://www.elwatan.com/actualite/la-mobilisation-a-triomphe-06-10-2010-93406_109.php.

229 El-Watan, 'Le relaxe pour les non - jeûneurs de Ain El Hammam: La mobilisation a triomphé', 6.10.10, http://www.elwatan.com/actualite/la-mobilisation-a-triomphe-06-10-2010-93406_109.php.

230 Ibid.

231 Freedom House, *'Policing Belief the impact of Blasphemy laws on human rights'*, October 2010, page 17, www.freedomhouse.org/uploads/special_report/95.pdf.

232 El-Watan, 'Pour avoir „mangé" pendant la journée du ramadhan, deux jeunes incarcérés puis remis en liberté',7.09.2009, http://www.elwatan.com/archives/article.php?id=136871.

233 Ibid.

234 'dénigrement du dogme et des préceptes de l'Islam', Ibid.

235 Freedom House, *'Policing Belief the impact of Blasphemy laws on human rights'*, October 2010, page 18,

Electronic copy available at: https://ssrn.com/abstract=1896164

charged before being moved to the prison, their release did not take place in a formal procedure.[236]

As outline in the case of Hocini and Fellake, the Algerian law does not hold a provision that criminalizes not fasting during the holy month of Ramadan. Eating during daytime in Ramadan is also not a criminal offence under Article 144 bis 2 penal code. Thus no legal bases existed for the arrest and subsequent charges of Salhi and her cousin. Hence their right to legality granted by Article 46 of the Constitution and by Article 15 ICCPR, has been violated. This case further illustrated how accusations of blasphemy can lead to the violation of the right to due process. Article 14 (3a) grants the right to the defendant to be informed in a language that he understands of the nature and the cause of the charges against him. Salhi was pressured into signing a statement, of which the content did not give the correct account of the incident and was in Arabic, a language that Salhi does not master. This is a clear violation of the right to due process by Article 14 ICCPR.

C. The case of Bouderbala and Bousaâd

Berkane Bouderbala, the editor of the weekly *Essafir* and its religious supplement *Errisala* was arrested on 11 February 2006 and Kamal Bousaâd, the director of the weekly *Panorama*, was arrested on 8 February 2006 after reprinting the controversial Danish Cartoons depicting the prophet Muhammad.[237] The arrest was based on Article 144 bis 2 penal code and came about subsequent to the complaint of the Ministry of Communications.[238] They were held at the Serkadji prison in Algiers until their release on March 15 2006, when the charges against both man were dropped.[239] Both publications were temporarily shut down. Similar cases took place in Malaysia[240] and Yemen subsequent to the reprinting of the cartoons.[241]

Freedom of expression is a core human right and has been violated gravely in this case. It is necessary to protect the exercise of all other human rights, because it is essential for holding governments accountable to the public.[242] The reprinting of the Danish Cartoons does not fall within the scope of limitation of Article 19 (3) ICCPR and neither is it incitement to hatred and therefore not prohibited by Article 20 ICCPR.[243]

D. The cases of Rachid Seghir

Christian convert Rachid Seghir has been charged and tried three times for religious offences under Article 144 bis Penal Code and ordinance 06-03. Together with another convert, Youssef Ourahmane, Seghir was charged in February 2008 under Ordinance 06-03 for 'blaspheming the name of the Prophet and Islam.'[244] In November 2007 Seghir and Djammal Dahmani were charged with

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www.freedomhouse.org/uploads/special_report/95.pdf.

236 Ibid.

237 Human Rights Watch, 'Cartoon Controversy: Drop Criminal Charges for Publication', 15.2.2006, http://www.hrw.org/en/news/2006/02/15/cartoon-controversy-drop-criminal-charges-publication.

238 El-Watan, 'Après la publication de dessins offensant le prophèete: Deux directeurs de jounaux mis sous mandat de depot', 12.2.2006,, http://www.elwatan.com/archives/article.php?id=36175.

239 Reporters Without Borders, 'Editors of Errissala and Essafir freed', 16.3.2006 ,http://en.rsf.org/algeria-editors-of-errissala-and-essafir-16-03-2006,16776.html; US Department of State, *2006 Report on International Religious Freedom- Algeria,* http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm.

240 BBC, 'Islam-West divide grows deeper', 10 February 2006, http://news.bbc.co.uk/1/hi/world/asia-pacific/4699716.stm.

241 Gulfnews, 'Yemen court fines journalist over abusive cartoons', 7 December 2006, http://gulfnews.com/news/gulf/yemen/yemen-court-fines-journalist-over-abusive-cartoons-1.269824.

242 Human Rights Watch, 'Questions and Answers on the Danish Cartoons and Freedom of Expression', 15 February 2006, http://www.hrw.org/legacy/english/docs/2006/02/15/denmar12676_txt.htm.

243 Ibid.; likewise Agnès Callamard, executive director of Article 19 in the Guardian Unlimited, 'Prophetic fallacy', 2 February 2006, http://www.article19.org/pdfs/publications/guardian-piece-on-cartoons.pdf.

244 US Department of State, *2010 Report on International Religious Freedom- Algeria*, p.6, http://www.state.gov/g/drl/rls/irf/2010/148812.htm.

Electronic copy available at: https://ssrn.com/abstract=1896164

proselytizing and illegally practising a non-Muslim faith and sentenced in absentia to two years in prison and fines of 500,000 dinars ($6,800) by court in Tissemsilt. In July 2008 in the retrial when both men appeared in front of court the sentences were reduced to a prison sentence of six months suspended and fines of 100,000 dinars ($1,360) on the bases of the same charges.[245]
Seghir was also convicted in a separate trial in Tiaret in June 2008. He was charged with proselytizing and illegally practicing a non-Muslim faith and sentenced to six months suspended prison sentence and a fine of 200,000 dinars ($ 2,720).[246]

3.2.3 Conclusion

The outlined cases illustrate how the Algerian blasphemy legislation violates international human rights law as well as Algeria's own constitution. The vague terminology of Article 144 bis of the Penal Code leads to selective, arbitrary or discriminatory enforcement. Even though most outlined cases finally lead to an acquittal, such unsuccessful legal action can encourage a society to self-censorship. The blasphemy article of the penal code in itself is discriminatory, both in effect and content. It only protects Islam and Islamic religious figures from insult. The Algerian legislation does not provide the same protection for other religions.

Compared to other countries such as for example Pakistan, Algeria's blasphemy laws are not as strictly applied, punishments are not as harsh and there are relatively few cases. Nevertheless Algeria is a helpful example for the international community to understand the impact of blasphemy law on human rights, the rule of law and society as a whole. This should stand for an example of risks of an adoption of the concept of defamation of religions.

245 Ibid.
246 Ibid.

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3.3. The Syrian Arab Republic

The Syrian Arab Republic (Syria) is a multi ethnic and religious state that does not pursue a certain state religion.[247] For the past five decades power has been confined to the minority Alawite sect.[248] After the Ba'ath party seized power in 1963, the country was ruled by Alawite President Hafez al-Assad from 1970 until his death in 2000 when power was transferred to his son Bashar al-Assad. Renowned for its religious liberal and secular character in comparison to other OIC member states, Syria's record of inhumane practises applied against opposition groups is subject to strong criticism voiced by international and local human rights organisations as well as UN reports. Despite the fact that no particular state religion is declared in Syria and neither does the legislation promote any blasphemy laws, the imposition of harsh restrictions on the general right to freedom of expression and opinion has also had severe impacts on certain religious groups.[249]

Discriminatory norms exercised by the state are directed against any group or individual that criticises the credibility of the government. Those alleged perpetrators are usually charged for threatening public order and/or incitement to sectarian unrest, mainly expressed in form of advocating certain religious and ethnic minority rights. In the past alleged members of so called opposition groups have become subject to long-term arrests, unfair trials and in many cases torture. Groups specifically monitored and targeted by the state include human rights defenders, the Kurdish population as well as members of banned political and certain religious groups. Those belonging to Islamic groups such as the Muslim Brotherhood and the Salafist movement are particularly targeted. Jehovah's Witnesses is the only religion outlawed in Syria as they are believed to promote Zionist ideologies.[250] Those perceived as enemies of the state are prosecuted by a special court – the Supreme State Security Court (SSSC, *'Mahkama Amn al-Dawla al-`Uliyya'*) that is exempted from rules of procedure followed by regular courts. Reports by human rights organisations estimate that hundreds of cases are tried each year by the SSSC, with a majority of those prosecuted allegedly belong to radical Islamist movements.[251]

The following section on Syria will discuss how laws and restrictions on freedom of expression and belief are abused by the Syrian state in order to silence opposition groups. For the purpose of this research paper, an exclusive focus will be taken on groups targeted due to their religious ideologies and links to prohibited religious groups. It should however be noted that hundreds of Kurds, human rights defenders and political opposition groups are also under constant threat of their lives and freedoms.

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247 Minority Rights Group International, country profile Syria, http://www.minorityrights.org/5266/syria/syria-overview.html: Main religions: Sunni Islam (74%), Alawi Islam (11%), other Muslim (including Ismaili and Ithna'ashari or Twelver Shia) (2%), Christianity (including Greek Orthodox, Syriac Orthodox, Maronite, Syrian Catholic, Roman Catholic and Greek Catholic) (10%), Druze (3%). Main minority groups: Alawi Muslims 2.1 million (11%), Christians of various denominations 1.9 million (10%), Iraqi refugees 1.5 - 2 million (7.8 - 10.4%), Kurds 1.5 million (7.8%), Druze 580,000 (3%), Palestinians 442,000 (2.3%), Isma'ilis and Ithna'ashari or Twelver Shia 386,000 (2%), Armenians 323,000 (1.7%).

248 UK Border Agency/Home Office, Operational Guidance Note, February 2009, para 3.8.2: 'The Alawis (Alawite) minority in Syria practise a form of Islam that started in the 9th century by splintering off from the Shiite branch and integrates doctrines from other religions; pagan, agnostic and particularly Christian. Alawi literally means "those who adhere to the teachings of Ali," the son-in-law of the Prophet Muhammad. Syria's three-quarters majority Sunni population considers the Alawi to be heretical because of their belief that Ali is Muhammed's successor and their rejection of traditional Islamic restrictions. Yet, the Alawi domination of the government, the Ba'ath party, key military positions, resources, and national wealth, have preserved their power since 1970 with Hafez al- Assad's successful coup'.

249 The Institute on Religion and Public Policy, 'Religious Freedom in Syria', 07 July 2009, http://religionandpolicy.org/cms/index.php?option=com_content&task=view&id=3881&Itemid=99999999.

250 UK Border Agency/Home Office, Operational Guidance Note, February 2009.

251 Human Rights Watch, 'No Room to Breathe – State Repression of Human Rights Activism in Syria', October 2007, Volume 19, No. 6(E).

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3.3.1. Legislation

The two main legal documents guaranteeing religious freedoms and setting its limits are found in the state's Constitution of 13 March 1973 and Penal Code. The ongoing state of emergency proclaimed in 1962, together with the implementation of special Law no. 49 in 1980 (see section 3.3.2.), have significantly impacted the rights and freedoms enshrined in the legislation by granting security forces almost full impunity from judicial authority to persecute minority groups, including certain religious groups.

The Constitution

Article 3 (Islam) lays out the religious character of the state by proclaiming that 'the religion of the President of the Republic has to be Islam' and 'Islamic jurisprudence is the main source of legislation.'[252]

Article 28 (Defence) enshrines the principle of innocence, guaranteeing that 'every defendant is presumed innocent until proven guilty by a final judicial decision and no one may be kept under surveillance or detained except in accordance with the law.' It further sets out that 'no one may be tortured physically or mentally or be treated in a humiliating manner. The law defines the punishment of whoever commits such an act.' Lastly it also ensures the right to fair trial by stipulating 'the right of litigation, contest, and defence before the judiciary is safeguarded by the law.' [253]

Article 35 (Religion) proclaims freedom of all religions and belief, stipulating that 'the freedom of faith is guaranteed. Respect for all religions is provided'. It further holds that the state guarantees 'the freedom to hold any religious rites, provided they do not disturb the public order.' [254]

Article 38 (Expression) guarantees the right of every citizen to 'freely and openly express his views in words, in writing, and through all other means of expression. He also has the right to participate in supervision and constructive criticism in a manner that safeguards the soundness of the domestic and nationalist structure and strengthens the socialist system. The state guarantees the freedom of the press, of printing, and publication in accordance with the law'.[255]

Article 39 (Assembly) enshrines that 'Citizens have the right to meet and demonstrate peacefully within the principles of the Constitution. The law regulates the exercise of this right.'[256]

The Penal Code

Article 278 prescribes temporary detention for:

1. 'Anyone who contravenes measures taken by the State to preserve its neutrality in time of war.
2. Anyone who, by engaging in acts or making written or spoken statements not authorized by the Government, exposes Syria to the risk of acts of aggression, disrupts its relations with foreign States or exposes Syrians to reprisals against their person or their property'.[257]

Article 285 'Anyone in Syria who, during times of war or in anticipation of war, makes allegations that

252 Middle East Information Network, http://www.mideastinfo.com/documents/Syria_Constitution.htm.
253 Ibid.
254 Ibid.
255 Ibid.
256 Ibid.
257 Human Rights Watch, 'Far from Justice – Syria's Supreme State Security Court, February 2009, p.32.

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weaken national sentiment or incite racial or sectarian strife will be punished with imprisonment'.[258]

Article 307 'Stipulates that any deeds committed, writings composed, or speeches held with the intention of inciting sectarian or racial strife or provoking conflict between the religions and the various members of the nation will be condemned to prison for between six months and two years, fined between 100 and 200 liras'.[259]

Article 308 'Prescribes the same punishment for any person belonging to an association established for the purpose referred to in Article 38 will receive the same penalty'.[260]

Article 462 'Stipulates that any act that is likely to prevent a Syrian from exercising his civil rights or fulfilling his civil obligations shall be punishable by detention for a term of one month to one year'.[261]

International Treaties

As a founding member of the UN, Syria is party to a number of international treaties. On 21 April 1969 Syria ratified both the ICCPR and ICERD, but has not signed any of the Optional Protocols to the ICCPR. Syria is party to the CEDAW and has also signed in 2004 the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, but has not signed the Optional Protocol.[262]

3.3.2. Implementation

Despite the fact that Article 3 of the Constitution lays out the Islamic character of the law, Article 35 guarantees the right of all religions to practice their faith freely under the condition of not disturbing public order. As discussed below however, under the pretext of safeguarding public order, a range of basic civil rights such as freedom of expression and assembly are severely- and often violently repressed by Syrian authorities targeting any state dissidents, including certain religious minority groups.

i. Emergency Law

On 22 December 1962 Syria imposed emergency law, which was amended by Decree-Law No.1 of 9 March 1963 and supplemented by martial laws stipulated in Military Legislation No. 2.[263] The state of emergency is in place until today, which legitimises severe constrains on civil and political rights, and also guarantees according to Legislative Decree No. 61 (1950) and additional Decree No. 69 of September 2008 impunity against prosecution of any human rights violation committed by state officials.[264] The draconian law of emergency provides the government's security apparatus full authority to issue arrest orders against anyone considered a threat to the state without having to provide any reasonable evidence of the alleged crime.[265] While Syria continues to defend its need to uphold a state of emergency due the persistent threat posed by Israel's occupation of part of Syria's territory and the ubiquitous threat of its expansion, the international community has repeatedly called on Syria to immediately relinquish its state of emergency.[266] According to Article 4 of the ICCPR to

258 Kurd Watch, Syrian Penal code, http://www.kurdwatch.org/index.php?cid=184
259 Ibid.
260 Ibid.
261 CCPR/C/SYR/2004/3, 19 October 2004, para 42, p.14.
262 Arab Human Rights Index, International Human Rights Treaties: Syria, http://www.arabhumanrights.org/en/countries/ratification.aspx?cid=19
263 Alkarama, 'Syria: The Permanent State of Emergency – A Breeding Ground for Torture', 09 April 2010;
264 Amnesty International, 'Syria – Briefing to the Committee Against Torture', 2010, p.11, London, UK.
265 Alkarama, 'Syria: The Permanent State of Emergency – A Breeding Ground for Torture', 09 April 2010; Amnesty International (AI), The State of the World's Human Rights 2010 Report, POL 10/001/2010; Human Rights Watch (HRW), 'A Wasted Decade', July 2010, 1-56432-663-2.
266 HRW, 'No Room to Breathe – State Repression of Human Rights Activism in Syria', October 2007, Volume 19, No. 6(E).p.16.

Electronic copy available at: https://ssrn.com/abstract=1896164

which Syria is a signatory, the implementation of emergency law is only to be maintained on a temporary basis and only under the condition of a 'public emergency which threatens the life of the nation and the existence of which is officially proclaimed'.[267] The almost fifty year long state of emergency however clearly violates its obligations under the ICCPR. The human rights organisation Alkarama pointed out that although Syria has a legitimate right to defend its territory, the implemented emergency legislation is mainly directed against domestic opposition groups and individuals.[268]

ii. Law No. 49

Special Law No. 49 passed by the Syrian People's Council in the Session on 07 July 1980 proclaims the illegality of the Muslim Brotherhood. Members belonging to the group are subject to punishment articulated in Article 1: 'Each and everyone belonging to the Moslem Brethren Group (Jama'a) organization is considered a criminal who will receive a death punishment'. [269] The group, a Sunni fundamentalist, anti-government and anti-Alawi movement was initially prohibited as a result of a failed assassination attempt on the President on June 1980. Regardless of the fact that since 1982, after the Muslim Brotherhood was crushed by the Syrian government, the group officially renounced violence and direct confrontation, Law No. 49 remains in place until today.[270] The broad nature of the term 'belonging' is however not clearly defined and can therefore be applied to anyone who is thought to be somehow associated with the movement. This stands in clear violation of Article 28 of the Syrian Constitution based on the presumption of innocence. As discussed below, numerous individuals, including children, have been arrested merely due to family links to current and former members of the movement. The human rights organisation Alkarama reports that thousands of associates and members of the Muslim Brotherhood have been arrested since 1979 and almost 17 000 have disappeared since enactment of the law.[271] Despite significant pressure exerted by the international NGO community urging Syria to abandon the death penalty, Syria has not amended its laws but in recent years commuted the death sentence to twelve years imprisonment with hard labour.[272]

iii. Arbitrary arrests and unfair trials

Numerous individuals accused of being radical Islamists or associated with fundamentalist religious movements have been charged by the SSSC under articles 307, 285 and 462 of the Syrian Penal code for allegedly causing incitement to sectarian and religious strife harming the public order.[273] As further elaborated below, in many of these cases defendants were sent to prison despite the fact that no clear evidence was presented to the court proving the alleged crime or intent to commit a crime. Various human rights groups such as HRW as well as the European Court of Human Rights (EctHR) have emphasised the fact that even if defendants admit to belonging to fundamentalist religious groups, their integrity is nevertheless protected under international law stipulating the right to freedom of

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267 CCPR/C/SYR/2004/3, 19 October 2004; ICCPR Article 4(1):

> '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, colour, sex, language, religion or social origin', http://www2.ohchr.org/english/law/ccpr.htm#art4.

268 Alkarama, 'Syria: The Permanent State of Emergency – A Breeding Ground for Torture', 09 April 2010, p.5.

269 SHRC, Special Report - Repressive Laws in Syria, 19 February 2001, http://www.shrc.org/data/aspx/d4/254.aspx#D2

270 Michael Jacobsen, 'What Role for the Muslim Brotherhood in Syria's Future?', The Washington Institute for Near East Policy, 11 March 2005, http://www.washingtoninstitute.org/templateC05.php?CID=2276.

271 Alkarama, 'Syria: The Permanent State of Emergency – A Breeding Ground for Torture', 09 April 2010 at 3.2.

272 CIHRS, 'Report on the State of Human Rights in the Arab Region in 2008: From Exporting Terrorism to Exporting Repression', December 2008, p.137, http://www.cihrs.org/Images/ArticleFiles/Original/382.pdf.

273 The Institute on Religion and Public Policy, 'Religious Freedom in Syria', 07 July 2009, http://religionandpolicy.org/cms/index.php?option=com_content&task=view&id=3881&Itemid=99999999.

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expression as long as their actions and appeals remain non-violent. The EctHR has stated that 'expressions of hostility towards national authorities, support for separatist aspirations, and promotion of shari`a law are protected speech to the extent they do not directly advocate violence'.[274]

Moreover, those tried before the SSSC are usually subject to unfair trial, as highlighted in a written statement by CIHRS to the UNHRC in 2010. The organisation complained that most defendants are deprived of basic rights guaranteed by international conventions, such as the right to a defence, the right to an attorney, the right to hear witnesses and the right to appeal.[275] Under Article 10 of the Universal Declaration of Human Rights (UDHR) and Articles 14 and 15 of the ICCPR, Syria must provide every alleged perpetrator the right to fair trial.[276] However, according to Amnesty International (AI) detainees and defendants are prevented from meeting their lawyer during pre-trial detention and consultation is often permitted for only a few minutes right before the first trial session, which clearly stands in violation of Article 14 (3b) of the ICCPR. Moreover, Article 14 stipulates that 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.[277] Trials by the SSSC are however usually closed even for family members and defendants are not allowed to appeal their conviction and sentence.[278]

3.3.2. Cases

i) The Muslim Brotherhood

Despite the fact that the death sentence for those convicted under Law No. 49 has frequently been reduced to 12 years' imprisonment in recent years, the loosely-defined criteria of "belonging" has resulted in the arrests of dozens of alleged members of the Muslim Brotherhood on an annual basis. This is a clear breach of the presumption of innocence enshrined in Article 28 of the Syrian Constitution and Article 9(1) of the ICCPR proclaiming that 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.[279] In numerous cases prosecutions of defendants were solely based on evidence such as the possession of CDs and books of apparently radical Imams, while no proof for a committed or intended crime was presented.[280] Over the past years children and other family members of persons accused of being members of the Muslim Brotherhood have also become subject to prosecution due to the loosely defined nature of "belonging".[281]

A. Amer Hamami

Human Rights Watch reported the case of Amer Hamami who was sentenced by the SSSC on 09 December 2007 to three years in jail for "weakening national sentiment and awakening sectarian strife" (Art. 285 of Penal Code). Trial notes by European diplomats show that the only evidence presented against Hamami was that he had copied 25 CDs that promoted the acts of the Muslim Brotherhood.[282]

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274 See Association Ekin v. France, no. 39288/98, ECHR 2001-VIII; Okçuoglu v. Turkey [GC], no. 24246/94, 8 July 1999; and Müslüm Gündüz v. Turkey No. 1. All available at www.echr.coe.int.

275 CIHRS, 6 September 2010, A/HRC/15/NGO/48.

276 ICCPR Article 14 and 15, http://www2.ohchr.org/english/law/ccpr.htm#art14; UDHR Article 10, http://www.un.org/en/documents/udhr/index.shtml#a10.

277 ICCPR Article 14, http://www2.ohchr.org/english/law/ccpr.htm#art14.

278 AI, 'The dangers of speaking out in Syria', 28 January 2008, http://www.amnesty.org/en/news-and-updates/feature-stories/dangers-speaking-out-syria-20080128; Amnesty International World Report 2008.

279 ICCPR Article 9, http://www2.ohchr.org/english/law/ccpr.htm#art9

280 Human Rights Watch, 'Far from Justice – Syria's Supreme State Security Court, February 2009, p.37.

281 Alkarama, 'Syria: The Permanent State of Emergency – A Breeding Ground for Torture', 09 April 2010.

282 Human Rights Watch, 'Far from Justice – Syria's Supreme State Security Court, February 2009, p.40: Trial notes by European diplomats, September 23, 2007 and December 9, 2007.

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B. Muhammad Osama Sayes

Born in July 1975 in Aleppo, Syria, Muhammad Osama Sayes was forced together with his family into exile in 1980 in fear of Law No. 49 due to his family's affiliation with the banned Muslim Brotherhood. In November 2000 Sayes applied for political asylum in the UK which was however refused by the British authorities. On 28 April 2005 Sayes was arrested and deported back to Syria on 03 May 2005. Upon his arrival Sayes was detained by Syrian officials and transferred to the Political Security Branch and then held in Seydnaya Prison where he was subject to torture and other ill-treatment. According to a report published by AI, the defendant was held in incommunicado detention, deprived of his right to consult a lawyer until January 2006. On 25 June 2006 Muhammad Osama Sayes was tried before the SSSC and sentenced to death. His sentence was then reduced to 12 year imprisonment.[283]

C. Omar al-Hayyan Razzouk

Omar al-Hayyan Razzouk was born in Baghdad, Iraq in 1986 to a Syrian father who was forced to flee Syria in 1983 in fear of his life due to his affiliation with the Muslim Brotherhood. After the American invasion of Iraq in 2003 the defendant was sent to Syria by his family in order to pursue a safer and more stable life. Prior to his arrival in Syria, Razzouk contacted the Syrian embassy in Baghdad explaining his family history and personal situation. The Syrian officials approved his plans and provided him with all necessary documents. On November 15, 2005 Razzouk was arrested by Syrian border police while trying to enter the country. He was arrested under Law No. 49 and was sent to Sednaya Prison. Razzouk was tried before the SSSC by Judge Fayez al-Nouri on charges of belonging to the Muslim Brotherhood. Razzouk was brought before the judge ten times persistently denying any affiliation with the outlawed movement or any other political group. Razzouk was convicted under Law No. 49 on 13 December 2009 and his death sentenced was commuted to 12 years imprisonment.[284]

ii) Salafist/Islamist groups

Other Islamic groups targeted by the Syrian state are frequently labelled as “Salafists”. The state however fails to clearly define who constitutes a member of such movement and hundreds of religious Islamic opposition figures have been detained over the past years. HRW reports that in the period between January 2007 and June 2008, the SSSC sentenced over 100 individuals on charges of belonging to a radical Salafist movement.[285] Many alleged Islamists are prosecuted under Article 206 of the Penal Code, charged with attempting to change the fundamental fabric of society through terrorist means. However, according to HRW in most cases those prosecuted either under charges of terrorist acts or for inciting racial and sectarian strife (under Article 285 or 307), no clear evidence was provided to the SSSC proving the defendants' intention of advocating Islamic extremists' goals through violent means.[286] Those found guilty are not only subject to unfair trials but many defendants are detained without an official charge or trial for extended periods of time under inhumane conditions and are often exposed to ill-treatment. Syria is therefore not only in violation of Article 9(3) and 14 (3c) of the ICCPR (stipulating the right to be tried promptly), but also of Article 9(2) as it frequently fails to declare the charge for which defendants are held for prolonged periods of time.[287] Furthermore, Syria is

283 SHRC, 12 May 2005, http://www.shrc.org/data/aspx/D4/2194.aspx; SHRC, 27 June 2006, http://www.shrc.org/data/aspx/D5/2695.aspx; Amnesty International, MDE 24/046/2006 (Public), 26 June 2006, http://www.amnesty.org/en/library/asset/MDE24/046/2006/en/1b61a4cf-fa04-11dd-b1b0-c961f7df9c35/mde240462006en.pdf.

284 SHRC, Omar Hayyan al-Razzouk sentenced pursuant to Law 49/1980, 16 December 2009, http://www.shrc.org/data/aspx/d19/4049.aspx.

285 Human Rights Watch, ‘Far from Justice – Syria's Supreme State Security Court, February 2009, p.4

286 SHRC, Omar Hayyan al-Razzouk sentenced pursuant to Law 49/1980, 16 December 2009, http://www.shrc.org/data/aspx/d19/4049.aspx.

287 ICCPR Article 9 and 14, http://www2.ohchr.org/english/law/ccpr.htm.

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heavily criticised by the international community for allegedly inflicting torture, which is illegal under international law (including Article 7 of the ICCPR) but is also forbidden by Article 28(3) of its own Constitution.[288] Amnesty International reported that no case is known where Syria's laws against torture have actually been implemented.[289]

D. Mu'awiya al-Hasan

On 23 September 2007, Mu`awiya al-Hasan, a student at the University of Damascus, was brought before judges of the SSSC. He was charged with "awakening sectarian strife" prohibited under Article 285. According to trial notes by European diplomats, the Syrian authorities had found CDs of 'fundamentalist imams' (Ibn Taymiyyah and Ibn Baz) in his apartment. The trial observers did not note any additional evidence presented in court. Two months later, on November 25, 2007, the SSSC sentenced him to two years in jail. By the time al-Hasan received his verdict, he had already been detained for one year and three month.[290]

E. Usra al-Hassani

On 31 July 2008 Syrian State Security officials arrested 35 year old Usra al-Hassani from her home in the village of al-Otayba, 20 km east of Damascus. AI believes her arrest to be related to her efforts to contact an international organisation in regards to the conditions of her husband held in US custody. Since August 2002 her husband Jehad Diab has been detained without charge or trial as an 'enemy combatant' in the US administered detention centre at Guantanamo Bay[291]. Usra al-Hassani was held incommunicado for one year without being informed of the charges against her. On 18 July 2009 Usra al-Hassani was released and then re-arrested on January 2010. The reason for her arrest is believed to relate to her involvement in a poem that is thought to incite violence against an informant to the security forces.[292] No further reports are known about her most recent arrest. AI and HRW have called for the immediate release of Usra al-Hassani unless the security service has clear evidence of the committed crime. In a statement related to her first arrest Joe Stork, Middle East deputy of HRW pointed out that 'being married to an Islamist or to a criminal suspect is not a crime'.[293]

iii) Jehovah's Witnesses

In 1964 the Syrian government outlawed the Jehovah's Witnesses due to their alleged Zionist motives. According to an US State Department report on freedom of religion in Syria, published on 2010, only a small number of members of the religion exist in Syria and they are forced to remain clandestine. While proselytizing is not illegal under Syrian law, it is however strongly discouraged by the government and those actively practising it might run the risk of being charged with posing a threat to the relations among religious groups.[294] Despite the fact that fewer incidents of arrests occur under the charge of belonging to the Jehovah's Witnesses, the procedures are nevertheless the same.

F. Nader Nseir

Amnesty International reported the case of Nader Nseir, a 38 year old Syrian and follower of Jehovah's

288 See p.67.
289 AI, 'Syria – Briefing to the Committee Against Torture', 2010, London, UK.
290 The Arabic Network for Human Rights Information (ANHRI), http://www.anhri.net/syria/nohrs/2007/pr1126.shtml; Ibid, p.38.
291 AI, Wife of Guantanamo detainee released in Syria, 21 July 2009, http://www.amnesty.org/en/news-and-updates/good-news/wife-guant%C3%A1namo-detainee-released-syria-20090722
292 AI, 19 February 2010, MDE 24/003/2010 Syria.
293 HRW, Syria: Wives of Islamist suspects detained, whereabouts anknown, 17 August 2008, http://www.hrw.org/en/news/2008/08/17/syria-wives-islamist-suspects-detained-whereabouts-unknown.
294 US State Department, 2010 Report on International Religious Freedom, 17 November 2010, http://www.state.gov/g/drl/rls/irf/2010/148845.htm.

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Witnesses. Nseir was called in to the Political Security branch in Latakia, western Syria, and allegedly put under pressure to become an informant about the community. As a result of his refusal, his ID card was confiscated and he was prevented from returning to Lebanon, his current place of residence. In an attempt to illegally cross the border he was returned by Lebanese border police to Syria and taken into custody on 7 May 2010. Since then Nseir has been held in incommunicado detention and his location is unknown to his family or human rights defenders. In the global campaign to locate Nader Nseir, AI has warned about torture and other ill-treatments practised in Syrian prisons.[295]

3.3.3. Conclusion

Despite the fact that Syria does not stipulate blasphemy laws and portrays itself as a secular State, it illustrates how restrictions of freedom of expression are dangerously imposed under the guise of protecting religious and racial minority groups. As party to the ICCPR and ICERD Syria is obliged to fully grant freedom of speech to all, even if those opinions are not conform with the State's interests.

Syria's ongoing state of emergency and imposition of Law No. 49 provides the basis for an almost unrestricted repression of certain opposition groups, including religious groups that are believed to endanger “public order” and essentially challenge the ruling group's power. Thousands of people, including prisoners of conscience are subject to arbitrary and prolonged imprisonment and are held incommunicado. Many others have disappeared and cases of torture and ill-treatment are reported frequently. Criticism voiced by the international community, calling on Syria to immediately terminate the repression of non-violent opposition groups under the auspice of emergency laws are rejected by Syria. Arguing within the framework of Article 20 of the ICCPR, Syria insists to simply exercise its right to set limits to the right to freedom of expression in order to prevent incitement to hatred. By applying Article 307 and 308 of the Syrian Penal Code, Syria claims to be consistent with its international obligations by merely punishing acts that endanger discrimination on religious or racial grounds.[296] In response to such justification HRW has argued that despite Syria's legitimate right to protect its national integrity, Syria's definition of a security threat has been cast so broadly and vague that it authorises the illegal persecution of any defendant who openly or privately expresses opinions contrary to government's interest.[297]

295 AI, Detained Jehovah's Witness at risk of torture, 09 July 2010, MDE 24/016/2010 Syria.
296 CCPR/C/SYR/2004/3, 19 October 2004, p. 77-78.
297 Human Rights Watch, ‘Far from Justice – Syria's Supreme State Security Court, February 2009, p.37.

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Section 4: Conclusion

This paper illustrates that while all parties to the debate on the defamations of religions at the UN, from the OIC to UN Special Rapporteurs and member states, acknowledge the pressing need to effectively counter incitement to hatred on racial and religious grounds, and give due recognition and concern to the rise of Islamophobia, a clear discrepancy exists among states concerning the method and instruments that should be used to counter the problem without violating fundamental human rights. The UN-adopted resolutions on combating defamation of religions prior to January 2011 may appear at first to promote tolerance by advocating limits to racism and xenophobia, but all entail serious flaws. Foremost among these is the shift of the protective focus away from individuals in the OIC-supported approach, and towards a system of belief, which makes a decisive breach with prevailing human rights standards. This paper concludes that by calling for the protection of Islam in order to safeguard Muslim communities in the West, the OIC's proposals in practice would endanger religious minorities, nurture religious intolerance and ignorance, and violate the rights to freedom of expression and of belief enshrined in human rights law, as well as leave civilians vulnerable to the breach of a spectrum of other rights. The broad definition of defamation of religion in OIC resolutions arbitrarily restricts the leeway for individuals to exercise their rights to free speech without being considered too critical – directly or indirectly – of the religion, and allows laws to be selectively applied.

The consequences of this have been demonstrated in the selection of recent cases taken from three OIC member states. Blasphemy laws in Pakistan and Algeria, and provisions of Syria's special and emergency laws have been partially justified by the respective governments as a bid to protect minority rights. Yet by looking at their use (or misuse) in these three countries we have seen them wielded as instrument of persecution, involving grave violations of the rights to free expression and belief.

The three countries represent a range in terms of their geographic locations and the extent of their legislative constraints on the issue. Although by no means exhaustive in scope, and certainly selected by the authors to demonstrate the derogative and arbitrary nature of these laws, all the cases illustrate a serious gap of protection concerning the rights of the individual. In each case laws relating to religious criticism have been used to restrain, punish and persecute – often for political ends – persons who belong to minorities or have exercised their freedom of expression. In Syria this has been seen in the prolonged implementation of emergency laws that legitimise severe punishments against anyone perceived as a threat to the rule of a minority group. In Pakistan, as in Algeria, the courting of powerful, often dangerous populist religious groups by local governments has led to a protection gap for civilians and the weakening of the law enforcement and judicial processes. Many of the cases involved ill-treatment or torture and unfair trials, with procedural safeguards unavailable or overlooked and an enforcement system ill-equipped to protect the accused from the public fervour that the laws have essentially encouraged.

As parties to the ICCPR, states are obliged to protect the right to freedom of expression, though they maintain the right under Article 20(2) to also subject this to certain limitations to protect citizens from incitements to racial or religious hatred. However in all three countries this clause has been severely abused in order to protect a particular religious perspective along with the interests of the state; this has (often fatally) endangered the fundamental rights of individuals to free speech and as noted by dissenting states and UN Special Rapporteurs, caused severe damage to inter-religious dialogue and understanding.

Despite Pakistan and Syria being two of the most outspoken advocates of the resolution on 'combating defamation of religions' at the UN to further the protection of minorities (ostensibly outside of the Muslim world), this paper has shown the great dangers inherent in the OIC proposals, as evidenced by both states' *de facto* application of oppressive blasphemy laws.

In view of the many rights threatened by the proposal to combat 'defamation of religions' in a

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binding instrument, we concur with the recommendations made by various states, NGOs and UN experts covered in Section Two. In *de jure* terms Articles 18-20 sufficiently articulate the boundaries and rights of the freedom of expression and belief that are necessary to protect persons from incitement to racial and religious hatred; it falls to states to implement them effectively. However equally important is the need for more open, pluralistic dialogue among religious, cultural and ethnic communities, which will overcome cultural and religious differences more effectively than the suppression or criminalisation of criticism.

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Annex

Excerpt of Pakistan's Criminal Law Amendment ACT 2004 (ACT I, 2005)

Section 156-A of the Criminal Procedure Code (Cr.P.C):

Investigation of offence under section - 295-C Pakistan Penal Code (PPC) – 'Notwithstanding anything contained in this code, no police officer below the rank of a superintendent of police shall investigate the offence against any person alleged to have been committed by him under section 295-C of the Pakistan Penal Code, (Act XLV of 1860).'

Published in Pakistan Law Journal (PLJ) 2005 Federal Shriat Court page # 207

The Lahore High Court cited the amendment in a blasphemy case in 2002:

MUHAMMAD MAHBOOB alias BOOBA-Appellant
Versus
THE STATE-Respondent

'---Ss. 295-A, 295-B & 295-C---Blasphemy---Increase in the number of registration of blasphemy cases and element of mischief involved therein calls for extra care at the end of the Prosecuting Officers---Failure, inefficiency and incompetence of the investigation in handling the case of blasphemy---Directions by the High Court, in circumstances, directed the Inspector General of Police of the Province to ensure that whenever such a case is registered, the same may be entrusted for purpose of investigation to a team of at least two Gazetted Investigating Officers preferably those conversant with the Islamic Jurisprudence and in case they themselves are not conversant with Islamic law, a scholar of known reputation and integrity may be added to the team and the team should then investigate as to whether an offence is committed or not and if the team comes to the conclusion that the offence is committed, the police may only then proceed further in the matter---Trial in such case be held by a Court presided over by a Judicial Officer who himself is not less than the rank of District and Sessions Judge.'

Published in the Pakistan Law Digest (PLD 2002, Lahore page # 588, paragraph (c) Penal Code (XLV of 1860)

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16th Regular Session of the UN Human Rights Council (28 February - 25 March 2011)

Incitement to Discrimination, Hostility or Violence

Evolution of the Recent Debate on "Defamation of Religions"

Friday, 11 March 2011
14h00 - 16h00
Room XXV (25), Palais des Nations

Panelists

Mr. Ibrahim Salama
Director of the Human Rights Treaties Division, Office of the UN High Commissioner for Human Rights (OHCHR); in charge of the 2011 regional expert workshops on the prohibition of incitement to national, racial or religious hatred

Ms. Jo Baker
School of Oriental and African Studies (SOAS) International Human Rights Clinic, University of London; researcher for the study on <Blasphemy Laws and Freedom of Expression in the Organization of Islamic Conference (OIC) States>, partner project with the Cairo Institute for Human Rights Studies

Ms. Bushra Gohar
Member of the National Assembly of Pakistan; parliamentarian with the Awami National Party, who submitted a bill on the repeal of the Blasphemy laws in 2009

Ms. Sejal Parmar
Senior Legal Officer, ARTICLE 19; leads the organization's legal and policy work on resolutions of the UN Human Rights Council and General Assembly on "defamation of religions"

Moderator

Mr. Jeremie Smith
Cairo Institute for Human Rights Studies

Refreshments will be served.
For further information, please contact Ms. Giyoun Kim, FORUM-ASIA
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