

**Becket Fund for Religious Liberty
Issues Brief**

“Defamation of Religions”

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(condensed version)**



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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.

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I. EXECUTIVE SUMMARY

The “defamation of religions” issue is fundamentally inconsistent with the principles outlined in the United Nations’ founding and legal documents, but more importantly, it violates the very foundations of the human rights tradition by protecting ideas rather than the individuals who hold ideas. Further, they force the state to determine which religious viewpoints may be expressed. The empowerment of the state (as opposed to protection of individuals against the state) through “defamation of religions” measures is thus unique in the human rights regime. “Defamation of religions” resolutions at the UN operate as international anti-blasphemy laws and provide international cover for domestic anti-blasphemy laws, which in practice empower ruling majorities against weak minorities and dissenters.

Major criticisms of the “defamation of religions” resolutions include: the narrow focus on Islam, the protection of a religion (essentially an ideology) instead of an individual, the conflation of race and religion, the erosion of freedom of expression as a fundamental freedom, overbroad and unclear language, including in the use of the term “defamation.”

II. PROCEDURAL HISTORY

A. *Introduction of a Resolution*

The “defamation of religions” issue was first introduced to the Commission on Human Rights in 1999 by Pakistan on behalf of the Organisation of Islamic Conference under the agenda item on “racism.”¹ In its original form, the draft resolution was introduced with the title “Defamation of Islam.”²

According to the statements made by Pakistan as it presented the draft resolution, it was intended to have the Commission stand up against what the OIC felt was a campaign to defame Islam, which they argued could incite already increasing manifestations of intolerance towards Muslims to a degree similar to anti-Semitic violence of the past.³ The impetus for a resolution combating the “defamation of religions” was reinvigorated after the September 11, 2001 terrorist attacks.⁴ The murder of Dutch anti-immigration film director Theo van Gogh, the 2005 publishing of twelve cartoons parodying the Prophet Mohammad in the Danish newspaper *Jyllands-Posten*, and more recently the production of the Dutch film *Fitna* have only intensified this debate.

Other delegates were of the opinion that this resolution was unbalanced in its sole focus on Islam. In response, the OIC agreed to make it more inclusive of all religions, although the text continued to focus on Islam specifically. The resolution continued to be raised in the Commission (now the

¹ Pakistan currently enforces Pakistan Penal Code 295, which imposes capital punishment for blasphemy, including defamation of Islam. No. 295 of 1986; Pakistan Pen. Code (1860)

² U.N. Econ. & Soc. Council [ESOSOC], Comm’n on Human Rights, Draft Res.: Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination, U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999)

³ Comm’n on Human Rights Res., 62nd Meeting, U.N. Doc. E/CN.4/1999/SR.61, ¶¶1-9 (April 30, 1999)

⁴ Comm’n on Human Rights Res. 2003/4, U.N. Doc. E/CN.4/2003/23 (January 2003) and the follow-up report Comm’n on Human Rights 2005/3, U.N. Doc. E/CN.4/2005/18/Add.4 (December 2004)

Human Rights Council) under the racism agenda item each year since 1999.⁵ The resolution has also been introduced in the General Assembly since 2005.⁶ Furthermore, the OIC has indicated its desire for the adoption of a binding international covenant to protect religions from “defamation.”⁷

B. Evolution of Resolution Language and Votes⁸

Votes usually occur along regional divisions with support for the resolution coming from the OIC and the Africa Group (led by Egypt). The resolutions also continue the trend of conflating race and religious identity with references to “increasing acts of racism and xenophobia” and to the World Conference against Racism (Durban Conference).⁹

The first two resolutions in the Commission passed without votes, but reservations were placed by the EU on the legal definition of “defamation.” In 2001, a vote was taken for the first time, but the resolution still passed 28 to 15, with 9 abstentions.¹⁰ The Commission resolution gained favorable votes in 2002 and 2003, lost votes in 2004, but regained most of them in 2005.¹¹ In 2005, the resolution was first introduced in the General Assembly by Yemen on behalf of the OIC with almost identical language to the Commission resolutions.¹² The GA resolution has passed every year since then with landslide votes. The current GA resolution draft is working its way through negotiations.

March 2007 saw the first serious challenge to a “defamation of religions” resolution at the Human Rights Council, when it passed with 24 votes for, 9 against, and 14 abstentions. In 2008, the resolution passed with a vote of 21 in favor, 10 in opposition, and 14 in abstention. This vote was significant because the combination of delegations that opposed or abstained outnumbered those supporting the resolution.

The OIC in 2008 successfully introduced an amendment to the mandate of the Special Rapporteur on freedom of expression, who is now requested “[t]o report on instances where the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination.”¹³

The renewal of the mandate of the Special Rapporteur on racism in 2008 created divisions within the Africa Group, as the sub-Saharan countries expressed concern over the conflation of race and religion. Nonetheless, the resolution passed without a vote.¹⁴

⁵ Resolutions on ‘Combating “defamation of religions”’ have been tabled and passed by the UN annually since 1999, see Comm’n on Human Rights Res. 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, and 2005/3, U.N. Doc.A/HRC/4/L.12, A/HRC/7/L.15.

⁶ G.A. Res. 60/150, 61/164, 62/154, U.N. Doc. A/Res/60/150, A/Res/61/164, A/Res/62/154.

⁷ Statement of Mr. Ekmelledin Ihsanoglu, OIC Secretary General, UN Human Rights Council, 4th Sess. (March 12, 2007); First OIC Observatory Report on Islamophobia, May 2007-March 2008, Org. of the Islamic Conference, p.8 (March 2008)

⁸ Please contact the Becket Fund for a more extensive voting analysis in an Addendum on “Defamation of Religions” Votes at the United Nations.

⁹ Comm’n on Human Rights Res., 61st Meeting, 2001/4 (April 18, 2001)

¹⁰ Comm’n on Human Rights Res., 61st Meeting, 2001/4 (April 18, 2001)

¹¹ G.A. Res. 60/150, U.N. Doc. A/Res/60/150 (January 20, 2006)

¹² G.A. Res. 60/150, U.N. Doc. A/Res/60/150 (January 20, 2006)

¹³ U.N. Human Rights Council, Draft Resolution: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, U.N. Doc. A/HRC/7/L.24 amdt. 4c bis. (March 25, 2008)

C. Special Rapporteur Mandates

The Special Rapporteur on freedom of religion or belief, Asma Jahangir, has expressed concern that “defamation of religions” measures can be a threat to the free expression of expression and religion by promoting an “atmosphere of religious intolerance” where certain peaceful religious expressions are deemed offensive to another religion and by “stifling legitimate criticism or even research on practices and laws appearing to be in violation of human rights.”¹⁵ Similarly, Amyebi Ligabo, Special Rapporteur on freedom of expression, has expressed concern about the sacrifice of free expression for the sake of religious feelings.¹⁶

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, has been supportive of the movement to forward measures regarding “defamation of religions.” The OIC has consistently proposed its “defamation of religions” resolutions under the racism agenda item rather than under the religion or expression agendas.¹⁷

D. Durban Review

The UN held the “World Conference against Racism” (WCAR) in Durban, South Africa. Many attendees felt that what was meant to be a constructive global discussion on racial hatred devolved into a platform for hatred itself. Responding to anti-Semitism and holocaust denial, the U.S. and Israel walked out of the conference. The EU continued to work toward creating a final Conference document that would be constructive in the global fight against racism.

“Durban II,” to be held in Geneva in April 2009, is intended as a review of the implementation of the resulting Durban Declaration and Programme of Action (DDPA).¹⁸ Although the conference is supposed to be focused on racism, it is expected that “defamation of religions” will be a central

¹⁴ The Becket Fund thanks Tina Ramirez, Co-Chair of the United States Congressional Human Rights Caucus’s Task Force on International Religious Freedom and Congressional Fellow to Congressman Trent Franks, for her research assistance in sections A and B of this Procedural History.

¹⁵ In her report to the General Assembly in 2007, Ms. Jahangir concluded:

The Special Rapporteur would like to reiterate that criminalizing “defamation of religions” can be counterproductive, since it may create an atmosphere of intolerance and fear and may even increase the chances of a backlash. Accusations of “defamation of religions” might stifle legitimate criticism or even research on practices and laws appearing to be in violation of human rights but that are, or are at least perceived to be, sanctioned by religion.”

U.N. Doc. A/62/280.

¹⁶ In his 2008 report to the UNHRC U.N. Doc.A/HRC/7/14, Mr. Ligabo states that “limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements... they are not designed to protect belief systems from external or internal criticism.”

¹⁷ The OIC has also consistently challenged Ms. Jahangir’s mandate. In December 2007, the OIC opposed language that would “urge” states to respond positively to the Special Rapporteur’s recommendations. The OIC preferred language that would ask states to “consider” responding positively.

¹⁸ The DDPA is available at <http://www.unhchr.ch/pdf/Durban.pdf>. The conference will take place in Geneva, Switzerland April 20-24, 2009.

issue at the upcoming conference.¹⁹ Many are calling on countries to boycott the upcoming Durban II.²⁰

III. ANALYSIS

A. *Legal Analysis*

The International Covenant on Civil and Political Rights Article 19(1) states, “Everyone shall have the right to hold opinions without interference.” ICCPR Article 19(2) states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Meanwhile, ICCPR Article 18 ensures the “right to freedom of thought, conscience and religion” and freedom “to manifest his religion or belief in worship, observance, practice and teaching.” Thus the primary ICCPR articles concerning freedom of religion particularly protect *expression* of thought, conscience, and religion, but do not protect the content of the thought, conscience, or religion.

Article 20 prohibits “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Notably, Article 20 focuses on discrimination against religious persons rather than defamation against religious ideas -- a “defamation of religion” resolution protects an ideology, while a religious discrimination resolution protects people themselves, who ascribe to a range of ideologies. Article 20 was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War. Ms. Jahangir has noted that the “threshold of the acts that are referred to in Art. 20 is relatively high.... At the global level, any attempt to lower the threshold of Art. 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself.”²¹ Defamation of religion measures, because they focus on the subjective sensibilities of the listener rather than the objective speech of the speaker, necessarily lower the bar for prohibited speech.

The right to disagree and to express dissent peacefully is a fundamental aspect of the freedom of thought. In his report in March 2008, Amyebi Ligabo, the Special Rapporteur on the protection of freedom of expression, stated that limitations of Article 19 of the ICCPR “are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements.”

Further, there is no basis in international or regulatory law for the concept of protection of religious ideas or collective rights of a sometimes disparate group of people within a larger faith tradition.²² “Defamation of religions” as a concept undermines the very foundations of the human rights system, which is based on a concept of individual rights. The grounding of human rights in the protection of individuals instead of in the protection of ideas or of group identities is

¹⁹ The chairperson of the Preparatory Committee is from Libya. Vice-Chairs include representatives from Cameroon, South Africa, Senegal, India, Indonesia, Iran, Pakistan, Argentina, Brazil, Chile, Cuba, Armenia, Croatia, Estonia, Russia, Belgium, Greece, Norway, and Turkey. The Vice-Chair Rapporteur is from Cuba.

²⁰ Canada, Israel, and the United States have indicated they will boycott Durban II.

²¹ Report to the Human Rights Council, U.N. Doc. A/HRC/2/3 (September 20, 2006)

²² For example, Shi’a, Sunni, Alevi, Ahmadi, Sufi, Isma’ili, etc. are all groups whose reputations are concomitantly injured by someone criticizing “Islam,” and yet there are also conflicting truth claims regarding what Islam teaches among these groups.

well established in treaty and custom, in general principles, and academia. Attempts to change this paradigm have met with extreme argument and dissent and thus do not have the force of established international law norms.

B. Analytical framework

Defamation laws are meant to protect individuals from public slander or libel that would negatively affect their livelihood, and is closely aligned with individual and personal, rather than group, rights. The traditional defense in a defamation lawsuit is the truth, as defamation laws are meant to inhibit someone from using mistruths to harm another.

“Defamation of religions” measures, however, are used to protect a set of beliefs, ideas, and philosophies. Yet religions make conflicting truth claims and indeed the diversity of truth claims is something that religious freedom as a concept is designed to protect. Thus, the traditional defense of truth in a defamation suit is subject in a “defamation of religions” case to what ideas, worldviews, or religious beliefs the judging authority believes to be true. The nature of the inquiry is factual.

However, “defamation of religions,” as opposed to the defamation of persons, forcibly requires the state to determine which *ideas* are acceptable, as opposed to which facts are true. A fundamental rule of law problem presents itself in the notion of “defamation of religion,” as belief cannot be empirically proven true.²³ “Defamation of religions” measures are thus distinct from traditional defamation laws because they do not protect persons, good faith speech, or dissent.

Enforcement of “defamation of religions” measures, including anti-blasphemy and anti-vilification laws, is typically left to the unbridled discretion of local officials who are free to act on their own prejudices.²⁴ Ultimately, “defamation of religions” measures empower majorities against dissenters and the state against individuals.

The conflation of race and religion has also complicated both racism issues and religious freedom issues. There is a stark distinction between race, which is immutable, and religion, which, though often exercised and expressed communally, requires and cannot exist without choice guided by individual conscience. Treating racial and religious discrimination as the same thing could lead to the conflation of racist hate speech and the suppression of peaceful, but controversial, discussions of truth claims about and within religions.

²³ It was thus argued in a court case in Victoria, Australia, by Muslims attempting to enforce an “anti-vilification” law very similar to “defamation of religions” measures that “truth is not a defense” when the defendant, a Pakistani-Christian pastor, attempted to read from the Qur’an during his court testimony to show that his statements regarding Islam were Qur’anic. The “anti-vilification” law has already been used by local authorities to forbid the reading of the Qur’an in public because some Muslims deemed those passages to be defamatory of Islam. See <http://www.becketfund.org/index.php/case/101.html>.

²⁴ “Defamation of religions” measures have allowed prosecution for “unreasonable” and “offensive” speech. These standards have been read to include giving charitable aid, criticizing a religious belief, or even telling someone that God would be happier if that person followed a different religion. There is no religious believer – including those who promote such laws – who does not value the ability to assert that his or her beliefs about religious truths are not only better, but true. Indeed, freedom of conscience and its expression is rooted in the *truth* of the inherent dignity of the human person, not in the fickle will of the state.

C. Domestic Implementation

Pakistan, Iran, and Egypt have all expressed strong support for the “defamation of religions” resolutions. Pakistan Penal Code 295 states that defiling Islam or its prophets is deserving of the death penalty; defiling, damaging or desecrating the Qur’an will be punished with life imprisonment; and insulting another’s religious feelings can be punished with 10 years of prison.²⁵ Anti-blasphemy laws “are often used to intimidate reform-minded Muslims, sectarian opponents, and religious minorities, or to settle personal scores.”²⁶ In Iran, an academic and member of the pro-reform Mojahedin of the Islamic Revolution, was sentenced to death for calling for the reformation of religion in which people should not “blindly follow” religious leaders.²⁷ In Egypt, a professor at Cairo University was declared an apostate for teaching his students to read certain parts of the Qur’an metaphorically.²⁸

Each of these instances required the state to mediate which religious viewpoints were acceptable and which were not. Further, in many instances, enforcement of “defamation of religion” measures requires a judgment based on the subjective sensibilities of the listener rather than the objectively ascertainable speech of the speaker. Under the standards promoted by the “defamation of religion” resolutions, when a Muslim states his belief that Jesus was a prophet, but not God incarnate, such statements could also be considered “defamation” against the Christian faith of many believers. But no OIC member state supporting defamation of religion laws would want to strip Muslims of their right to state this Qur’anic teaching. In such an environment, we effectively abolish the right to disagree over matters of truth, rendering “freedom of belief” a mere illusion.

The United States Congress has introduced three bills – two in the House, one in the Senate – with regard to the defamation laws of foreign countries. The bills essentially seek to maintain the U.S. courts’ traditional interpretation of the First Amendment. HR 5814 and S. 2977 (“Free Speech Protection Act of 2008”) establishes a cause of action in U.S. courts for U.S. persons against foreigners suing the U.S. person in a foreign court, if the speech or writing by the U.S. person in the U.S. does not constitute defamation under U.S. law.²⁹ HR 6146 (“To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments”) amends the federal judicial code to prohibit a domestic court from recognizing or enforcing a foreign judgment concerning defamation unless the domestic court determines that the foreign judgment is consistent with the First Amendment to the U.S. Constitution.³⁰

D. Correlation between “Defamation of Religions” and Upsurge in Intolerance

²⁵ No. 295 of 1986; Pakistan Pen. Code (1860)

²⁶ U.S. Department of State, International Religious Freedom Report 2006, “Pakistan.”

²⁷ Amnesty International Annual Report 2003.

²⁸ *See Writer’s Block: Islam and Toleration*, *Economist*, Jan. 27, 1996. As an “apostate,” he was forced to divorce his Muslim wife.

²⁹ HR 5814: Free Speech Protection Act of 2008 - Sponsor: Rep. Peter King [R-NY] 4/16/2008--Introduced. ([Full Text](#)) Last Action: Jun 3, 2008: Referred to the Subcommittee on Courts, the Internet, and Intellectual Property.

S. 2977: Free Speech Protection Act of 2008 – Sponsor: Sen. Arlen Specter [R-PA] 5/6/2008—Introduced. ([Full Text](#)) Last Action: May 6, 2008: Read twice and referred to the Committee on the Judiciary.

³⁰ HR 6146: To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments - Sponsor: Rep. Steve Cohen [D-TN] 5/22/2008--Introduced. ([Full Text](#)) Last Action: May 23, 2008: Sponsor introductory remarks on measure.

General Assembly Resolution 62/154 of 18 December 2007 requests the Secretary-General to address the “possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world;” however, the tone of the resolution seems to imply that the only upsurge in intolerance has been towards Muslims. In fact, religious discrimination and intolerance has been directed at religious minorities from a diversity of traditions around the world. Further, much of the persecution and discrimination has resulted not from “defamation of religions” but from state action against religious minorities and dissenters, who promote viewpoints that are often considered offensive to the majority religious populations in each of these countries.

Just this past winter, anti-Christian violence broke out in Orissa state in India following accusations against Christians of having persuaded Hindus to convert to Christianity; the violence left buildings destroyed and hundreds of Christians homeless. Pakistan has banned Ahmadis from praying with the Qur’an or professing to believe in the Muslim faith; Iran has banned Baha’is; China has banned Falun Gong followers. Religious believers of every stripe are tortured and sent to prison camps in the Democratic People’s Republic of Korea (North Korea) because religion is itself viewed as offensive to the atheist ideology of the state. Conspicuous religious attire, including those of Sikhs and Muslim, in certain public areas has been banned in several European countries, including in France, the Netherlands, and Turkey.

“Defamation of religions” measures do not help these minorities. Such laws only benefit those who are in the majority and have the power to determine what acceptable speech is in the public square.

IV. RECOMMENDATIONS

Religious freedom is best preserved through protection of religious exercise of people of all faiths, not through restricting the speech of people of some faiths. “Defamation of religion” laws claim to protect vulnerable religious communities and the civil dialogue.³¹ However, there are already laws against assault, false imprisonment, fraud, and even defamation of persons. “Defamation of religion” laws in practice act as a form of thought control and work solely to the advantage of religious majorities that have the power to sanction which ideas should be permitted in the public square.

1. U.S. Department of State:

- Despite recent decisions to disengage from certain UN Human Rights Council proceedings, the U.S. Department of State should remain engaged in the debate surrounding resolutions addressing the “defamation of religions.” U.S. engagement symbolizes the importance of the fundamental freedoms of expression and of religion.

2. U.S. Congress

- U.S. Congressmen and Senators should continue to exercise diligent oversight of the State Department on this important issue.

³¹ If respect between religions is the goal, recognition of differences as well as similarities is essential, and in order to recognize differences, conflicting truth claims must be allowed to exist.

- Congress should also develop and promote U.S. legislation protecting the traditional interpretation of "defamation" as a legal concept.

3. **Future UN resolutions on “defamation of religions”**

- The resolution title should be changed to “The Protection of Religious Sensibilities” in order to avoid confusion about the legal term “defamation.”
- The resolution should affirm the already existing standards protecting freedom of thought, conscience, and belief, as enshrined in the UDHR and ICCPR.
- The resolution should draw further on the educational efforts of the High Commissioner and Special Mandate holders to promote peaceful religious expression.
- A distinction should be made between “defamation of religion” measures and traditional defamation laws, in order to emphasize the protection of individuals rather than ideologies, as is customary throughout international law.
- The resolution should address religious intolerance as it applies to all religions, not just Islam.
- The resolution should clearly distinguish between the use of religion to justify or incite violence and hatred, as opposed to peaceful religious speech that may offend the listener.