

**Becket Fund for Religious Liberty
Issues Brief**

“Defamation of Religions”

**Updated 27 May 2008
(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. ABSTRACT

The “defamation of religions” issue is fundamentally inconsistent with the principles outlined in the United Nation’s 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.

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,

¹ Pakistan currently enforces Pakistan Penal Code 295, which outlaws blasphemy with a maximum punishment of execution.

² E/CN.4/1999/L.40

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 all fueled this debate even further.

Other delegates were of the opinion that this resolution was unbalanced in its sole focus on Islam; thus 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 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 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

After passing without a vote the first two years, since 2002, the resolution passed a vote in 2003, 2004, and 2005 at the Commission. 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.¹⁰ 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 a motion renewing the mandate of the Special Rapporteur on freedom of expression “[t]o report on instances where the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination.”¹¹

³ E/CN.4/1999/SR.61, para 1-9.

⁴ E/CN.4/2003/23 in January 2003 and the follow-up report E/CN.4/2005/18/Add.4 in December 2004.

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

⁶ 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, Fourth Session, March 12, 2007; First OIC Observatory Report on Islamophobia, May 2007-March 2008, Organisation of the Islamic Conference, March 2008, p. 8.

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 Commission on Human Rights Resolution 2001/4.

¹⁰ A/RES/60/150.

¹¹ A/HRC/7/L.24 with amendment 4c bis.

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.¹²

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 religion.¹³ Similarly, Amyebi Ligabo, Special Rapporteur on freedom of expression, has expressed concern about the sacrifice of free expression for the sake of religious feelings.¹⁴

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diene, has been supportive of the movement to forward measures regarding “defamation of religions.” As a result, the OIC has consistently proposed its “defamation of religions” resolutions under the racism agenda item rather than under the religion or expression agendas.¹⁵

D. Durban Review

In 2001, 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).¹⁶ Although the conference is supposed to be focused on racism, it is expected that “defamation of religions” will be a central issue at the upcoming conference.¹⁷ Many are calling on countries to boycott the upcoming Durban II.¹⁸

¹² The Becket Fund thanks Tina Ramirez, Co-Chair of the 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.

¹³ From her report to the General Assembly in 2007:

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.”

A/62/280.

¹⁴ In his 2008 report to the UNHRC (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.”

¹⁵ 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.

¹⁶ The DDPA is available at <http://www.unhchr.ch/pdf/Durban.pdf>. The conference will take place in Geneva, Switzerland April 20-24, 2009.

¹⁷ 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,

III. LEGAL AND ANALYTICAL FRAMEWORK

A. International law framework

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 protection of freedom of religion or belief.

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.¹⁹ “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 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 exactly what 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, worldview, 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

Armenia, Croatia, Estonia, Russia, Belgium, Greece, Norway, and Turkey. The Vice-Chair Rapporteur is from Cuba.

¹⁸ Canada, Israel, and the United States have indicated they will boycott Durban II.

¹⁹ For example, Shi’a, Sunni, Alevi, Ahmadi, Sufi, Ismaili, 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.

cannot be empirically proven true.²⁰ “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.²¹ Ultimately, “defamation of religions” measures empower majorities against dissenters and the state against individuals.

IV. RECOMMENDATIONS

1. Country delegates and observers, especially NGOs, should educate themselves on this issue so that the underlying theoretical problems are more deeply understood throughout the United Nations. “Defamation of religions” should be understood as international anti-blasphemy laws that are unlikely to promote tolerance or respect because of their selective enforcement and empowerment of states rather than individuals, and majorities in power over minorities with little voice.
2. NGOs need to develop bilateral relationships with countries who are currently abstaining on the “defamation of religions” resolutions but might vote against them if they better understood the issue.²²
3. Asma Jahangir’s role as the holder of mandate for Special Rapporteur on freedom of religion or belief will be challenged in the next year at the UNHRC. Because she grasps the “defamation of religions” issue, it is important for the UNHRC to renew her role as the mandate holder.
4. The High Commission on Human Rights has called for NGOs to contribute to her reports on “Combating Defamation of Religions” by 2 June 2008 (contact Ms. Tania Naydenova at tnaydenova@ohchr.org).

²⁰ 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 ironically, some Muslims deemed those passages to be defamatory of Islam. See <http://www.becketfund.org/index.php/case/101.html>.

²¹ “Defamation of religions” measures have allowed prosecution for “unreasonable” and “offensive” speech. These standards have been read to include giving charitable aid, criticising 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.

²² South American and Sub-Saharan countries are the most obvious examples.