

**Becket Fund for Religious Liberty
Issues Brief**

“Defamation of Religions”



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The Becket Fund is a nonprofit, public interest law firm protecting the religious freedom of people of all faiths. Our clients have included Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians.

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I. EXECUTIVE SUMMARY

“Defamation of religions” as a concept violates the very foundations of the human rights tradition by protecting ideas rather than the individuals who hold ideas, and is thus fundamentally inconsistent with the principles outlined in the United Nations’ founding and legal documents. Further, laws combating the “defamation of religions” 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 existing 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 protection of religions or ideologies instead of individuals; the conflation of race and religion; the erosion of freedom of expression as a fundamental freedom; overbroad and vague language that can easily be abused by states, including in the use of the term “defamation of religions” itself; and a narrow focus on protection of Islam.

II. PROCEDURAL HISTORY

A. *Introduction of a Resolution*

The “defamation of religions” issue was first introduced to the United Nation’s Commission on Human Rights (the “Commission”) in 1999 by Pakistan on behalf of the Organisation of the 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 in Europe preceding World War II.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 publication of twelve cartoons parodying the Prophet Mohammad in the Danish newspaper *Jyllands-Posten*, and the production of the Dutch film *Fitna* only intensified this debate.

¹ Pakistan currently enforces Pakistan Penal Code § 295, which imposes capital punishment for blasphemy, including defamation of Islam. See PAK. PEN. CODE § 295 (1860).

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

³ See HRC 61st Meeting, U.N. Doc. E/CN.4/1999/SR.61, ¶¶ 1-9 (May 3, 1999).

⁴ See HRC Res. 2003/4, U.N. Doc. E/CN.4/2003/23 (Jan. 2003); see also HRC Res. 2005/3, U.N. Doc. E/CN.4/2005/18/Add.4 (Dec. 2004).

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 Human Rights Council) under the racism agenda item each year since 1999.⁵ The resolution has also been introduced in the General Assembly each year 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 on “defamation of religions” at the UN usually occur along regional divisions with support for the resolution coming from the OIC and the Africa Group (led by Egypt). The resolutions also conflate 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 by consensus 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 (the “GA”) 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.

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.

⁵ Resolutions on “Combating “defamation of religions”” have been tabled and passed by the UN annually since 1999. *See* HRC Res. 2000/84; 2001/4; 2002/9; 2003/4; 2004/6; 2005/3; U.N. Doc. A/HRC/4/L.12 (Mar. 26, 2007); U.N. Doc. A/HRC/7/L.15 (Mar. 20, 2008).

⁶ G.A. Res. 60/150, U.N. Doc. A/RES/60/150 (Dec. 16, 2005); G.A. Res. 61/164, U.N. Doc. A/RES/61/164 (Dec. 19, 2006); G.A. Res. 62/154, U.N. Doc. A/RES/62/154 (Dec. 18, 2007); G.A. Res. 63/171, U.N. Doc. A/RES/63/171 (Dec. 18, 2008).

⁷ Statement of Mr. Ekmelledin Ihsanoglu, OIC Secretary General, UN Human Rights Council, 4th Sess. (Mar. 12, 2007); OIC, *First OIC Observatory Report on Islamophobia*, May 2007-Mar. 2008, at 8 (Mar. 2008).

⁸ Please contact the Becket Fund for an addendum including a more extensive analysis of “Defamation of Religions” votes at the United Nations. The Becket Fund thanks Tina Ramirez, former Co-Chair of the United States Congressional Human Rights Caucus’s Task Force on International Religious Freedom for her research assistance on sections A and B of this Procedural History.

⁹ *See* HRC Res., 61st Meeting, 2001/4 (Apr. 18, 2001).

¹⁰ *See id.*

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

¹² *See id.*

In March 2009, the Human Rights Council resolution proposed a relationship between “defamation of religions” and “incitement” laws for the first time. The resolution nonetheless passed the Council with a vote of 23 in favor, 11 against, and 13 abstentions.¹³ The OIC is expected to table the General Assembly version of this resolution in the coming weeks.

C. Special Rapporteur Mandates

In 2008 the OIC successfully introduced an amendment to the mandate of the Special Rapporteur on freedom of conscience and 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.”¹⁴

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.

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 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, Frank La Rue, Special Rapporteur on freedom of expression, has expressed concern about the sacrifice of free expression for the sake of religious feelings.¹⁶

The OIC has consistently proposed its “defamation of religions” resolutions under the racism agenda item rather than under the religion or expression agendas.¹⁷ The previous Special

¹³ See U.N. Doc. A/HRC/10/L.2/Rev.1 (Mar. 26, 2009).

¹⁴ HRC, *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, amend. 4c bis. (Mar. 25, 2008).

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 (Aug. 20, 2007).

¹⁶ In December 2008, the expert mechanisms on freedom of expression from the UN, the OSCE, the African Commission on Human and Peoples’ Rights, and the OAS issued a joint statement which stated:

“International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of ‘defamation of religions’.”

See *Joint Declaration on Defamation of Religions, and Anti-Terrorism, and Anti-Extremism Legislation* (Dec. 9, 2008), available at http://www.osce.org/documents/rfm/2008/12/35705_en.pdf (last visited Oct. 20, 2009).

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

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.” However, at the end of his tenure as Special Rapporteur, Mr. Diene agreed that the problem of “defamation of religions” was better approached as a sociological phenomenon rather than a legal concept.¹⁸

The current Special Rapporteur on racism, Mr. Githu Muigai, was joined by Ms. Jahangir and Mr. La Rue in a statement given at the Durban Review Conference in April 2009:

Indeed, the difficulties in providing an objective definition of the term “defamation of religions” at the international level make the whole concept 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”[...] It is necessary to anchor the debate on these issues in the relevant existing international legal framework, provided for by the ICCPR.¹⁹

D. Durban Review and Ad Hoc Committee – the first potentially binding international treaty

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. The United States and Israel walked out of the conference, citing aggressive expressions of anti-Semitism and holocaust denial by participants and delegates. The European Union continued to work toward creating a final conference document that would be constructive in the global fight against racism.

“Durban II,” held in Geneva in April 2009, was intended as a review of the implementation of the Durban Declaration and Programme of Action (“Durban Declaration”) from Durban I.²⁰ Although the conference was supposed to be focused on racism, the debate over “defamation of religions” became a major concern of member-states and ultimately contributed to the boycott of the conference by some countries, including the Australia, Canada, Germany, Israel, the Netherlands, and the United States.²¹ The Final Outcome Document from the Durban Review Conference deleted all references to the “defamation of religions” but did include a section addressing the “derogatory stereotyping and stigmatization of persons based on their religion or

recommendations. The OIC preferred language that would ask states to “consider” responding positively.

¹⁸ Diene expressed this sentiment at the October 2008 Expert Meeting held in Geneva under the auspices of the UN Office of the High Commissioner for Human Rights.

¹⁹ See Githu Muigai, Asma Jahangir & Frank La Rue, *Freedom of Expression and Incitement to Racial or Religious Hatred*, Statement at OHCHR Side Event During the Durban Review Conference (Apr. 22, 2009) [hereinafter “Joint Statement of Githu Muigai, et al”], available at <http://www2.ohchr.org/english/issues/opinion/docs/SRJointstatement22April09New.pdf> (last visited Oct. 20, 2009).

²⁰ See Durban Declaration and Programme of Action, available at <http://www.un.org/WCAR/durban.pdf> (last visited Oct. 20, 2009). The conference took place in Geneva, Switzerland April 20-24, 2009.

²¹ 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.

belief.” This language was a major improvement in its focus on the individual rather than the ideology.²²

Durban Declaration paragraph 199 also recommended “that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects.” The Commission on Human Rights, in its resolution 2002/68, created the Intergovernmental Working Group to follow up on Durban I.

The Human Rights Council, in decision 3/103, established that the Ad Hoc Committee on the Elaboration of Complementary Standards (“Ad Hoc Committee”) would be responsible for elaborating complementary standards.²³

In December 2008, the President of the Ad Hoc Committee issued a “Non Paper” to “stimulate a constructive debate on the content and the framework of major areas of vulnerability.”²⁴ In his letter he discussed the “need to re-emphasize that the prohibition of publication of material with the aim of protecting the rights of others and against seriously or gratuitously offensive attacks on matters regarded as sacred by the followers of any religion is a legitimate State objective.”²⁵ Ambassador Jazairy has also proposed an optional protocol to Article 4 of the International Convention on the Elimination of All forms of Racial Discrimination (“ICERD”) that would address the “defamation of religions.”²⁶

In its submission to the Ad Hoc Committee on behalf of the OIC, Pakistan wrote that the new convention should introduce “development of new internationally binding normative standards” incorporating “defamation of religions, religious personalities, holy books, scriptures and

²² See Durban Review Conference, *Outcome Document*, ¶ 12 (Apr. 2009), available at http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf (last visited Oct. 20, 2009).

²³ Human Rights Council resolution 6/21 of 28 September 2007 also recalls “its decision 3/103 of 8 December 2006, by which, heeding the decision and instruction of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it decided to establish the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards, with the mandate to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps in the Convention, and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred.” HRC, Res. 6/21: *Elaboration of international complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination* (Sept. 28, 2007).

²⁴ Letter from Amb. Idriss Jazairy, President of the Ad Hoc Committee on complementary standards, to the Permanent Mission of the Office of the United Nations and all other International Organizations in Geneva, *Non Paper on Complementary International Standards to Strengthen and Update International Instruments Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in all their Aspects* (Dec. 5, 2008) (on file with author).

²⁵ See *id.*

²⁶ See *id.* at 4.

symbols.”²⁷

In October, 2009, the Ad Hoc Committee met in Geneva to discuss the optional protocol.

E. Human Rights Committee General Comments

The Human Rights Committee (“the Committee”) is a body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (“ICCPR”).²⁸ The Committee is empowered to hear individual and inter-state complaints alleging violations of the ICCPR and to issue interpretative General Comments of the ICCPR. The three General Comments most directly affecting freedom of religion or belief and freedom of expression have interpreted permissible state restrictions of these freedoms to be very narrowly tailored.²⁹ For example, the Committee’s current General Comment 10 on ICCPR Article 19 states in part, “Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, *these may not put in jeopardy the right itself*.”³⁰

The Human Rights Committee will soon consider a reinterpretation of Article 19 of the ICCPR. In October 2009, Michael O’Flaherty, an expert from Ireland, is expected to present his draft general comment 34 on Article 19 of the ICCPR to replace the current General Comment.³¹ The new draft general comment on Article 19 may also touch on ICCPR Article 20(2), which declares, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”³² Other experts, including Asma Jahangir, have also discussed issuing a new general comment on Article 20 of the ICCPR.³³

²⁷ UN Office of the High Commissioner for Human Rights (“OHCHR”), Ad Hoc Committee on the Elaboration of Complementary Standards, *Submission of the Permanent Mission of Pakistan*, 3 (May 30, 2009).

²⁸ See ICCPR, 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.

²⁹ See UN High Comm’r for Human Rights, HRC., *General Comment No. 10: Freedom of expression (Art. 19)*, (Jun. 26, 1983) [*General Comment 10*]; UN High Comm’r for Human Rights, HRC., *General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20)*, (July 29, 1983); UN High Comm’r for Human Rights, HRC., *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, CCPR/C/21/Rev.1/Add.4 (July 30, 1993).

³⁰ See *General Comment 10* (emphasis added).

³¹ See UN High Comm’r for Human Rights, HRC., *General Comment No. 34: Freedom of expression (Art. 19)*, CCPR/C/GC/34/CRP.1, (Aug 31, 2009).

³² See ICCPR art. 20(2).

³³ See Report to the HRC by Asma Jahangir, U.N. Special Rapporteur on freedom of religion or belief (Mar. 23, 2009) (on file with author); see also Joint Statement of Githu Muigai, et al, *supra* note 19.

F. *The Debate in the Context of “Incitement”*

Supporters of the “defamation of religions” concept have also attempted to identify the concept within existing language in Article 20 of the ICCPR, which addresses “incitement to discrimination, hostility, or violence.”³⁴

In the 12th session of the Human Rights Council in September 2009, the United States and Egypt co-sponsored a fiercely negotiated resolution on freedom of expression in an attempt to bridge the debate over limitations on this freedom.³⁵ The resolution passed by consensus but not without controversy. Civil society, including the Becket Fund, welcomed the resolution with mixed reactions due to ambiguous language that expressed the Council’s concern for “negative racial and religious stereotyping.”

The document also condemned “religious hatred that constitutes incitement to discrimination, hostility or violence”—language that paraphrases Article 20 of the ICCPR. In the explanation of its vote, Pakistan, on behalf of the OIC, declared its “hope that [this] consensus outcome would lead to better understanding of our concerns regarding defamation of religions.”³⁶ However, UN Special Rapporteurs have previously recognized difficulties caused by vague Article 20 language referring to incitement to “hostility”:

Defining which expression may fall under the categories of incitement to commit *genocide, violence or discrimination* may be an easier task than to determine which expressions amount to incitement to *hostility*... The notion of incitement to *hostility* may, however, be more prone to subjective approaches, very much depending on the perspective taken.³⁷

The question of how to define incitement in a way that does not have a chilling effect on speech and religious expression in the same way that the “defamation of religions” concept does thus remains a challenge.

Further, the discussion surrounding the definitions of “defamation” and “incitement” implicate the distinction between the legal concepts of incitement on the one hand, and provocation on the other. Traditionally, only incitement is punishable by law. Incitement to violence is where one party instigate another party to commit an act of physical violence against a third party. On the other hand, provocation is what has traditionally been a failed defense of the violent act itself – the violent actor defends the violence by saying the speaker provoked him to anger and physical retaliation. But expressions that may be provocative in nature are not an excuse for the listener to respond with violence. The law should focus on protecting individuals from violence, not on protecting the violent actor by making the excuse he was motivated to violence by speech that offended him.³⁸

³⁴ See ICCPR art. 20.

³⁵ See generally HRC, U.N. Doc. A/HRC/12/L.14/Rev.1 (Sept. 30, 2009).

³⁶ Explanation of Vote on Draft Resolution L.14 at 12th Session of the HRC.

³⁷ See Joint Statement of Githu Muigai, et al, *supra* note 19.

³⁸ The history of Article 20 – which was directed at Nazi propaganda in Part 1 and Nazi incitement against minorities in Part 2, bears this out. The Nazis were not responding to provocations from minority groups such as Africans, Arabs, Asians, Jews, homosexuals, Muslims, and others. They were actively inciting violence against those minorities.

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 . . . 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 religions” resolution protects 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.”³⁹ “Defamation of religions” 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, Ambeyi Ligabo, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and 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; neither is there protection for the collective rights of a sometimes disparate group of people within a larger faith tradition.⁴⁰ “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 in 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.

³⁹ Report to the HRC, U.N. Doc. A/HRC/2/3 (Sept. 20, 2006).

⁴⁰ 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.

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 of religions” suit is subject to whatever ideas, worldviews, or religious beliefs the judging authority holds to be true.

“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 religions,” as belief cannot be empirically proven true.⁴¹ “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.⁴² Ultimately, “defamation of religions” measures empower majorities against dissenters and the state against individuals. And once the state is empowered to restrict expression in one sphere, the slippery slope to even more oppressive restrictions is easily realized. Protecting “bad” speech – peacefully expressed – is a safeguard for protecting all “good” speech.

The conflation of race and religion diminishes the uniqueness of both race and religion. Unlike immutable race, religion involves the freedom to follow one’s conscience. Treating racial and religious discrimination as the same thing confuses racist hate speech with discussion of (sometimes controversial) truth claims. Whereas one can easily identify and narrowly define racist hate speech, it is not nearly so simple to define what falls into the category of “defamation of religion,” which as currently characterized can include any controversial truth claim about someone’s religion. Race-based speech restrictions have never been used to cut off

⁴¹ 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 Press Release: *Australia—Criminalizing Religious Speech—Pastors Scot and Nalliah*, THE BECKET FUND, available at <http://www.becketfund.org/index.php/case/101.html> (last visited Oct. 20, 2009).

⁴² “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.

discussion about racial identity, whereas the “defamation of religion” measures by definition prohibit controversial discussion of religious belief.

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 deserves 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.⁴³ Although such laws may be premised on the idea of protecting the image and reputation of Islam domestically and abroad, in actuality, anti-blasphemy laws “are often used to intimidate reform-minded Muslims, sectarian opponents, and religious minorities, or to settle personal scores.”⁴⁴ In the process, they severely hinder the quest for religious truth. 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.⁴⁵ In Egypt, a professor at Cairo University was declared an apostate for teaching his students to read certain parts of the Qur’an metaphorically.⁴⁶

In other instances, anti-blasphemy laws punish mere trivialities. In November 2007, a Sudanese court sentenced a British teacher to fifteen days in jail for “insulting religion,” after she named a class teddy bear Mohammed. The bear had been named after a popular student in class who was also named Mohammed. The teacher was pardoned and deported the following month.⁴⁷

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 religions” 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 religions” 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 religions” laws would want to strip Muslims of their right to state this Qur’anic teaching. Adherents of one religion, Islam included, cannot share their beliefs with adherents of other religions and risk being prosecuted even for statements made in casual discussion. In such an environment, the right to disagree over matters of truth is effectively abolished, rendering “freedom of belief” a mere illusion.

The United States Congress has introduced several bills with regard to the defamation laws of foreign countries. Three bills essentially seek to maintain the U.S. courts’ traditional

⁴³ PAK. PEN. CODE § 295 (1860).

⁴⁴ U.S. Dep’t of State, Pakistan, 2006 Report on International Religious Freedom, *available at* <http://www.state.gov/g/drl/rls/irf/2006/71443.htm> (last visited Oct. 20, 2009).

⁴⁵ See Amnesty International, *Annual Report 2003*, *available at* <http://www.amnesty.org/> (last visited Oct. 20, 2009).

⁴⁶ See *Writer’s Block: Islam and Toleration*, THE ECONOMIST (Jan. 27, 1996). As an “apostate,” he was forced to divorce his Muslim wife.

⁴⁷ See *Teddy Row Teacher Leaves Sudan*, CNN.COM (Dec. 3, 2007), *available at* <http://www.cnn.com/2007/WORLD/africa/12/03/sudan.teacher/index.html> (last visited Oct. 20, 2009).

interpretation of the First Amendment. HR 1304 and S. 449 establish a cause of action in U.S. courts for U.S. persons against foreigners who sue 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.⁴⁸ HR 2765 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.⁴⁹

In September 2009, the US House of Representatives also proposed a resolution “expressing the sense of the House of Representatives that the United Nations resolutions on the “defamation of religions” are incompatible with the fundamental freedoms of individuals to freely exercise and peacefully express their religious beliefs.”⁵⁰

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

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, while adherents to a particular religion may feel especially discriminated against at any given time or in certain contexts, religious discrimination and intolerance have 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 local majority religious populations.

In 2008, 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 Muslims, 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 control of the government and have the power to determine what acceptable speech is in the public square.

⁴⁸ See Free Speech Protection Act, H.R. 5814, 110th Cong. (2008) (as referred to the Subcomm. on Courts, the Internet and Intellectual Prop., Jun. 3, 2008); Free Speech Protection Act, S. 2977, 110th Cong. (2008) (as read twice and referred to the Subcomm. on the Judiciary, May 6, 2008).

⁴⁹ H.R. 6146, 110th Cong. (2008) (as introduced to Senate, May 23, 2008).

⁵⁰ H.R. Res. 763, 111th Cong. (2009).

IV. CONCLUSION

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 religions” laws claim to protect vulnerable religious communities and the civil dialogue. However, there are already laws against assault, false imprisonment, fraud, and even defamation of persons. “Defamation of religions” 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.

Thus, rather than pursue limitations on expressive rights, state actors should recall the positive right that the law exists to protect—the ability to seek and express truth claims in a safe environment. Efforts to encourage civil dialogue should therefore focus on enforcing existing laws that make it possible for people to exercise fundamental rights freely and peacefully.