

Recommendations on actions to help repeal and reform blasphemy laws within the international human rights framework.

Brief background: International Legal Standards and Blasphemy laws

Blasphemy laws stand in opposition to international human rights law. Not only is the concept of blasphemy fundamentally inconsistent with the principles outlined in Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR),¹ the UN Human Rights Committee's General Comment 34 explicitly affirms that, "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant."²

Blasphemy laws not only undermine the rights to freedom of belief and freedom of expression, they are also discriminatory by nature by affording different levels of protection to different religions.³ Indeed, blasphemy laws can be understood as the antithesis of human rights. At a normative level, they establish a hierarchy of beliefs that betrays the common understanding and intentions of the international human rights framework. Blasphemy laws tend to serve those in power and enable religious persecution; they censor, they create a climate of fear, and they stifle artistic creativity, academic research, scholarship and freedom. They may also lead to imprisonment and death – thus violating the most potent human rights of all - the right to mental and physical integrity, and the right to life."⁴

This inconsistency of blasphemy laws with international standards is but one of many problems related to their continued presence on penal codes. Firstly, the prohibition of so-called blasphemy has become "an increasingly common way for governments to silence debate; not only debate about religion per se but to silence dissenting views on politics, calls for individual freedoms, or to provoke hatred against minorities."⁵ Secondly, such laws risk legitimising

¹ Article 18 guarantees the right to freedom of thought, conscience and religion which also includes the right to change or reject any religion and to manifest one's religion or belief; in public or in private, in teaching, practice, worship, observance and expression. Article 19 adds that everyone has the right to freedom of opinion and expression, including the freedom to impart information and ideas through any media and regardless of frontiers.

² CCPR/C/GC/34:48

³ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>

⁴ <https://www.article19.org/data/files/pdfs/publications/blasphemy-hate-speech-article.pdf>

⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/041/49/PDF/G1404149.pdf?OpenElement>

religious intolerance, creating a permissive environment for vigilante justice and inter-communal violence. Thirdly, the concomitant social stigma that comes with blasphemy laws has been shown to inhibit the individual's right to a fair trial and due process of law. The recourse to justice for those accused of blasphemy is at best, skewed; at worst, non-existent.⁶

International law does impose one clear positive duty upon states in terms of restricting expression: as stated in Article 20(2) of the ICCPR: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." This is the only duty that States are under in the context of restricting freedom of expression.

The UN's Rabat Plan of Action here: "Limitation of speech must remain an exception," and that restrictions must not be "overly broad, so that they do not restrict speech in a wide or untargeted way."⁷ This means that laws aimed at protecting the "feelings" of religious believers through criminal law, where there is no incitement to discrimination or violence, do not pursue a legitimate aim.

Whilst it is clear that blasphemy laws, religious defamation laws or any laws protecting religious ideas or feelings are incompatible with international Human Rights standards, unfortunately there is a significant gap between this reality and many States' acceptance of this and implementing their laws accordingly. The rest of this statement therefore, will look at how to help close the gap between the reality of blasphemy laws being terrible laws and incompatible with international Human Rights law, and the implementation globally of that reality.

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1. Need for better literacy on human rights, FoRB and beliefs.

Mutual reinforcement of Freedom of Expression and Freedom of Religion or Belief

It is no coincidence that the right to freedom of expression and the right to freedom of religion or belief (FoRB) are stated together in the international covenants. Articles 18 and 19 are intertwined, and generally stand or fall together. Indeed, this is apparent when looking at "blasphemy" laws that claim to protect religious freedom, but in reality are incompatible with both the right to freedom of expression and religion or belief.

⁶ See more at <https://end-blasphemy-laws.org/whats-wrong-with-blasphemy-laws/>

⁷ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>, para 18

However, supporters of, and governments defending, blasphemy laws often *intentionally seek to present the two rights in conflict* with each other in order to polarise the debate, to inflame religious sentiment and to make reform more difficult. Whilst they present blasphemy laws as protecting religious ideology and feelings in contrast to the human right to free expression and free thought, this is a false dichotomy that goes against the foundation of human rights. Indeed, free expression is very much compatible with freedom of religion or belief, the latter depending on the former for its manifestation. Both are essential in the solution to intolerance; and both constitute the underpinning of any society which values equality, human dignity and mutual understanding.

To enjoy the right to freedom of religion or belief fully, several other rights must also be protected, including of course the right to freedom of expression. Freedom of religion or belief is also related to other rights in the sense that discrimination on the grounds of religion or belief rarely concerns only restrictions of religious practices and manifestations, but also entails violations of other rights.

Maintaining and publicising this reality of a mutually reinforcing relationship between free expression and freedom of religion or belief, is essential in convincing people to support the repeal of blasphemy laws and in opposing the instrumentalisation and distortion of religion to silence dissent.

Manifestation of one religion or belief may be blasphemous to another

It is worth remembering that even the expression or manifestation of one's genuinely-held beliefs can be interpreted as blasphemous by someone else. So, it is not just a free speech argument versus freedom of religion or belief argument, but *blasphemous content can be the result of the simple manifestation of the right to freedom of religion or belief itself*.

A law against "blasphemy" depends on some standard of what counts as "blasphemy", which assumes something like a correct, inviolable standard of religion which is being blasphemed against. But even when states try to found blasphemy laws on a single religious text, it is abundantly clear that different sectarian groups within a single religion interpret all mainstream scriptures in a variety of ways, with different groups deciding that some declarations or depictions are 'blasphemous' while others disagree, or find other declarations or depictions 'blasphemous'.

The expression of atheist or Humanist views might be an obvious example here; where the expression or manifestation of one's genuinely-held humanist belief - for example the denial of

the existence of god - might be interpreted as blasphemous by someone else. But also within religion “blasphemous” views are common; evolutions in religious views have been interpreted as blasphemous at the time of their original expression. And many Islamic scholars consider deviations from their own sect (either Sunni or Shia) blasphemous, as well as sects such as Ahmadiyya which they do not recognise as “Islamic”, but which are frequently treated as “blasphemous” to Islam.⁸

Notably, in international law, the terms “belief” and “religion” are to be broadly construed so it is worth remembering that when we talk about expression of religion or belief, it covers a very wide range of thought. Article 18 of the ICCPR (and the UDHR) is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.⁹

In sum: to have true freedom of religion or belief for all, you have to accept blasphemy.

Of course, resisting censorship does not imply silence and positive obligations surrounding "counter-speech" and positive speech should always be encouraged. This brings me to a related point on hate speech and intolerance and its impact on the process of repealing blasphemy laws.

2. Need to concurrently tackle hate and intolerance positively, whilst seeking to convince governments to repeal blasphemy laws.

Quite often, blasphemy laws are presented as a mechanism to deal with hate and intolerance. Whilst they are consistently the wrong tools for doing so (some of the reasons for which are covered above), the role of hate speech and incitement to hate in many societies and countries is a severe and genuine problem and a threat to peace - and it should be taken seriously. Since an ongoing challenge in the move to abolish blasphemy laws is the rise in hate speech and the insufficient measures taken in combating it, along with the conflation of hate speech and blasphemy, I would recommend that if the US and its allies want to convince countries to abolish blasphemy laws, this recommendation needs to be made in tandem with a recognition of the need for policies and initiatives that tackle hate.

Hate and intolerance is of growing concern in much of the world. Over the past two decades, ‘hate speech’ incidents, motivated on various grounds – including religion or belief - have

⁸ https://fot.humanists.international/countries/asia-southern-asia/pakistan/#Establishing_blasphemy_laws

⁹ CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), <https://www.refworld.org/docid/453883fb22.html>

increased. This is often accompanied by an increase in the number of hate crimes being recorded.¹⁰ [need to get reference for this]

A 2018 report by the advocacy group Article 19 looking at the legal framework and practices related to 'hate speech' in six European countries found widespread deficiencies across the countries' national frameworks on 'hate speech' in terms of compatibility with international freedom of expression standards, as well as inconsistencies in implementation of the available legislation.¹¹ The six countries were also found to be failing to provide effective remedies to victims of 'hate speech', with their legal and policy frameworks insufficient to enable effective resolution of inter-communal tensions or poor social cohesion.

But, it is important to distinguish between blasphemy laws – which protect ideas and/or feelings – and legitimate anti-incitement speech laws and policies which should protect individuals, should be carefully designed to promote equality and protect against discrimination, and should meet the three-part test set out in Article 19 of the ICCPR.

Criminalising speech criticising religious ideas or values is counterproductive in any question to lessen hate and intolerance; it fails to protect those with minority beliefs and actually most often make those minorities a target of hate. If we are to genuinely counter intolerance, we must protect the rights of all individuals whatever their belief. We must fulfil our moral duty to counter offensive expression through dialogue, counter-speech, education, and public debate.

So, whilst the repeal of blasphemy laws is essential to respecting and realising the human rights of all, in concurrence I recommend that we have to be mindful of the need for: (a) legitimate measures against incitement to hate; (b) policies and actions to tackle the causes of inequality and discrimination in all its forms; and (c) positive counter-speech. On this last point I am talking about recognising our positive duty to speak out when we hear hateful or insulting comments against people or groups. This is very different to making such comments illegal.

Along with better education about human rights norms and protections, and about the suffering blasphemy laws are causing individuals globally, we need a more convincing commitment to genuinely tackling hate and intolerance, if we are to see the abolition of blasphemy laws globally. Until then I feel many people will cling on to them in the false view they protect individuals from hate and discrimination.

3. Need to engage in multilateralism and diplomacy

¹⁰ https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf

¹¹ https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf

As with most change, there needs to be dialogue and persuasion; both to convince relevant governments of the arguments and how they might sell the arguments, but also to sway public opinion too.

I would argue that engagement via the multilateral fora is key here. Indeed, the US has an admirable legacy in this area. In 2011, it was part of a core group of States to use diplomacy and multilateralism in order to finally rid the UN Human Rights Council of a 10-year old resolution on “defamation of religion.” A resolution that had been sponsored by the Organisation of Islamic Cooperation (OIC) since 2001.

After the US became a member of the Council in 2009, the OIC’s political influence began to wane, as did support for its defamation resolutions. By the start of 2011, it had become clear that the ‘defamation of religions’ resolution was no longer sustainable. Effective US diplomacy made it highly likely that further resolutions would be defeated, while expert criticism had undermined the theoretical and legal underpinnings of the OIC’s approach.¹²

As a consequence the US worked with the OIC, along with the UK and Turkey, to draft an alternative resolution on tackling intolerance and hate. The resolution managed to bridge polarised views on how to effectively address intolerance based on religion or belief. Instead of the idea that blasphemy or defamation laws were the right way to do so, the resolution committed States to tackling religious intolerance through promoting the rights to freedom of expression, freedom of religion or belief, and non-discrimination.

This watershed moment in human rights diplomacy at the UN, led by the US, encapsulates the effective combination of principle, determined diplomacy and multilateral cooperation.

This resolution gave rise to the important Istanbul process, which joins a number of other multilateral processes working to eliminate blasphemy laws and the context in which they thrive. For example, the Office of the United Nations High Commissioner for Human Rights Rabat plan of Action,¹³ the Office of the United Nations High Commissioner for Human Rights Faith for Rights Framework,¹⁴ the Fez Process and the Fez Plan of Action on the role of religious leaders in preventing incitement to violence that could lead to atrocity crimes¹⁵, the UN Secretary

¹² https://www.universal-rights.org/wp-content/uploads/2015/02/URG_report-1618-Dec2014.pdf

¹³ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>

¹⁴ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>

¹⁵ <https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf>

General's Plan of Action on Hate Speech.¹⁶ The US also co-leads the International Contact Group on Freedom of Religion or Belief.¹⁷ There is no need to reinvent the wheel here; but rather to support, engage and improve the process that already exist in line with its aims on repealing blasphemy laws globally.

4. Need to lead by example

I want to end with a final recommendation: to lead by example.

One simple way, for example, is for the Senate to follow the lead of the House and pass Senator Lankford's resolution, SRes458.

Another is for the State Department to designate countries that enforce blasphemy, heresy, or apostasy laws as "countries of particular concern" for religious freedom under section 402(b)(1)(A)(ii) of the International Religious Freedom Act of 1998 for engaging in or tolerating severe violations of religious freedom, as a result of the abuses flowing from the enforcement of such laws and from unpunished vigilante violence often generated by blasphemy allegations.

More generally, there is a need to be even-handed in the approach to different religions and beliefs. There is a tendency by some countries to prioritise Christian minorities abroad or Muslim minorities. This is deeply unhelpful and shows a political, rather than real, commitment to change.

Blasphemy laws affect people of all religions and none. To lead by example the US must show equal concern for all those affected by blasphemy laws, whatever their beliefs.

Summary and Recommendations

Blasphemy laws work in opposition to all international standards and understandings of basic human rights and dignity. They are intrinsically bad laws; subjective and inconsistent in nature, with no "right way" to use them. There is a plethora of existing international law, which addresses

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<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

¹⁷ https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/frb-lrc/2019-03-06-meeting-reunion.aspx?lang=eng

discrimination, personal defamation, and incitement in a more carefully focused way than blasphemy laws ever could, without threatening the basic right of every individual to freedom of expression and belief.

Open discussion is “the soundest way to probe whether religious interpretations adhere to, or rather distort, the original values that undermine religious belief.”¹⁸ Relying on notions of offense or insult when it comes to silencing criticism of ideas not only runs counter to the international guarantee of the right to freedom of expression and opinion, but silences dissent and necessary critique of governments.

Recommendation for Congress:

- The Senate should follow the lead of the House and pass Senator Lankford’s resolution, SRes458, immediately.

Recommendations for the Department of State:

- Designate countries that enforce blasphemy, heresy, or apostasy laws as countries of particular concern¹⁹ for religious freedom under section 402(b)(1)(A)(ii) of the International Religious Freedom Act of 1998 (22 U.S.C. 6442(b)(1)(A)(ii))²⁰ for engaging in or tolerating severe violations of religious freedom, as a result of the abuses flowing from the enforcement of such laws and from unpunished vigilante violence often generated by blasphemy allegations.
- Encourage other States to publicly condemn, and more urgently, investigate harassment against those exercising their free expression. States should take active steps to prevent vigilante violence against those seeking to question or criticise religious or non-religious belief, practices or authorities. International trial observation is a mechanism that could be considered in those states where fair hearings have been found difficult to guarantee.
- Encourage freedom of religion or belief and human rights literacy programmes internationally, so as to prevent the right from being intentionally misconstrued or instrumentalized.

¹⁸ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>

¹⁹ <https://www.state.gov/frequently-asked-questions-irf-report-and-countries-of-particular-concern/>

²⁰ <http://uscode.house.gov/quicksearch/get.plx?title=22§ion=6442>

- Encourage States to revise their legislation regarding the prohibition of incitement to discrimination, hostility or violence, such that:
 - Criminal sanctions should be applied only in the most severe cases;
 - It applies a broad set of measures to sanction and prevent incitement to hatred, including: promotion of free and open discourse and intercultural dialogue; pluralism and diversity and positive measures for the protection of minorities and vulnerable groups.
 - It ensures independent and pluralistic media;
 - It increases activities aimed at fostering inclusion and counters negative stereotypes, in particular at the grassroots level.

Recommendations for the President-Elect and his cabinet

- Ensure that the State Department's International Religious Freedom Office—under his leadership—approaches the issue in a manner that includes the rights of nontheists.
- Be inclusive on freedom of religion or belief, remembering the variety of beliefs and non-beliefs covered by the right, including non-traditional and specifically non-religious beliefs and lifestyles.
- Recommence participation in multilateral fora, notably the UN Human Rights Council, where the global repeal of blasphemy laws should be high on its agenda.