

Policing Belief



THE IMPACT OF BLASPHEMY LAWSON HUMAN RIGHTS



A FREEDOM HOUSE SPECIAL REPORT

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THE IMPACT OF BLASPHEMY
LAWS ON HUMAN RIGHTS

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ABOUT FREEDOM HOUSE

Freedom House is an independent watchdog organization that supports the expansion of freedom around the world. Freedom House supports democratic change, monitors freedom, and advocates for democracy and human rights. Since its founding in 1941 by prominent Americans concerned with the mounting threats to peace and democracy, Freedom House has been a vigorous proponent of democratic values and a steadfast opponent of dictatorships of the far left and the far right. Eleanor Roosevelt and Wendell Willkie served as Freedom House's first honorary co-chairpersons. Today, the organization's diverse Board of Trustees is composed of a bipartisan mix of business and labor leaders, former senior government officials, scholars, and journalists who agree that the promotion of democracy and human rights abroad is vital to America's interests.

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Introduction

In many countries, laws that criminalize blasphemy have been on the books for decades, and in some cases centuries. Critics have increasingly questioned their necessity and effectiveness in recent years, but the laws have been defended by state authorities who claim they are needed for the maintenance of social harmony among various religious groups. This argument has also been employed at the United Nations as part of an effort to prohibit blasphemy—or “defamation of religions”—on an international level. Supporters of the project characterize it as an extension of the existing human rights framework, maintaining that blasphemous expression is discriminatory and negatively affects freedom of religion for the offended groups. However, an examination of the application of blasphemy laws indicates that they typically give rise to the violation, not the protection, of fundamental human rights.

This study assesses blasphemy and religious insult laws in Algeria, Egypt, Greece, Indonesia, Malaysia, Pakistan, and Poland, analyzing their compatibility with international law and their impact on human rights. By definition, these laws, which are designed to protect religious institutions, doctrines, figures, and concepts—in other words, nonhuman entities and ideas—from insult or offense, impose undue restrictions on freedom of expression. Moreover, blasphemy laws are often vaguely worded and ill-defined, making them prone to arbitrary or overly broad application, particularly in settings where there are no checks and balances in place to prevent such abuses. In countries with weak democracies, authoritarian systems, or compromised judiciaries, these laws have a particularly pernicious effect:

- Governments have abused blasphemy laws to silence the political opposition, government critics, and other dissidents.
- Individuals have fabricated charges of blasphemy against others in their communities to settle petty disputes.

- Religious extremists have exploited blasphemy laws to justify attacks on religious minorities, thereby fostering an environment of intolerance where discrimination is effectively condoned by the state.
- Religious institutions, often with official or unofficial government backing, have used blasphemy laws to impose the state-sanctioned interpretations of religious doctrine on members of minority sects that are deemed deviant or heretical.

While freedom of expression is always constrained by blasphemy laws, through direct enforcement as well as the self-censorship they engender, this report identifies a host of other human rights that are negatively affected by such laws:

- The selective application of blasphemy laws gives rise to discrimination based on religion and belief, as religious minorities and heterodox sects are often targeted disproportionately.
- In many cases, alleged blasphemers have been arbitrarily arrested based on false or unsubstantiated accusations of blasphemy, and reports of unfair trials, lax legal procedures, and prolonged periods of pretrial or administrative detention on blasphemy charges are plentiful.
- Individuals accused of blasphemy have endured torture and ill-treatment in custody.
- Blasphemy suspects, including those who have been acquitted, have experienced breaches of their right to security of the person in the form of death threats, mob beatings, and other violence by nonstate actors.

There is no question that discrimination based on religion or belief is a genuine grievance for many and in some instances leads to limitations on freedom of religion. However, the notion that insults or criticism aimed at a religion or religious doctrine somehow restrict adherents' ability to freely practice their religion has been rejected by renowned experts and human rights activists, who have emphasized the interdependence and indivisibility of freedom of expression, freedom of religion, and all other human rights. Freedom of expression is considered a "cornerstone right" without which other rights fall into jeopardy. As one expert has pointed out, "freedom of expression is also essential to the exercise of freedom of religion."¹ Moreover, there is little evidence to support the argument that prohibiting defamation of religions is an effective means of combating racial and religious hatred. In fact, the application of blasphemy laws appears to instigate and exacerbate communal conflict rather than prevent it.

BLASPHEMY LAWS: INHERENT FLAWS AND THREATS

All blasphemy laws carry inherent flaws that make them especially likely to lead to human rights abuses. They inevitably fail to address the issue of what exactly constitutes blasphemy, leaving enormous discretion in the hands of prosecutors, judges, and accusers who may be influenced by political or personal priorities. They also vary considerably in the punishments they prescribe, since unlike other crimes, the victims of and damage caused by blasphemy are uncertain or intangible; acts covered by blasphemy laws can be interpreted as relatively mild offenses against individual feelings, offenses against the beliefs of an entire community, or grave attacks on a deity. These weaknesses leave blasphemy laws open to selective, arbitrary, or discriminatory enforcement, which worsens existing problems in countries with shaky institutions and mars the human rights credentials of otherwise well-functioning democracies. No matter what the political environment, however, blasphemy laws lend the power of the state to particular religious authorities and effectively reinforce extreme views, since the most conservative or hard-line elements in a religious community are generally the quickest to take offense and the first to claim the mantle of orthodoxy.

Lack of Safeguards to Prevent Abuse

In almost all cases, blasphemy laws lack clear and precise definitions, making them prone to manipulation and arbitrary application. There is no international consensus on the kinds of acts that would constitute blasphemy or defamation of religions, and even at the national level these terms are quite nebulous. As a result, blasphemy laws are generally expansive in scope, and virtually any act has the potential to draw an accusation and prosecution. In many cases, blasphemy laws are worded so as to criminalize “insults” or “offenses” against religions or religious figures. These are highly subjective terms, and what is an insult to one may not be offensive to another. At their most benign, blasphemy laws lead to what have been described as “petty cases,” as seen in Greece, where individuals have brought complaints against others for everyday comments or expressions that were perceived as insulting. The majority of these cases are reportedly dismissed in the first instance by Greek courts, but even the threat of unsuccessful legal action can encourage self-censorship.

More worrisome are cases in which governments use blasphemy laws to silence political opponents. In Egypt, for example, several bloggers are currently detained for alleged blasphemy under Article 98(f) of the Penal Code. They had

also written critically about government institutions and figures, and the charges are believed to be politically motivated. In another form of abuse, individuals have filed blasphemy complaints to settle property disputes and other personal rivalries. In some cases, as seen in Pakistan, charges are brought by Islamic extremists against members of minority groups as a means of religious persecution. The laws of certain countries incorporate the Islamic principle of hisba, which allows a Muslim to bring a complaint against any other Muslim for perceived breaches of Shari'a (Islamic law). The failure of governments to limit when such cases can be brought has had serious consequences for freedom of expression.

There are also human rights concerns with regard to the punishments for blasphemy. These vary considerably from state to state, and include fines, or a combination of fines and light or suspended prison sentences, as in Greece, Poland, and Algeria; longer sentences of up to five years in prison, as in Indonesia; extremely long sentences, for instance up to 20 years in Afghanistan; corporal punishment in the form of caning, as in Sudan; and even the death penalty, which is possible in countries like Saudi Arabia and Pakistan. It is worth noting that blasphemy falls well short of the international standard on crimes for which the death penalty is considered acceptable.

While the death penalty has not been banned by international law, the United Nations has set limitations on its use. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court." The UN Human Rights Committee has routinely interpreted "the most serious crimes" to mean those offenses that result in loss of life. The panel's General Comment 6 also states that the committee "is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure." A number of other UN reports have sought to clarify the limitations implied by "the most serious crimes." The Economic and Social Council, along with the General Assembly, adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which states in paragraph 1: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."

Effects on Democratic Standards and Institutions

The country studies in this report show a notable distinction between the impact of blasphemy laws in democratic countries and their influence in semi-democratic or authoritarian states. While the laws restrict freedom of expression in all political contexts, their effects on human rights are much broader and more severe in countries where there are insufficient checks and balances on the executive, the independence of the judiciary is in question, discrimination is condoned or endorsed by the government, and religious extremists engage in violence with impunity. In such countries, there have been numerous reports of false and unsubstantiated blasphemy charges leading to unfair trials, long periods of arbitrary detention, and even torture. While it is true that all types of defendants are subject to ill-treatment and injustice in societies where the rule of law is weak, blasphemy cases entail an added layer of abuse in that they are applied in a discriminatory manner, focusing on already disadvantaged minorities and stoking mob violence against them. Moreover, religious extremists in some countries seem to dictate law enforcement and trial outcomes to state authorities, who appear cowed by threats of vigilantism.

Even when they appear in the legal systems of robust democracies, blasphemy laws represent threats to human rights both at home and internationally. There are blasphemy laws on the books in a number of countries where free speech and other democratic ideals are for the most part vigorously upheld and protected. In some, such as Germany, Greece, and Poland, the laws are still in use. In others, like the Netherlands, they have not triggered prosecutions in decades. Ireland in July 2009 enacted a new blasphemy law that entered into force in January 2010, to the disappointment of many freedom of expression experts and human rights groups. The persistence of these laws in some of the world's best-performing democracies not only lends legitimacy to their abusive enforcement elsewhere, it also bolsters arguments for an international law against defamation of religions. For example, Pakistan has incorporated the language of Ireland's new blasphemy law in its proposals before the Ad Hoc Committee on the Elaboration of Complementary Standards (see below) calling for an internationally binding instrument to prohibit defamation of religions. The European Union has been a strong opponent of the defamation of religions effort at the United Nations, and as freedom of expression expert Agnes Callamard argued in a 2009 op-ed for the *Guardian*, "the resolve demonstrated by European states to fight defamation of religion at the international level must be matched by a similarly courageous resolve at home."

Discrimination

The blasphemy laws in Indonesia, Pakistan, Malaysia, and a number of other countries have been described by experts as a form of legalized discrimination against minority religious groups. Those affected include individuals seen to be questioning the state-sanctioned religious doctrine, heterodox Islamic sects, Christians, and followers of traditional indigenous beliefs. The demographic breakdown of blasphemy defendants in Pakistan represents a prime example of selective application. Although Christians, Ahmadis, and Hindus make up less than 3 percent of the country's population, they have accounted for about half of the blasphemy defendants in Pakistan over the past two decades, according to some estimates.

The official and unofficial discrimination associated with the application of blasphemy laws has been seen to foster a general climate of intolerance for religious diversity. Contrary to the arguments of many governments and judicial authorities, these laws damage rather than preserve communal harmony. Indonesian legal expert Todung Mulya Lubis was quoted this year in the *Jakarta Post* as stating that “conflicts happen when there [are] repressive actions by groups which believe that only the state-sanctioned religions (the “standard” forms of Islam, Christianity, Protestantism, Hinduism, Buddhism, and Confucianism) are legal while the others have to be eradicated. Such actions are a source of conflict.” Pakistani expert Akbar S. Ahmed similarly pointed out in a 2002 op-ed in the *Washington Post* that “in the application of the blasphemy law [in Pakistan], intolerance has fed on intolerance.”

As noted above, blasphemy laws have been used by vigilante groups to justify and instigate incidents of interreligious violence. There are reports from a range of countries of communal conflicts that were triggered by allegations of blasphemy. For example, prosecutions for blasphemy under the penal code are virtually nonexistent in Nigeria, but there have nevertheless been numerous incidents of violence stemming from unsubstantiated accusations of blasphemy. Similarly, in Indonesia and Pakistan, religious extremist groups have rallied angry mobs to take justice into their own hands, threatening accused blasphemers and their families, and in some cases raiding their homes and assaulting the perceived offenders. There is evidence that religious extremists often act with the tacit consent or even the assistance of the police. The failure of state authorities to hold such thuggish groups accountable for their actions has only served to embolden them, as has been the case with the Islamic Defender Front (FPI) in Indonesia.

In some countries, the blasphemy laws are discriminatory not just in their

application, but also in their substance, with language that protects a specific religion or belief from insult, or that effectively prohibits a particular sect. As scholar Jeroen Temperman argued in a 2008 article in the *Netherlands Quarterly for Human Rights*, “blasphemy/defamation prohibitions that are designed to protect just one religion—that is, the State/predominant religion—are contrary to the non-discrimination or equality principle.” This was one of the reasons behind the United Kingdom’s 2008 repeal of its blasphemy law, which had protected only the Church of England from insult.

Defining Orthodoxy

In determining what constitutes blasphemy, state authorities must establish some notion of religious orthodoxy against which to measure an alleged offense. This effectively allows governments to impose particular strains of the official or predominant religion on the country or religious community as a whole. In some countries the state uses blasphemy laws to exercise extensive control over religious practice, while in others the government is exceedingly deferential to the dominant or most assertive religious authorities, who use the justice system to magnify their influence and enforce conformity.

In Egypt, Indonesia, Malaysia, and Pakistan, there are abundant examples of the use of blasphemy laws to crack down on religious minorities that are deemed “deviant” or “heretical” offshoots of Islam. The Becket Fund for Religious Liberty has described how blasphemy laws force “the state to determine which religious viewpoints may be expressed, thus putting states in the business of judging the truth claims of religions.” This process is particularly apparent when it comes to Ahmadiyya, a sect whose members consider themselves Muslims but do not believe that Muhammad was the final prophet. Several governments in Muslim-majority countries do not accept the legitimacy of Ahmadi’s beliefs, and subject them to significant legal restrictions.

The enforcement of religious orthodoxy through blasphemy laws sometimes extends to the punishment of those who simply fail to display sufficient piety within the dominant faith. For example, there have been reports of Sunni Muslims being arrested for blasphemy after violating the fast during Ramadan or praying in non-Arabic languages. In addition, Muslims wishing to convert to other religions face serious legal obstacles, as they are considered apostates rather than members of their new faiths.

INTERNATIONAL LAW AND RESTRICTIONS ON FREEDOM OF EXPRESSION

There is an important distinction in international law between blasphemy—meaning critical, insulting, or offensive expression against religious doctrines, figures, and deities—and incitement—meaning expression that explicitly encourages and calls for hostility and violence. Of the two, only the latter appears to fit the limited circumstances in which restrictions on freedom of expression are considered acceptable.

According to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), limitations on freedom of opinion are never allowed. However, Article 19(3) permits states to impose constraints on freedom of expression if they are provided by law and are necessary for respect of the rights or reputations of others, or for the protection of national security, public order, or public health or morals.

The idea that the constraints must be “necessary” is crucial, as it sets the threshold beyond what is simply appropriate, useful, or reasonable. As human rights scholar Nazila Ghanea-Hercock pointed out in a presentation at the October 2008 UN expert conference on Articles 19 and 20 of the ICCPR, the “necessary” qualifier indicates that any restrictions must be “proportional to the value which the restriction serves to protect.” The UN Human Rights Committee has also confirmed in General Comment 10 that any restrictions on freedom of expression justified under Article 19(3) “may not put in jeopardy the right itself.”

The threshold for restrictions under Article 20(2) of the ICCPR—which bans “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”—is less clear. However, there is agreement among leading freedom of expression experts that the bar is quite high. They cite the historical context in which Article 20 was drafted, namely the recent horrors of World War II and the Nazi regime. Ghanea-Hercock noted that the first part of Article 20 bans “propaganda for war,” indicating “the gravity of hatred that it is concerned with.”

The UN special rapporteur on freedom of expression, Frank La Rue, compiled a set of principles in his 2010 annual report to the Human Rights Council to help guide states on questions relating to limits on freedom of expression. Among other advice, he called on states to ensure that any restrictions are clear and unambiguous, compatible with human rights law, and regularly reviewed to assess their continued relevance. Because blasphemy laws are almost always vaguely worded

and deeply ambiguous, they directly conflict with these principles.

Nevertheless, proponents of blasphemy laws have argued that offensive religious expression must be restricted for the maintenance of communal harmony, and that they are in line with international obligations under Articles 19(3) and 20(2) of the ICCPR. In addition to the evidence mentioned above that blasphemy laws actually stoke religious tensions, experts have countered that permissible limitations on expression do not include the protection of religious or belief systems from criticism. As the special rapporteurs on freedom of religion and belief and on contemporary forms of racism pointed out in a joint annual report to the Human Rights Council in 2006, “the right to freedom of expression can legitimately be restricted for advocacy that incites to acts of violence or discrimination against individuals on the basis of their religion. Defamation of religions may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion.”

While blasphemous expression can at times be reprehensible and deliberately provocative, it is essential to distinguish it from the kind of expression that may be legitimately restricted under international law. Freedom of expression includes the right to be controversial, insulting, or offensive, even when such speech targets ideas that are devoutly held beliefs for some. This principle was affirmed by the European Court of Human Rights (ECHR) in the *Handyside v. United Kingdom* case of 1976, in which the court found that expression was protected even if it “offends, shocks, and disturbs,” adding, “such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’” The former special rapporteur on freedom of expression, Ambeyi Ligabo, similarly pointed out in his 2008 annual report to the Human Rights Council that “the constant confrontation of ideas, even controversial ones, is a stepping stone to vibrant democratic societies.”

Despite its decisions upholding controversial speech, the ECHR has drawn criticism from human rights experts for failing to categorically rule out blasphemy laws. The court has found that state authorities would know better than its own judges whether a particular restriction fell within the boundaries set by Article 10(2) of the European Convention on Human Rights, which are similar to those in Article 19(3) of the ICCPR. Callamard, the executive director of the nongovernmental organization Article 19, stated in her 2006 Equal Voice article that this reasoning “calls into question the normative courage of the court.”

“INCITEMENT” AND “DEFAMATION OF RELIGIONS” AT THE UNITED NATIONS

UN member states from the Organization of the Islamic Conference (OIC) and the African group—particularly Egypt, Algeria, and Pakistan—have been leading an initiative to incorporate a prohibition on defamation of religions into the international human rights framework. Pakistan, acting on behalf of the OIC, introduced the first resolution on this issue at the Commission on Human Rights in 1999, and similar resolutions have been passed each year since. The 2009 version of the resolution, introduced in the Human Rights Council, explicitly linked defamation of religions with states’ obligations under Article 20(2) of the ICCPR to legally prohibit “incitement to hatred.” The move represented an attempt to expand existing international norms on incitement. The March 2009 resolution makes at least seven references to defamation of religions as a form of, or catalyst for, incitement to religious hatred. For example:

Stressing that defamation of religions is a serious affront to human dignity leading to a restriction on the freedom of religion of their adherents and incitement to religious hatred and violence...

13. *Urges* all States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions and incitement to religious hatred in general, and to take all possible measures to promote tolerance and respect for all religions and beliefs.

This description of defamation of religions as a form of incitement to religious hatred is made more worrisome by the language of an October 2009 resolution (12/16) on freedom of expression that was cosponsored by Egypt and the United States. The document, which makes no mention of defamation of religions, has been praised for recognizing freedom of expression as “one of the essential foundations of democracy” and calling on states to respect and uphold this fundamental right. However, it makes abundant reference to the obligations of states, including the Article 20 prohibition on any “advocacy of...religious hatred that constitutes incitement to discrimination, hostility or violence.” Similarly, the outcome document of the 2009 Durban Review Conference, a follow-up to the 2001 World Conference Against Racism, included no references to defamation of reli-

gions, and it did not explicitly link the concept with incitement, but its Paragraph 134 calls on the Office of the High Commissioner for Human Rights (OHCHR) to organize regional conferences aimed at clarifying the scope and meaning of “incitement to hatred.” The provision has raised concerns that these conferences will affirm the link between defamation of religions and incitement, thereby legitimizing domestic blasphemy laws and bolstering the call for an international prohibition on defamation of religions.

The General Assembly passes an annual resolution on defamation of religions that is much like those adopted in the Human Rights Council. These documents have steadily lost support and votes in both bodies in recent years, and in the past year abstentions and votes against the resolutions outnumbered those in favor. According to some analysts, this declining support is linked to the OIC’s publicly avowed goal of establishing an internationally binding instrument, in the form of a treaty or additional protocol to a treaty, that would prohibit defamation of religions.

Proponents of such an instrument are currently focusing their efforts on an obscure UN body, the Ad Hoc Committee on the Elaboration of Complementary Standards, which came out of the recommendations of the Durban Declaration and Platform for Action (the outcome document from the 2001 World Conference Against Racism). In 2002, in the lead-up to the creation of the Ad Hoc Committee, the Commission on Human Rights passed a resolution establishing an Intergovernmental Working Group to prepare “complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance and all their aspects.” The Working Group commissioned two studies to examine whether there are gaps in international law on racism—one by the Committee on the Elimination of Racial Discrimination (CERD), the treaty body overseeing implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and one by a group of five human rights experts. Neither study identified any gaps in international law on racism, though both did cite a need for better implementation of existing treaties, including improving monitoring systems and strengthening education programs. Nevertheless, in 2007 the Human Rights Council established the Ad Hoc Committee through resolution 3/103, with a mandate to “elaborate...complementary standards in the form of either a convention or an additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to hatred.”

During the Ad Hoc Committee's October 2009 meeting, Pakistan, on behalf of the OIC, submitted a proposal calling for the adoption of an optional protocol to the ICERD that would ban defamation of religions. Nigeria, on behalf of the African group, submitted a similar proposal. Established democracies including the United States, Canada, and members of the European Union pushed back, arguing that existing international law is sufficient to address incitement to racial or religious hatred, and that better implementation, including the promotion of tolerance and education, should be the focus.

CONCLUSION

The severity and range of abuses that can result from the application of domestic blasphemy laws should raise serious doubts about the prospect of a similar law at the international level. Such a law would legitimize its flawed national counterparts while working against the communal harmony they are supposedly designed to protect. Worse still, it would insert into the international human rights framework a concept that essentially turns human rights upside down, restricting the speech and actions of men and women for the sake of disembodied ideas as such, and replacing equality and the rule of law with deference to religious orthodoxy and subjective feelings of outrage. An internal contradiction of this magnitude would cripple international human rights law as a whole and leave little recourse to victims of persecution around the world.

Algeria

INTRODUCTION

Freedom of expression, freedom of religion, and equality before the law are guaranteed in Algeria's constitution,¹ but they are subject to extensive restrictions. The Penal Code and other laws include prohibitions on insulting or criticizing the military and government officials, the media face many limitations on what and how they may report, and human rights defenders have been prosecuted for their work on security-related issues, including the many disappearances that took place during the civil conflict of the 1990s. Algeria's legal system also criminalizes blasphemous expression and other forms of religious insult, including seeking to convert Muslims to other faiths.

Article 144 bis 2 of the Penal Code bans insults against Islam or the prophet Muhammad, and most blasphemy cases are brought under this provision, usually against nonpracticing Muslims or those failing to adhere to the state-sanctioned interpretation of Islam. The Information Code of 1990, governing the media, also prohibits blasphemy under Article 26, which forbids publications that are "contrary to Islamic morals, national values, human rights," and Article 77, which bans insults against Islam and the other "heavenly religions," namely Christianity and Judaism.² All of these measures have obstructed the ability of Christians, Muslims, and nonbelievers alike to enjoy their fundamental human rights.

Algeria's population is fairly homogeneous with respect to religion, with Sunni Muslims making up 99 percent of the country's 36 million people. Christians and Jews account for the remainder.³ However, in recent years there has reportedly been a rise in the number of evangelical Christians in the country,⁴ and this has triggered mounting restrictions on Christian practice, notably through the enactment and enforcement of Ordinance 06-03 of 2006. The ordinance imposes a number of administrative requirements on non-Muslim religious associations,

obliging them to register places of worship and limiting worship to registered sites. The law also criminalizes proselytizing among Muslims on behalf of other faiths (Article 11) and dissemination of materials aimed at “shaking the faith of a Muslim.”

BACKGROUND

Algeria’s political history and the power struggle between the National Liberation Front (FLN) and Islamists have played a major role in the development of current conditions for religious freedom. The political rhetoric in the period just prior to independence from France in 1962, and in the decade that followed, often tied Algerian nationalism to Muslim identity,⁵ giving Islam a lasting and significant influence in the political arena.

For the first three decades of independence, the Algerian government was largely secular. Article 2 of the constitution identifies Islam as the religion of the state,⁶ and Article 171 establishes a High Religious Council to provide opinions on Islamic law,⁷ but the socialist influence was strong in the government during the 1960s and 1970s under President Houari Boumédiène.⁸ The ruling FLN remained the dominant party and political opposition was banned by the constitution until protests calling for political reform reached a peak in 1989.⁹ The ban was lifted, and many new political parties were formed, with the Islamic Salvation Front (FIS) quickly becoming the most popular. In 1990, the FIS won a majority of seats in municipal and provincial elections, and as it was poised to win parliamentary elections in January 1992, the military seized power and engineered the dissolution of the parliament as well as the FIS.¹⁰ Military commanders established a High Council of State to rule the country. The move set off almost a decade of civil strife between Islamist rebel groups and the government that had devastating effects on the population at large.¹¹ Between 1992 and 1999, the worst years of the civil war, Algeria was plagued by terrorist attacks, bombings, and incidents of indiscriminate violence. Government officials estimate that 150,000 Algerians died during this period.¹²

Elections were held in 1995, but the FIS was excluded from participating. Liamine Zéroual, who had been appointed head of the High Council of State in 1994, won the presidency. Zéroual stepped down in 1999 and called another presidential election. The military-backed candidate, Abdelaziz Bouteflika, ran unopposed following withdrawals by other candidates, and he won a second term

in 2004.¹³ In 2008, Bouteflika successfully pressured the parliament to remove presidential term limits from the constitution, and in April 2009 he was elected for a third term.

Terrorist violence in Algeria has subsided significantly under Bouteflika, and the security situation is for the most part stable, though attacks do still occur. While the government was able to regain control of the country, the aftereffects of the civil conflict have contributed to a rise in Islamization and general religious conservatism, which in turn has facilitated the crackdown in recent years on religious minorities and nonpracticing Muslims.¹⁴ Bouteflika has been criticized for pandering to Islamists for political reasons. His attempts to reconcile with and appease this significant constituency can be seen in the 2006 charter guaranteeing amnesty for many perpetrators of violence during the civil war, the introduction of new laws in the past five years targeting religious minorities, and the recent enforcement of “moral” policing under Article 144 bis 2 of the Penal Code.¹⁵ These measures also serve to counter the perceived “Westernization” of Algerian society, in what some have described as holdover attitudes from the immediate postcolonial period.¹⁶ The overall impact of the political concessions to Islamists, and the general exploitation of religion in politics, has been negative for freedom of religion and freedom of expression. While the situation is significantly less severe than in many other countries where blasphemy laws are enforced, the recent increase in prosecutions for religious offenses in Algeria is cause for concern.

BLASPHEMY LAWS

Algeria’s blasphemy and other religious insult prohibitions are found in a number of laws, though Article 144 bis 2 of the Penal Code is invoked most often to clamp down on perceived religious insults. The measure prescribes up to five years of imprisonment and a fine of 50,000 to 100,000 dinars (US\$680 to US\$1,360) for “insulting the prophet and any of the messengers of God, or denigrating the creed and precepts of Islam, whether by writing, drawing, declaration, or any other means.”¹⁷ The law has been criticized for its lack of clarity, which leaves it open to interpretation and manipulation by police and judicial officials.¹⁸

Incompatibility with International Law

Algeria’s blasphemy and religious insult laws do not comply with international human rights standards. The vague terminology in Article 144 bis 2 of the

Penal Code and Articles 26 and 77 of the Information Code allow police officials and judges to impose their own religious perspectives on society, and to give at least one version of Islamic practice the force of law.¹⁹ There have been cases of Muslims being arrested for failing to adhere to the state-endorsed belief system, for example by not fasting during Ramadan. These incidents are relatively infrequent, but the numbers have increased in recent years, and their persistence does not bode well for religious freedom and nondiscrimination.

Algeria is party to a number of core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the UN Convention Against Torture, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC).²⁰ In addition, Algeria holds a seat on the UN Human Rights Committee, which requires members to pledge their commitment to upholding and protecting human rights. Many of the rights violated by Algeria's blasphemy and religious insult laws are enshrined in the Universal Declaration of Human Rights, as well as the Algerian constitution.

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom of Expression

While all cases brought under Algeria's blasphemy laws lead to violations of freedom of opinion and expression, those aimed at the news media are particularly damaging to these rights. Kamal Bousaâd, the director of the weekly *Panorama*, and Berkane Bouderbala, editor of the weekly *Essafir* and its religious supplement *Errisala*, were arrested in February 2006 under Article 144 bis 2 of the Penal Code. The Ministry of Communications had lodged the complaint against them after their outlets published controversial Danish cartoons depicting the prophet Muhammad.²¹ *Panorama* and *Essafir* were shut down by the government,²² but both journalists were released the following month.²³

According to the U.S. State Department, others in the media were demoted, reassigned, or fired for disseminating the contentious cartoons in 2006. For example, Lotfi Cheriet, general manager of the Canal Algérie television station, was demoted; the narrator of the Canal Algérie broadcast in question was fired; and Houria Khatir, director of the television channel Thalita, was also fired.²⁴

Freedom of Religion

Algeria's blasphemy laws have had negative consequences for the religious freedom of Muslims and non-Muslims alike. In recent years, a number of people have been arrested for not fasting during Ramadan even though the fast is an obligation only in Islamic law; it is not explicitly required by Algerian law. In 2008, six men were arrested in the town of Biskra for this supposed offense. They were found guilty under Article 144 bis 2 of the Penal Code in September 2008, and each was sentenced to four years in prison and a fine of 100,000 dinars.²⁵ They appealed the ruling, and in October of that year a higher court overturned the verdict, acquitting all six defendants.

The case illustrates the propensity of some Algerian authorities to interpret and apply Article 144 bis 2 in an expansive manner. As one observer pointed out, the men "were convicted for mocking the precepts of Islam, but there is no evidence that it was mockery."²⁶ An Algerian editorial writer argued, "Such a precedent is dangerous. It opens the door for other abuses. One can imagine tomorrow another judge convicting persons arrested on the streets during Friday prayers because they were not at the mosque!"²⁷ In a more recent case, Djamila Salhi and her cousin, both Muslim, were arrested in 2009 in Algiers under the religious insult law, also for eating during daylight hours amid the Ramadan fast. Both were released within days, and the charges against them were dropped, as described in further detail below.

Freedom from Discrimination

Algeria's blasphemy and religious insult laws are discriminatory in both their content and their effects. For example, Article 144 bis 2 protects only Islam and Islamic religious figures from insult. The same protections are not provided for other religions. The law is mainly used to punish theological dissent or nonobservance among Muslims, but it has been invoked against Christians as well. Algeria's Christians suffer societal discrimination, and in 2003 the UN Special Rapporteur on the Right to Freedom of Religion or Belief reported that "there is a general tendency to believe that all Algerians are Muslim and all Christians are foreigners living in Algeria."²⁸ The 2006 enactment of the law regulating non-Muslim worship, Ordinance No. 06-03, and its subsequent enforcement since 2008 have exacerbated this religious divide.

Rachid Seghir, one of the most prosecuted Christians in Algeria, has been charged and tried three times for religious offenses under Article 144 bis 2 and the 2006 ordinance.²⁹ Other Christians have been similarly targeted under Ordinance 06-03.

Freedom from Arbitrary Arrest and Detention

Although the constitution prohibits arbitrary arrest and detention,³⁰ there are frequent reports of suspects being held in detention for unlawful periods,³¹ including in some blasphemy cases.

Djamila Salhi and her cousin were briefly detained in El Harrach prison following their 2009 arrest for violating the Ramadan fast.³² They were reportedly in a private car when they were approached by plainclothes policemen and arrested.³³ Their parents contacted the Algerian League for the Defense of Human Rights (LADDH), a respected nongovernmental organization (NGO), but the two were unexpectedly released before any legal petitions were filed. The case was apparently dropped and effectively erased from police files on the orders of a senior official.³⁴ Though both detainees had been formally arrested and charged before being moved to the prison, they went through no formal release procedures.³⁵

In another case, suspects T. Mustapha, M. Farid, T. Houcine, and S. Said were arrested and tried for smoking during Ramadan in September 2008. They were found guilty under Article 144 bis 2 and sentenced to three years' imprisonment and fines of 100,000 dinars.³⁶ In November 2008, an appeals court overturned the decision, acquitting Said and reducing the sentences of the three others to two months, or time served,³⁷ as the men had been detained in El Harrach prison for 60 days during their trial proceedings.³⁸ The "offense" for which they were arrested and detained is arguably not a legitimate one, and indicates a possible breach of the prohibition on arbitrary detention. One of the lawyers representing the accused questioned how "smoking a cigarette could undermine Islam."³⁹ Another observer referred to the case as a modern-day "witch hunt."⁴⁰

Right to Due Process

Cases brought under Algeria's blasphemy and religious insult laws have in some instances featured violations of the rights to a fair trial and due process. Suspects have reportedly been convicted after speedy trials on little evidence, only to be acquitted on appeal. For example, in the 2008 case of the six men arrested for eating and playing cards during Ramadan,⁴¹ the appellate judge argued that the initial conviction had violated the constitutional guarantee of freedom of religion or belief,⁴² and the trial was described in the press as "expedited and collective" and "characterized by a flagrant lack of evidence."⁴³ One human rights expert suggested that the decision "to set the date for the appeal hearing so soon, less than ten days [after the trial], implies that the court recognizes its mistake."⁴⁴

Violations of due process were also seen in the case of Djamila Salhi and her

cousin, who were allegedly harassed and intimidated by police after their arrest.⁴⁵ Speaking to the media, Salhi said, “They questioned my cousin in a very muscular manner about the fact that he did not fast.”⁴⁶ In the course of the interrogation, Salhi signed a written statement in Arabic, a language she cannot read, stating that she had eaten during daylight hours in a public square, though in reality she had been in a private car.⁴⁷

The use of trials in absentia for blasphemy and other religious charges may also give rise to breaches of the right to a fair trial, specifically under Article 14.3(d) of the ICCPR. Algerian law calls for defendants to be notified of verdicts from trials in absentia, and unless the verdict is “opposed” or challenged within 10 days, it becomes final.⁴⁸ The UN Human Rights Committee has clarified that trials in absentia are permitted in international law, but they must be the exception and not the norm, and are subject to certain conditions.⁴⁹ For example, the court must make a reasonable effort to inform the defendant of the date and place of trial and to request attendance.⁵⁰

Rachid Seghir, Youssef Ourahmane, and Hamid Ramdani were tried and convicted in absentia in January 2008, and sentenced to three years’ imprisonment and fines of 50,000 dinars under Article 144 bis 2 of the Penal Code.⁵¹ They were accused of blaspheming against Islam and the prophet Muhammad by a Christian convert, Chamouma Laid, who was reportedly disgruntled after being excommunicated due to his ties with radical Islamic groups.⁵² The defendants challenged the ruling within the 10-day window, and the case was heard again in October 2008, leading to acquittals for all three men.⁵³ According to Seghir, with both trials he and the other defendants never received any summons from the court and were unaware that the proceedings had taken place until they were notified of the verdicts.

CONCLUSION

The application of Article 144 bis 2 of the Penal Code has had particularly negative consequences for freedom of expression, and defendants have in some cases experienced arbitrary arrest and unfair trials. However, the overarching human rights violation produced by these laws is that of freedom of religion or belief for both Muslims and non-Muslims. There are still fewer prosecutions for blasphemy in Algeria than in some other countries examined in this report, and most of the blasphemy provisions in the legal system are not actively enforced. But the

recent increase in legal harassment of Christians, and of Muslims who are deemed insufficiently pious, represents a disturbing trend toward silencing of theological dissent among Muslims and intimidation and harassment of Christians and nonbelievers.

Egypt

INTRODUCTION

The government of Egypt has long been criticized for imposing unduly harsh and repressive limitations on freedom of speech, expression, and opinion for its citizens. Despite constitutional provisions guaranteeing freedom of speech, the Egyptian Penal Code (EPC) criminalizes religious insult and blasphemy; insults to the president; the dissemination of news, statistics, or information that could harm the reputation of Egypt abroad; and criticism of the constitution. Similarly, journalists and publishers are subjected to severe limitations on their work. Though there are a broad range of laws restricting freedom of expression in Egypt, this chapter will focus on those that specifically address blasphemy or that have been used to charge individuals with religious offenses, including apostasy.

Egypt's blasphemy law is found in Article 98(f) of the EPC, and several other articles criminalize various forms of religious insult. Even more alarming, however, is the judicial system's incorporation of *hisba*, an Islamic principle by which one Muslim can bring a case against another Muslim for perceived violations against Islam. Although these kinds of cases have no basis in Egyptian legislation, court rulings have set precedents that allow for hisba cases to be filed.

BACKGROUND

From the time of Egypt's independence in 1922 to the 1952 military coup that ended the monarchy, a number of political parties were formed, among them the Muslim Brotherhood, which has been a source of tension in Egyptian politics since it was founded in 1928. Lt. Col. Gamel Abdel Nasser, who led the 1952 coup, ruled the country until his death in 1970. After a Muslim Brotherhood member

attempted to assassinate him in 1954, he oversaw a general crackdown on the organization; thousands of members were imprisoned, marking the beginning of a long campaign of repression against Egypt's so-called Islamists.¹

The current head of state, President Hosni Mubarak, has been in power since the 1981 assassination of his predecessor, Anwar al-Sadat, by Islamic militants. In the 1990s and early 2000s, Islamic extremist attacks became more frequent and were met with a renewed, widespread crackdown on Islamists in general. Thousands of people were arbitrarily arrested and detained, and the country's extraordinary or military courts were grossly misused.² Today, Islamists—militant or otherwise—continue to be targeted as Egyptian authorities closely monitor and regularly break up independent political activity of any kind. The particular discrimination faced by Islamists in the 1990s has continued to some extent in contemporary Egypt. For example, Human Rights Watch has reported that the government “detains Islamists for longer periods and uses harsher punishments.”³

The Muslim Brotherhood has been banned since 1954 and its leaders are periodically arrested. Nevertheless, the organization as a whole has been unofficially tolerated by the government since the 1970s,⁴ and its members have run for office as independents since political parties based on religious platforms are prohibited.⁵ They won considerable support in the 2005 parliamentary elections, taking 88 of 444 seats and forming the largest bloc in opposition to the ruling National Democratic Party.⁶ Many of the Brotherhood's candidates used the organization's slogan, “Islam is the solution,” in their campaigns, making their affiliation clear.⁷ This has led some to describe Egypt's political landscape as being covertly religious. Commentators have attributed the growth in support for the Muslim Brotherhood to Mubarak's repression of all political opposition movements, which leaves a vacuum that is being filled by religious institutions:

As the Egyptian regime tightens its grip on political power, it provides the Islamic establishment with the venue and audience to advance its own religious agenda. Paradoxically, by denying its citizens access to political space, the Egyptian government reinforces the authority of the Islamic establishment in the public sphere and surrenders a significant amount of control as a result.⁸

Some analysts have noted an apparent tension between the judicial and executive branches in their approaches to Islamic law.⁹ The courts have in almost every instance adopted conservative interpretations of the Quran and Shari'a (Islamic

law). Mubarak has appeared less interested in imposing such beliefs, though he continues to allow religious institutions to do so, as evidenced in the censorship role played by Al-Azhar University, discussed below. Experts have also pointed to the spate of hisba cases over the past two decades as a sign of the increased influence of conservative religious institutions on both the judiciary and society.¹⁰

Before examining Egypt's blasphemy laws and their impact on human rights, it is important to note that the constitution does include provisions addressing the rights to freedom of expression and religion, among others. Article 46 guarantees "the freedom of belief and the freedom of practicing religious rights." Article 47 protects freedom of opinion, and Article 48 similarly provides liberty of the press, printing, publication, and mass media, and forbids censorship of newspapers or "suspending or cancelling them by administrative methods."¹¹ In addition, the constitution guarantees freedom from discrimination in Article 40, which states: "All citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed."¹²

However, all the articles in the constitution must be read in conjunction with Article 2, which states that "Islam is the Religion of the State...and the principal source of legislation is Islamic Jurisprudence (Shari'a)."¹³ The emphasis on Shari'a is problematic for non-Muslims in Egypt. Not only has it led to laws that are themselves discriminatory toward non-Muslims, it has also contributed to an environment of intolerance. As one commentator has argued, Article 2 "has had important cultural implications in creating and sustaining power relations in society and making groups from various backgrounds unable to attain equality."¹⁴ Moreover, Muslims who wish to convert to another faith or who seem to be questioning Islam have faced discrimination and charges of apostasy.

The official role of Shari'a means that cases of alleged blasphemy or religious insult can also lead to accusations of—and sometimes convictions for—apostasy, which in turn lead to discrimination. Under Shari'a, apostasy has consequences affecting inheritance, marriage, and guardianship, and some cases have prompted compulsory divorces. Rulings on these issues have created jurisprudence in Egypt's court system on the question of apostasy, despite the lack of any formal legislation on the matter.¹⁵

Limitations on freedom of opinion and expression in Egypt are compounded by an emergency law that grants extensive powers to government officials. The law, No. 162 of 1958, was first invoked in 1967, and has been in effect without interruption since 1981.¹⁶ The most recent renewal took place in May 2010, and brought with it some positive amendments, such as the repeal of censorship pro-

visions. However, the renewal itself was heavily criticized by human rights groups and a range of foreign governments, including the United States.¹⁷ Among other things, the emergency law provides for detention without charge or trial for up to 45 days by order of the interior minister, and the 45-day stints can be renewed indefinitely. People arrested under blasphemy or religious-insult allegations have been detained under this provision. In addition, the law allows for civilians to be tried before military or special emergency courts with no right to appeal. The emergency law effectively exacerbates the various human rights violations that arise from the application of the blasphemy and religious insult laws.

BLASPHEMY LAWS

Egypt's main blasphemy law, Article 98(f) of the EPC, criminalizes "any use of religion to promote or advocate extremist ideologies...with a view toward stirring up sedition, disparaging or showing contempt for any divinely revealed religion, or prejudicing national unity and social harmony."¹⁸ Other provisions of the EPC address various forms of religious insult. For example, Article 160 punishes the destruction, vandalism, or desecration of religious buildings, sites, symbols, cemeteries, and graves, as well as the hindering of religious ceremonies.¹⁹ Article 161 prohibits the printing and dissemination of deliberately distorted religious texts for state-approved religions (Islam, Christianity, and Judaism), and also criminalizes the mocking or ridicule of religious ceremonies in public.²⁰ Article 176 punishes public incitement and holding a religious community in hatred or contempt.²¹ And Article 178 provides up to two years of imprisonment for possession, distribution, or manufacturing of documents in violation of "public morals," though that term is not defined.²²

Incompatibility with International Law

Egypt's blasphemy and religious insult laws are incompatible with international human rights standards. They place serious and unjustified limitations on freedom of expression and freedom of religion, and have a broad and negative impact on the enjoyment of other human rights, as described below.

Egypt is a state party to a number of major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimi-

nation (ICERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). According to Article 151 of the constitution, all international treaties “shall have the force of law after their conclusion, ratification and publication according to the established procedure.”²³ Moreover, many of the rights violated by Egypt’s blasphemy and religious insult laws are explicitly protected in the constitution itself and enshrined in the Universal Declaration of Human Rights. These laws conflict with the country’s obligations under international law on a number of levels, including their application and the processes in place to enforce them.

Lack of Safeguards to Prevent Abuse

In addition to restricting fundamental human rights like freedom of expression, the blasphemy and religious insult laws lack internal safeguards to prevent abuses that result in further limits on these rights. For example, they are vaguely written and lack clear definitions for key terms. According to one commentator, Egyptian legislation is often “reactive in nature, whereby a law comes into existence to deal with a specific case. The law is selective due to the very process by which it is issued and in an attempt to make it more general it often becomes too vague.”²⁴

The broad and undefined terms in Article 98(f) of the EPC have made it a useful tool for settling personal or political scores; silencing regime critics, human rights defenders, and opposition parties; and targeting vulnerable groups like homosexuals. For example, in May 2001, more than 50 alleged homosexuals were arrested following a raid on a popular gay nightclub. The men were charged with “habitual debauchery,” and two of the supposed ringleaders of the “cult,” Sherif Farhat and Mahmoud Dokla, were charged with blasphemy under Article 98(f). They were ultimately found guilty and sentenced to five and three years in prison, respectively.²⁵

In another case, two human rights activists—Adel Fawzy Faltas and Peter Ez-zat of the Canadian organization Middle East Christian Association (MECA)—were detained in August 2007 on suspicion of “insulting a heavenly religion” as a result of their work defending the rights of Coptic Christians.²⁶ In the days preceding their arrest, the two men had met with the family of a Coptic Christian who was allegedly killed by police officers.²⁷ MECA had also worked to support the contentious case of Christian convert Mohammed Hegazy, and had recently sued the government to seek reparations for the killing of 21 Copts in the northern village of Kosheh in 2000. A representative for MECA expressed his belief that

Faltas and Ezzat's detention was a form of state intimidation directed at the organization as a whole.²⁸ The two men were eventually released in November 2007, and no formal charges were pursued, but the case illustrates the way in which Egypt's blasphemy and religious insult laws, together with the powers granted to the state by the emergency law, are used to abrogate rights and target specific individuals or groups.²⁹

The blasphemy and religious insult laws are also used to muzzle any differing interpretations of Islam. Questioning of Islam can be prosecuted as blasphemy and lead to accusations of or convictions for apostasy. As the Becket Fund for Religious Liberty has argued, "Articles 98(f), 160, 161, 176, and 178 of the Penal Code are consistently used against individuals who engage in peaceful debate about religion."³⁰

Abuse of Hisba

A 1966 ruling by Egypt's highest court, the Court of Cassation, established that hisba is procedurally allowed in the courts by virtue of the legal system's basis in Shari'a.³¹ Legal precedents permit the courts to convict individuals of blasphemy and deem them apostates as a result of hisba suits. In Islamic jurisprudence, the principle of hisba allows a Muslim to bring a suit against another Muslim if he believes the defendant is acting in a way that is contrary to the tenets of Islam.³² However, the concept remains vague, and virtually any act could be deemed an offense to Islam and prosecuted. According to the International PEN Foundation, the mechanism is reportedly misused for personal reasons or even for blackmail.³³

In the 1980s and 1990s, dozens of Egyptian academics and intellectuals were prosecuted under hisba. One of the better known cases is that of the scholar Nasr Abu Zayd, who in 1995 was arrested and charged with blaspheming against Islam in some of his academic writings as a professor of Arabic language and Islamic studies at Cairo University. He has stated that he believes his prosecution was the result of political differences between him and another professor, and involved "a personal grudge."³⁴ According to several sources, Abu Zayd had an ongoing academic dispute with Abdel-Sabour Shahin, a Muslim cleric and professor of Arabic language.³⁵ One observer has claimed that his case "served no other purpose than settling personal or political scores."³⁶ Abu Zayd was found guilty of blasphemy, and the Court of Cassation ruled that despite the lack of any document or deliberate action announcing his apostasy, his writings themselves were proof of apostasy.³⁷ Since the prevailing interpretation of Islamic law holds that a Muslim woman cannot be married to non-Muslim man, Abu Zayd had to flee to the Netherlands

to avoid being forcibly divorced from his wife.³⁸

Egyptian lawyers, intellectuals, and some parts of the media have raised objections to the overzealous use of hisba to prosecute scholars and theological dissidents, and the Egyptian parliament passed two laws in 1996 to limit its use. The first law prohibits hisba claims from reaching court unless they are first deemed valid by a prosecutor. The second law requires complainants to have a “personal interest” in the case. However, in practice these safeguards are not always enforced. According to the Arabic Network for Human Rights Information (ANHRI), some hisba cases have been accepted by the courts despite a lack of proper vetting by prosecutors.³⁹

This was seen in the 2001 case of Egyptian feminist and writer Nawal el-Saadawi, who was accused of blasphemy against Islam following her remarks regarding the origin of the hajj and the Shari’a inheritance rules by which men can receive double the amount of women.⁴⁰ Cairo lawyer Nabih el-Wahsh brought a hisba complaint against Saadawi, but instead of submitting the case to the prosecutor general’s office, he went straight to the Civil Affairs Court.⁴¹ It was expected that the charges against Saadawi would therefore be dropped at the hearing of first instance, but she was asked to appear in court again, and el-Wahsh was given the opportunity to have his complaint heard.⁴² Several weeks later, the court dismissed the charges, reportedly at the request of the prosecutor general.⁴³ Though the prosecution did not go forward, the fact that it was not immediately dismissed for basic procedural violations illustrates the way that hisba cases continue to be used to curb freedom of expression and opinion.

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom of Expression

Egypt’s prohibitions on blasphemy and religious insult have led to severe and illegitimate restrictions on freedom of expression. The laws are enforced partly through the country’s extensive mechanisms for prepublication censorship.⁴⁴ There are several bodies charged with reviewing materials for publication, including at the executive level. However, all Muslim religious texts are vetted by the Islamic Research Council of Al-Azhar University, the oldest Islamic university and a leading religious authority for Sunni Muslims that is known for its conservative interpretations of Shari’a. Law No. 102 of 1985 gave Al-Azhar the authority to regulate publication of the Quran and the *hadith* (teachings of the prophet).

According to analysts, “its powers soon began to grow and today it is involved in the banning of not only books directly related to the Quran and *hadith* but also a number of other books which may incidentally be related to ‘religion.’”⁴⁵ In 1994, the government clarified that Al-Azhar was the “sole authority to which the Ministry of Culture must refer Islamic matters, and that it was to issue licenses for films, books, and tapes that discussed religion.”⁴⁶ The list of banned books in Egypt is extensive, and titles are continually being added.

There have been numerous incidents of newspapers and magazines being censored for religious reasons. In 2006, editions of leading European newspapers *Le Figaro* and *Frankfurter Allgemeine Zeitung* were banned, reportedly because of articles deemed “insulting to Islam.”⁴⁷ The Egyptian magazine *Ibdaa* (Creativity) had its publishing license withdrawn in April 2009 because of a poem, published in 2007, that was found to be blasphemous,⁴⁸ though the move was later reversed on appeal.

In an ongoing case, the Egyptian author Youssef Ziedan, a Muslim, has been accused of blaspheming against Christianity in his book *Azazil*. Coptic groups have filed a complaint under Article 98(f) of the EPC, arguing that the book insults Christianity and some of the faith's leading figures, and the prosecutor general's office is reportedly investigating the claim.⁴⁹ How this case proceeds will be telling, as it is the first to invoke Article 98(f) in defense of Christianity. While the government has given the task of vetting publications relating to Islam to Al-Azhar University, the Coptic Orthodox Church unofficially does the same for books addressing Christianity. *Azazil* was not vetted by the Church, however, as it was considered to be popular literature rather than religious.⁵⁰

In addition to books and periodicals, blasphemy and religious insult laws have been used to curb expression on the internet. Blogger Kareem Amer was arrested in 2006 and sentenced to four years in prison in 2007 for his critical online writings about the leadership of Al-Azhar. The UN Working Group on Arbitrary Detention found that the case against him led to a violation of his right to freedom of expression under Article 19 of the ICCPR and of the Universal Declaration of Human Rights. The working group concluded: “Defamation of religions may offend people and hurt their feelings but it does not directly result in a violation of their rights to freedom of religion. International law does not permit restrictions on opinions or beliefs which diverge from the religious beliefs of the majority of the population or the state prescribed one.”⁵¹

Freedom of Religion

Article 98(f) is discriminatory in that it only prohibits blasphemy against one of the three “heavenly” or “divinely revealed” religions, namely Islam, Christianity, and Judaism. Unrecognized minority religious groups such as the Baha’i and Ahmadiyya, a heterodox offshoot of Islam, are not protected and are disproportionately affected by the law.⁵²

Unlike Christians and Jews, adherents of the Baha’i faith and Ahmadiyya are not legally free to practice. In fact, practicing the Baha’i faith is considered blasphemy. The religion is criminalized under Law No. 263 of 1960, which bans Baha’i institutions and community activities and strips Baha’is of any legal recognition.⁵³ The government has argued that the law was adopted to uphold “public order,”⁵⁴ and Egypt’s courts, including the Supreme Administrative Court, have affirmed this position.⁵⁵ According to the National Spiritual Assembly of the Baha’is, the faith’s adherents in Egypt “have faced several episodes of arrests, detentions, and imprisonment, the most recent being in 2001. Baha’is remain under constant police surveillance. Their homes are periodically searched. Baha’i literature is taken and destroyed.”⁵⁶

Others deemed to have deviated from the state-endorsed version of Sunni Islam are also prosecuted under Egypt’s blasphemy law, as occurred in the case of Abdul Sabur el-Kashef and Mohammed Radwan. El-Kashef was the leader of an Islamic cult and claimed to have seen God; Radwan was one of his followers. The men were arrested for blasphemy in 2006 after they were seen preaching in a public square and calling for Muslims to stop praying five times a day.⁵⁷ Kashef was reportedly sentenced to 11 years in prison for claiming to see God, and Radwan received a three-year prison sentence for denying the existence of heaven and hell; both were charged under Article 98(f). An appeals court later reduced Kashef’s sentence to six years but confirmed Radwan’s term.⁵⁸

Egypt’s *hisba* jurisprudence also imposes severe restrictions on freedom of religion or belief, as the procedure can be used to target theological dissidents or any discussion of Islam that diverges from the official interpretation. The principles of freedom of religion and freedom of expression both allow for a diversity of opinions on religious matters, and the legal harassment and intimidation faced by Nasr Abu Zayd and other Egyptian academics and writers illustrates the extent to which conditions in Egypt conflict with such principles.

Freedom from Discrimination

Egypt's laws and legal practices have negatively affected Muslims' right to change their religion, a fundamental component of overall religious freedom.⁵⁹ These restrictions also amount to religious discrimination, as non-Muslims are not subject to similar constraints. A key 2008 ruling by the Cairo Administrative Court affirmed that apostasy is a violation of the principles of Islam, and therefore conversion from Islam to another faith is not allowed.⁶⁰ The decision stated that the freedom to practice one's religion is subject to certain limitations, namely the "maintenance of public order, public morals, and conformity to the provisions and principles of Islam."⁶¹ The court went on to explain that "public order" refers to the official religion of Islam, the majority Muslim population of Egypt, and Islamic law as the principle source of Egyptian legislation.⁶² Meanwhile, Christians wishing to convert to Islam reportedly face no challenges in doing so.⁶³

In recent years there have been several notable cases exhibiting such discrimination against Muslims who wish to identify with another faith. In 2005, Christian convert Baha el-Akkad was arrested and detained under the emergency law on suspicion of "insulting a heavenly religion."⁶⁴ He was held without charge or trial for more than two years before finally being released in 2007.⁶⁵ In a separate case in 2007, Christian convert Mohamed Hegazy petitioned the courts to change his religion on his state-issued identification card from Muslim to Christian. He was reportedly the first Christian to attempt to receive official recognition of his conversion.⁶⁶ In April 2010, following two years of postponements by the courts and appeals against rejections of his legal request (during which he was subjected to death threats and discrimination because of his conversion), Hegazy's case was postponed yet again pending the outcome of a case before the Constitutional Court with regard to Article 47 of the constitution, which provides for freedom of religion.⁶⁷

Freedom from Arbitrary Arrest and Detention

The problem of arbitrary arrest and detention has been seriously compounded by Egypt's emergency law and its language restricting blasphemy. In 2006, the law was amended to limit the length of detention without charge or trial to six months.⁶⁸ However, many nongovernmental organizations (NGOs) report that this barrier exists only in theory, as in practice individuals continue to be held for years or even decades without being formally charged or tried. The U.S. Department of State has noted "large-scale detentions of hundreds of individuals without charge under the emergency law."⁶⁹ The Egyptian government maintains

that the powers of arrest and detention under the emergency law are subject to judicial review, which guards against abuse. However, the government commonly “disregards court orders to release detainees held under the emergency law, and the Interior Ministry is empowered under the law to renew detention orders on its own authority.”⁷⁰

The case of Hani Nazeer, a Coptic Christian blogger, illustrates the abusive combination of emergency detention and blasphemy laws. Nazeer reportedly posted a link on his blog to an image of a book cover that was deemed insulting to Islam.⁷¹ He was detained in October 2008 under the emergency law, and has been held in Borg al-Arab prison since then.⁷² Nazeer’s ANHRI lawyers obtained five court orders for his release, but it was not until July 2010 that he was freed.⁷³ However, each time an order for his release has been issued, security forces have appealed the decision and obtained new detention orders from the Interior Ministry. Following the latest release order, one NGO reported that Nazeer was moved briefly to a police station, only to be transferred back to Borg el-Arab under a new detention order.⁷⁴

It is noteworthy that Nazeer has not been charged formally with blasphemy or insulting Islam, but was detained because of allegations that he did so.⁷⁵ Egyptian authorities claimed that his detention was a preventative measure designed to protect his life “in light of the anger and the strong uprising of Muslims in Quena caused by his blog.”⁷⁶

In the case of blogger Kareem Amer, mentioned above, the defendant was charged with “inciting hate of Islam,” “insulting religion,” and “insulting the president” for his criticism of Al-Azhar University and its Islamic Research Council—the body charged with ensuring that all publications in Egypt are in line with Shari’a principles.⁷⁷ In 2009, the UN Working Group on Arbitrary Detention found his detention to be in violation of the detention and trial provisions of both the Universal Declaration of Human Rights (Articles 9 and 10),⁷⁸ and the ICCPR (Articles 10 and 14).⁷⁹

More recently, nine Ahmadiyya adherents were arrested on March 15, 2010, and detained under the emergency law for more than 80 days without charge or trial, reportedly “because of their affiliation with the Ahmadi confession.” According to the Egyptian Initiative for Personal Rights (EIPR), they were finally charged with “showing contempt for the Islamic religion” under Article 98(f) of the EPC.⁸⁰ After their detention order under the emergency law expired on May 31, they were placed under a preventive detention order issued by the state security prosecutor for four more days. On June 4, three of the detainees were released on the order of

a summary court judge, and on June 8 the remaining six were released by the state security prosecutor in what was described as a “surprising step.”⁷⁸¹

Access to Legal Representation

The well-publicized cases of Hani Nazeer and Kareem Amer have featured violations of the right to access to legal counsel while in detention.⁸² Both individuals are represented by lawyers from ANHRI, and these attorneys have been denied the right to visit their clients in prison. Although the lawyers reportedly obtained official visit permits from the Public Prosecutor and Detainee Affairs Office, prison officials denied them entry on at least three occasions in 2009.⁸³ No reasons were given for the refusals. ANHRI submitted formal complaints to the prosecutor’s office, but apparently no action was taken to investigate them.⁸⁴

Right to Due Process

As mentioned above, blasphemy suspects detained under Egypt’s emergency law can be referred to military courts.⁸⁵ The emergency law also empowers the government to establish special courts with no right to appeal, falling short of international standards for fair trial, due process, and judicial independence.⁸⁶ According to one commentator, “Over the years, it has become clear that the military [special] courts are not an independent body since they are under the executive authority. It appears that in a system where the independence of the judiciary is a farce—a principle on paper only—no mechanism exists through which human rights can be achieved.”⁸⁷

Moreover, the Interior Ministry’s practice of appealing special courts’ decisions to release prisoners and issuing new detention orders on its own authority raises doubts about the relevance of existing judicial review mechanisms.⁸⁸ As one Human Rights Watch official has stated, “security officials’ disregard for court decisions shows that they operate outside the law and basically do whatever they want.”⁸⁹

The *hisba* system also affects due process and fair trial rights for those accused of blasphemy or religious insult in Egypt. Hundreds of *hisba* cases have been registered against writers and activists, often using blasphemy or apostasy as a pretext,⁹⁰ and the authorities have failed to curb the practice or prevent frivolous or invalid complaints from reaching the courts, as required by law. ANHRI has argued that “the weak stance of the Government regarding the swarm of *hisba* cases against writers and reporters resulted in *hisba* cases gaining more ground and extending their reach to human rights activists and civil society advocates.”⁹¹

Freedom from Torture and Cruel, Inhuman, or Degrading Treatment & Right to Life and Security of the Person

Egypt's poor record on torture and other cruel, inhuman, or degrading treatment or punishment has come under much scrutiny and been documented in innumerable reports. A range of UN expert and treaty bodies—including the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, the Committee Against Torture, and the Human Rights Committee—have expressed concern over Egypt's continued use of torture and ill-treatment, particularly in administrative detention and prison facilities.⁹²

Human Rights Watch has described torture in Egypt as “epidemic,” and alleges that complaints of torture are inadequately or simply not investigated, while prosecutions are rare.⁹³ When they have occurred, punishments for torture or ill-treatment have been light, contributing to a culture of impunity for the perpetrators.⁹⁴ A number of individuals held on blasphemy or religious insult charges have been subjected to abusive treatment.

According to the UN Working Group on Arbitrary Detention and ANHRI, Amer has been repeatedly abused while in detention at Borg al-Arab prison.⁹⁵ An investigation into one such allegation was not launched until 11 days after the incident in question, despite a complaint submitted by Amer's lawyers.⁹⁶ The Cairo Institute for Human Rights Studies has also reported on the “inhuman imprisonment circumstances” in which Amer is detained. The group noted, for instance, that he was placed in solitary confinement for two months in 2007 and did not receive regular meals.⁹⁷

Nazeer has reported being assaulted by guards at Borg al-Arab prison.⁹⁸ ANHRI stated that Nazeer had also been pressured by prison officials to convert to Islam while in detention, which may amount to cruel, inhuman, or degrading treatment.⁹⁹ According to the organization, complaints regarding these violations were submitted but not acted upon.¹⁰⁰

Allegations of torture arose in the case of the nine Ahmadis who were arrested and detained on charges of “showing contempt for the religion of Islam.” Lawyers for the EIPR were present during the interrogation of the nine detainees by the state security prosecutor, during which several of them said they had been tortured by police to “compel them to confess to the charges against them.”¹⁰¹ The EIPR reportedly asked for an investigation into these allegations.¹⁰²

Apostasy and blasphemy continue to be highly stigmatized in Egyptian society, and their criminalization by the state encourages extralegal persecution by

religious extremists. Islamic radical groups are able to rally angry mobs to protest perceived unorthodox interpretations of Islam; individuals accused of defying or merely questioning Islamic principles are at risk of being targeted in such campaigns. In some cases, alleged blasphemers and apostates have been physically attacked. For example, Naguib Mahfouz, an Egyptian novelist and Nobel laureate, was vilified by Islamists who accused him of promoting secularism in his 1959 book *Children of Gaballawi*. Though he did not face legal proceedings, Islamist groups waged a campaign against him, succeeding in having the book banned in Egypt and posing a serious threat to his safety and security. In October 1994, Mahfouz was stabbed in the neck by an Islamist militant while walking in the street. Though he survived the attack, it is indicative of the dangers faced by those accused of insulting Islam.

In the case of Hani Nazeer, when law enforcement officials were unable to find him to arrest him in connection with his alleged insults against Islam, they instead detained his brothers for three days and threatened to arrest his sisters. Nazeer then turned himself in to secure the release of his brothers.¹⁰³ This kind of intimidation violates individuals' right to security of the person.

Many individuals accused of blasphemy or other forms of religious insult have received death threats. The same is true for those accused of apostasy. Mohammed Hegazy was forced to go into hiding as a result of death threats that followed his attempt to get official recognition for his conversion from Islam to Christianity.¹⁰⁴ In a public statement, two religious scholars from Al-Azhar University reportedly declared it legal in Islamic law for Hegazy to be killed because of his conversion.¹⁰⁵

CONCLUSION

Egypt's blasphemy and religious insult laws, coupled with the expansive detention powers granted by the emergency law and the capricious system of hisba complaints, expose the accused to a range of serious human rights abuses at the hands of the authorities as well as individuals. The victims can include journalists, academics, bloggers, religious minorities, political dissidents, and ordinary citizens caught up in personal disputes. As demonstrated by the cases cited in this chapter, the vaguely worded and arbitrarily enforced restrictions are incompatible with the rule of law and the fundamental civil liberties that the government of Egypt is obliged to uphold and protect.

Greece

INTRODUCTION

Greece, an established democracy and long-standing member state of the European Union (EU),¹ guarantees freedom of expression under Article 14 of its constitution.² However, the provision imposes some limitations on this right. For example, newspapers and other print media can be seized if they are accused of insulting the Greek president, offending Christianity or any other “known religion,” or “offending public decency.” Greece’s Penal Code also includes blasphemy and religious insult provisions under Section 7, Articles 198 and 199. The application of these laws has led to restrictions on freedom of expression that extend beyond what is permitted in international and regional agreements to which Greece is a party, most notably in the form of self-censorship by artists and others to avoid prosecution.

The country is relatively homogeneous in terms of religion, with Greek Orthodox Christians making up 98 percent of the population.³ According to the U.S. State Department, Muslims account for about 1.3 percent, and the remainder consists largely of Jews, Roman Catholics, and other Christian denominations.⁴

BACKGROUND

Greece gained independence from the Ottoman Empire in 1830 following a nine-year war. The country’s modern history has featured many episodes of civil and political unrest, including a civil war in the aftermath of World War II. However, Greece has been a democratic republic since 1974, and in 1981 it joined the EU. The political landscape has been relatively stable in recent decades, and the country continues to meet the criteria for membership in the EU.⁵

During Ottoman rule, the Orthodox Church worked to preserve the Greek language and cultural identity, and served as an “important rallying point in the struggle for independence.”⁶ The dominant role of the Church in the social, cultural, and political history of the country has led the Greek legal system to be “marked by a very high level of religious devotion.”⁷ Article 3 of the constitution declares the Eastern Orthodox Church to be the “prevailing” religion in Greece.

As a result of its official status, the Orthodox Church enjoys certain government benefits, including financial support, that are not extended to other religions.⁸ For example, salaries of Orthodox clergy are paid by the government; instruction in Orthodox Christianity is mandatory in all public schools, except for students who declare adherence to other religions; and the Orthodox Church is free of the administrative obstacles that other religions face, for instance when seeking permits for maintenance or construction of religious sites.⁹ The Church’s special status is also apparent in the influence it wields in politics, law, and society. According to a 2008 survey by the Council of Europe’s Venice Commission, “the solid historical links between the Eastern Orthodox Christianity and the emergence of the Greek nation, are used in order to justify a high level of interference of the church in the state affairs, in all different levels.”¹⁰ Indeed, scholars have argued that the continued prosecutions for blasphemy under Penal Code Articles 198 and 199 in recent years can be attributed to the influence of the Orthodox Church.

BLASPHEMY LAWS

Greece’s main blasphemy laws are found in Section 7 of the Penal Code, entitled “Offenses Against Religious Peace.”¹¹ This section contains four provisions, two of which—Articles 198 and 199—specifically address blasphemy and religious insult. Article 198 punishes any public and malicious blasphemy against God with a maximum of two years in prison, and punishes the public “manifest[ation of] a lack of respect for the divinity” with up to three months’ imprisonment.¹² Article 199 is directed at established religions as opposed to God or “the divinity,” and prescribes up to two years’ imprisonment for “one who publicly and maliciously and by any means blasphemes the Greek Orthodox Church or any other religion tolerable in Greece.”¹³ According to one scholar, “public” expression has been interpreted in Greek jurisprudence as “any manifestation that may be perceived by an undetermined number of people, irrespective of whether it took place in a

public area or was actually perceived by anyone.”¹⁴

Blasphemy cases can be brought before civil and criminal courts, and in some cases civil courts have used prior restraint to prevent the public expression of a work that is deemed blasphemous. Such interim measures have been used to prevent a work of art from being exhibited and a movie from being screened, as described below. Articles 198 and 199 are somewhat different in that for the latter, a complainant is required, whereas for the former, the state initiates prosecutions on the basis of public interest, even in the absence of an offended person. This approach has been justified by the notion that religion is the “foundation of the state” of Greece, and consequently religious feelings must be protected for the good of society. The prosecutor has discretionary powers to carry out investigations into alleged blasphemy against the divinity, reportedly with no supervision or mechanism for appealing the prosecutor’s decision on whether to proceed.¹⁵ Most state-initiated cases under Article 198 come as a result of pressure from Greek Orthodox groups. One observer has described this relationship as stemming from the “atmosphere of a ‘natural’ alliance between justice and the Church.”¹⁶

According to the jurisprudence on these articles, an expression or manifestation is “malicious” if it “incorporates a vilifying act aimed directly at offending a religion for the offender’s gratification.”¹⁷ Malicious intent is difficult to prove in law, but even in cases where it appears to be absent, such as the 1988 suit over an American film, *The Last Temptation of Christ*, injunctions have nevertheless been issued.¹⁸

The Greek judiciary has argued in case law that Articles 198 and 199 are designed to protect not religion or religious doctrine per se, but rather social and religious peace and harmony.¹⁹ However, this rationale is at odds with the laws’ application in practice, which has not required an offended party or even an audience for the expression or manifestation at issue. As scholars have pointed out, Article 198 “as it stands seems to protect respect for the divine as a legal interest independent of the intermediation of an offended person as the subject of a civil right.”²⁰

Incompatibility with International Law

Greece’s blasphemy and religious insult laws are contrary to international standards on freedom of opinion and expression. Greece is a state party to a range of international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimina-

tion (ICERD), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), an instrument of the Council of Europe that provides for freedom of expression under Article 10. Moreover, Greece's EU membership obliges it to maintain democracy, the rule of law, human rights, and respect for and protection of minorities. In a 2008 study, the Venice Commission concluded that "the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced."²¹

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom from Discrimination

Greece's blasphemy laws are not limited to a particular religion and formally protect the Orthodox Church as well as any other "tolerable" religion from offense. In practice, however, these laws are used only to prosecute cases of perceived blasphemy against the Orthodox Church. This de facto discrimination is indicative of the special status enjoyed by the Church within the state establishment.²²

In response to the 2008 Venice Commission survey, a Greek expert observed that "the very existence of Chapter 7 of the Greek Penal Law can be regarded as a solid material of the integration of the Orthodox religion into the penal machinery." He added, "It should not be regarded as accidental therefore, that the Greek case law related to crimes contained in the Chapter 7 of the Code is inexistent when it comes to condemnation of blasphemous acts against '*any other religion tolerable in Greece*.'"²³

Freedom of Expression

Blasphemy cases are reportedly rather common in Greece, with most stemming from quotidian verbal insults against "the divinity" and related figures.²⁴ These have been described as "petty" cases, involving sensitive individuals who take offense at allegedly blasphemous expression, and they are often dismissed in the first instance due to a lack of malicious intent. However, Greece's blasphemy and religious insult laws have also been applied in several well-publicized cases involving artists using an array of media. The defendants have been criminally sanctioned for their "offensive" works, or the works themselves have been subjected to interim restrictions by civil courts in the interests of preserving social and religious peace.²⁵ Both forms of enforcement have had negative consequences for freedom of expression in country, including self-censorship to avoid legal entanglements.

One of the more infamous blasphemy cases in Greek jurisprudence is the successful 1988 bid to ban public screenings of American director Martin Scorsese's film *The Last Temptation of Christ*. Though the movie was approved for distribution by a government censorship board, Orthodox Christians protested the film in the days and weeks following its release in Athens, holding demonstrations that in some instances degenerated into riots and had to be dispersed by police with tear gas.²⁶ The demonstrations were reportedly led by Orthodox priests, who called on the faithful to protest outside cinemas.²⁷ Orthodox groups ultimately forced the government to initiate legal proceedings to ban the movie, despite the censorship board's approval.²⁸ The decision in the case by the Athens Court of First Instance was significant, as it stated that "protection of religious feelings is imperative because they are moral-social values...worthy of protection.... Religion is not a purely personal affair...but the foundation of the state, a vector of spiritual civilization."²⁹

In February 2000, author Mimis Androulakis and his publisher, Thanasis Kastaniotis, were charged with blasphemy in the province of Thessaloniki for the novel *M to the Power of N*, which included references to the sexual desires of Jesus Christ. The complaint against the two men was reportedly submitted by a fundamentalist historian, Marios Pylavakis, who also allegedly orchestrated burnings of the book.³⁰ In March, the men were formally indicted and the Thessaloniki Court of First Instance imposed an interim injunction on the distribution of the novel, effective in the northern provinces of Greece and justified as a means of "preventing outbreaks of violence."³¹ The March hearing was marred by intimidation and harassment of the defendants by Christian fundamentalists. According to one nongovernmental organization (NGO), "Christian zealots and black-clad monks stormed the court, chanting 'blasphemers' and 'antichrists.'"³²

The temporary ban on the book was upheld in another hearing in April, but eventually lifted in September 2000. The request for a permanent injunction was denied, and charges against the author and publisher were dropped.³³ Injunction requests were also submitted to the courts in Athens, at the instigation of the fundamentalist Greek Orthodox Salvation Movement,³⁴ but the Athens Court of First Instance denied them. The court found that the novel did not constitute "malicious insult" because it was aimed at condemning misogyny rather than offending Christianity, and did not "attack religion as such."³⁵ According to one commentator, the Holy Synod, the governing body of the Eastern Orthodox Church in Greece, had officially asked the government for bans on both the Androulakis book and the Scorsese film in the 1988 case.³⁶

In another case, Greek art curator Christos Ioakimidis assembled an exhibition entitled *Outlook* in 2003. One of the paintings in the show, *Asperges*, by Belgian artist Thierry de Cordier, depicted a crucifix alongside male genitalia.³⁷ The piece drew a public outcry from the Orthodox Church and some of its followers, and was consequently removed from the exhibition.³⁸ Right-wing politician Georgios Karatzaferis reportedly submitted a formal complaint to the judiciary alleging that the artwork was blasphemous and in violation of the Penal Code.³⁹ An investigation into the complaint was initiated by the prosecutor, much to the dismay of artists and others in Greece who argued that even an inquiry into a possible criminal violation of this kind “threatens artistic freedom of expression.”⁴⁰ In 2005, following a 17-month investigation, a judge concluded that there were indeed grounds for criminal prosecution under Article 198.⁴¹ The prosecutor claimed that the very display of the “despicable work” with “repulsive content” in a public exhibition was proof of the curator’s “malicious will to scorn and ridicule the Eastern Orthodox Church.”⁴² In May 2006, the Magistrate’s Court of Athens acquitted Ioakimidis of all charges, finding that there had been no malice, and that the curator had not intended to offend the Orthodox Christian religion or public decency.⁴³

In a more recent case, Austrian cartoonist Gerhard Haderer was accused of blasphemy under Article 198 for his satirical book *The Life of Jesus*, which depicted Christ as a heavy-drinking, marijuana-smoking hippie.⁴⁴ The book was originally published in Austria, and Haderer was allegedly unaware of its publication in Greece until he received a court summons, but he was tried in absentia in January 2005 by the Magistrate’s Court of Athens. He was found guilty of malicious blasphemy and received a six-month suspended prison sentence, and the court imposed an injunction on distribution of the book.⁴⁵ Since he was living in Austria, Haderer fell under the jurisdiction of the European Arrest Warrant system, which obliged any EU member state to honor Greece’s arrest warrant for him.⁴⁶ In March 2005, Haderer went to Greece to appeal his conviction, and in April 2006 the Appellate Court of Athens acquitted him of all charges on the grounds that the humorous quality of the book precluded it from being malicious.⁴⁷ The case against Haderer was heavily criticized by Greek artists and writers, European NGOs, and even the Organization for Security and Cooperation in Europe (OSCE). The OSCE sent a letter to the Greek government following the initial ruling, arguing that the criminalization of expression such as that seen in *The Life of Jesus* was contrary to international press freedom standards.⁴⁸

CONCLUSION

The apparent pattern in Greece is that “petty” complaints of malicious blasphemy by individuals are usually dismissed by courts of first instance, while high-profile cases involving works of art lead to injunctions and convictions that are eventually overturned. The more prominent cases are almost always initiated by the Orthodox Church and related fundamentalist groups, or by the government under pressure from these entities, reflecting the Church’s political influence and special status. The blasphemy laws essentially allow certain elements of society to engage in legal harassment and intimidation of those who offend them, with the blessing of the state. Even if they end in exoneration, blasphemy prosecutions impose financial and other burdens on the defendants, have a chilling effect on the broader creative community and media sector, and curtail the general public’s fundamental right to have access to information and a variety of viewpoints.

Indonesia

INTRODUCTION

Indonesia, a secular state, has developed a reputation for pluralism and moderate Islam while doing more to protect freedom of expression than many of its neighbors. With its unique political history and state ideology, the country has become a model for the successful integration of democracy and Islam. However, there are concerns that Indonesia's pluralism is declining. The past decade has featured an increase in violent attacks on religious minorities as well as governmental and judicial measures to curb freedom of religion and freedom of expression for these groups. Much of the shift appears to be driven by the application of Indonesia's criminal blasphemy provision, Article 156(A) of the Penal Code, coupled with legislation that limits the religions recognized by the government.

There have been some positive developments in the state of freedom of expression in Indonesia, most notably a December 2007 Constitutional Court decision that found Articles 154 and 155 of the Penal Code, which criminalized insults and similar offenses against the government, to be in violation of constitutional guarantees of freedom of expression.¹ However, there have also been some setbacks, namely an excessively broad antipornography law passed in 2008 and a Constitutional Court review that upheld the blasphemy restrictions in Article 156(A) of the Penal Code in April 2010. These measures have exacerbated the recent trend of infringements on religious freedom and helped to deepen societal discrimination and religious divides.

About 86 percent of Indonesia's 240 million people are Muslim, giving the country the world's largest Muslim population.² The next largest religious group consists of Protestant Christians, who make up 6 percent of the population. Roman Catholics account for 3 percent, and Hindus 2 percent.³ The majority of Muslim Indonesians practice Sunni Islam, which the state endorses as the official form

of the religion.⁴ According to the U.S. State Department, there are also one to three million Shiite Muslims in the country, and 400,000 adherents of the heterodox Ahmadiyya sect. Other religious minorities include smaller Christian denominations, Buddhists, practitioners of traditional indigenous religions, and Jews.⁵

BACKGROUND

The Dutch East India Company began colonizing what is now Indonesia in the 17th century, gradually unifying the many existing sultanates and other territories under Dutch rule. Indonesia declared independence and adopted its first constitution in 1945, though it was not until 1949, after four years of fighting, that the country's independence was formally negotiated with the Dutch. A revised constitution was then adopted, establishing a parliamentary system of government.⁶ However, the country's diverse array of political parties made it difficult to establish and maintain stable governing coalitions.

One of the major factors behind this discord was the debate over the role of Islam in Indonesia. The country's independence leader and first president, Sukarno, elaborated a national ideology called Pancasila that consisted of five core principles: belief in God (monotheism), humanitarianism, national unity, representative democracy by consensus, and social justice.⁷ Conservative Islamic groups argued that Pancasila failed to specify the obligations of Muslims,⁸ and the blasphemy laws, adopted under Sukarno in 1965, were intended as a tool to help implement the religious aspect of Pancasila.

Sukarno assumed authoritarian powers in 1957 and implemented a system of governance he labeled Guided Democracy, which "ushered the collapse of parliamentary democracy and replaced it with a system that provided no real checks on the executive presidency."⁹ In 1965, some factions of the powerful Indonesian military, reportedly alarmed by the rise in influence of the Communist Party of Indonesia (PKI), to which Sukarno had grown close, attempted to overthrow him in a failed coup d'état.¹⁰ In 1966, after suffering a drop in support and control, Sukarno handed power to General Suharto, who had not been involved in the attempted coup. Suharto then served as Indonesia's president for more than three decades. He established Golkar, a "progovernment party based on bureaucratic and military interests,"¹¹ and created a regime known as the New Order, which sought to improve Indonesia's failing economy, reestablish political order, and

promote development. Many of these policies were implemented by the military, which was given a strong political role.¹²

Though Pancasila was the brainchild of Sukarno, it was under Suharto's rule that the ideology became entrenched in Indonesian politics. The discourse of national unity was a core element of Suharto's regime, and has been described as a means of "maintaining control over an extremely disparate and varied society."¹³ Suharto worked to repress certain forms of religious expression and religiously tinged politics, and indeed any mass politics that was not managed by the authorities.¹⁴ According to some experts, his emphasis on national unity imposed an "artificial harmony" and a "forced pluralism" in Indonesia that has now begun to break down.¹⁵ Others have argued that Pancasila contributed significantly to the development of a genuinely pluralistic and peaceful Indonesia. After Suharto resigned amid an economic crisis and social unrest in 1998, there was general agreement among political parties on retaining the state ideology as a way to continue to emphasize tolerance and acceptance in a religiously and ethnically diverse country.¹⁶

In 1999, Indonesia held its first free elections, and the Indonesian Democratic Party–Struggle (PDI-P) won the largest number of seats in parliament. The country underwent a dramatic democratization process over the next 10 years, and religiosity surged after decades of discouragement by the former regime. Signs of the Islamic revival can be seen in the increased number of women wearing the *hijab*, or Muslim headscarf, the establishment of more Islamic banks, and the growing popularity of Islamic-themed art and fiction.¹⁷ However, the trend does not appear to extend to the political arena, where hard-line Islamist parties are reportedly losing support. A poll of voters taken throughout 2005 by an independent Jakarta-based polling agency showed "an unmistakable and steady decline" for the Prosperous Justice Party (PKS), Indonesia's largest Islamist party.¹⁸ In 2009, the secular Democratic Party won the most seats in the lower house of parliament, taking 148, or almost triple the 55 it won in the previous elections. Golkar and the PDI-P, which placed second and third, also won more seats than any of the four Islamist parties.¹⁹ The results showed a significant decline in support for three of these parties, with the PKS merely holding its ground.²⁰ The popularity of the PKS has reportedly suffered from its backing of the antipornography law enacted in October 2008.²¹

Despite being somewhat marginalized in elections, hard-line Islamic parties and groups have exercised influence by "pressuring government officials, judges, and politicians through private lobbying, demonstrations, threats and mob ac-

tion.”²² Coupled with the general rise in piety and strengthened religious institutions, these efforts helped secure the adoption of the antipornography law and the issuing of a Joint Ministerial Decree that limited freedom of worship for Ahmadi in 2008. Some commentators have argued that the April 2010 Constitutional Court decision upholding Indonesia’s blasphemy laws is another sign of Islamist influence.²³

It is also important to note that since the fall of Suharto in 1998 and the implementation of a decentralization program designed to shift more power to local governments, some parts of Indonesia have adopted ordinances that enforce aspects of Shari’a (Islamic law). At least 50 local governments have codified elements of Shari’a, mainly relating to dress codes and personal behavior. In Aceh, the provincial government has gone further by adopting a criminal statute that provides for the stoning of adulterers.²⁴

Nevertheless, at the national level, Indonesia’s constitution guarantees fundamental freedoms. Although Article 29 affirms that the “State shall be based upon the belief in the One and Only God,” it also stipulates that everyone in Indonesia is free to choose and practice their religion, and guarantees freedom of expression under Article 28. Article 27 provides for equality and nondiscrimination for all residents of Indonesia.²⁵

BLASPHEMY LAWS

Indonesia’s criminal blasphemy provision, Article 156(A) of the Penal Code, is based on Law No. 1/PNPS/1965, adopted by presidential decision in 1965. Article 156(A) assigns up to five years of imprisonment for anyone who “deliberately in public gives expression to feelings or commits an act: a) which principally has the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; or b) with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.”²⁶ Article 1 of the 1965 presidential decision prohibits “every individual...in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion.”²⁷ It also specifies that the six recognized religions in Indonesia are Islam, Buddhism, Protestantism, Catholicism, Hinduism, and Confucianism.²⁸

Some Indonesians have argued that the blasphemy laws, while perhaps appropriate at the time of adoption, are no longer needed.²⁹ As one observer noted, the laws were passed at a time when a number of controversial heterodox sects were emerging.³⁰

In October 2009, the Advocacy Alliance for Freedom of Religion,³¹ a coalition of nongovernmental organizations (NGOs) and activists, formally requested that the Constitutional Court review Law No. 1/PNPS/1965 and Article 156(A) of the Penal Code. The alliance contended that the laws should be repealed because they were discriminatory and abusive, and in violation of the constitutional rights to freedom of religion and freedom of expression.³² Hard-line Islamic organizations such as the Islamic Defenders Front (FPI), which has been involved in numerous incidents of violence,³³ staged “vociferous demonstrations” outside the hearings, reportedly threatening the petitioners and supporters of the review.³⁴ Inside the courtroom, extremists allegedly attempted to intimidate speakers arguing for the laws’ repeal, heckling them with shouts of “infidel” and “repent” as well as religious slogans.³⁵ In addition, Indonesia’s two largest Muslim organizations, Muhammadiyah and Nahdlatul Ulama, though generally considered moderate, officially expressed their opposition to the judicial review.³⁶

After hearing testimony from 49 experts representing a wide range of opinions,³⁷ the court upheld the blasphemy laws in April 2010. Judge Maria Farida Indrati dissented, stating that the legislation was “a product of the past,” and that “wrongful acts were being carried out against minority groups in its name.”³⁸ The majority, however, argued that it “was still needed to maintain public order among religious groups.” The judges provided some clarification on the interpretation of the laws, specifying that while Article 1 of Law No. 1/PNPS/1965 identifies the six religions recognized by the government, it also instructs the state to “leave alone” members of other religious groups, meaning the government should allow them to practice without interference.³⁹

Human rights and freedom of expression groups around the world lamented the decision,⁴⁰ and many observers said it was motivated by politics and fear of an Islamist backlash.⁴¹ The chairman of the National Commission on Human Rights (Komnas Ham) criticized the ruling, accusing the court of failing in its obligation to uphold constitutional protections.⁴²

Several governmental and quasi-governmental bodies monitor compliance with Indonesia’s blasphemy laws, including the Ministry of Religious Affairs, the Indonesian Council of Ulema (MUI), and the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor PAKEM), which falls under the Attorney

General's Office.⁴³ The MUI has played a leading role in the development of state-sanctioned discrimination against Ahmadiyya. In 2005, the council issued a fatwa (religious opinion) that declared Ahmadiyya a heretical sect, citing the 1965 presidential decision and Article 165(A) of the Penal Code.⁴⁴ The fatwa was reportedly used by extremist Islamic groups to pressure the government to issue the 2008 Joint Ministerial Decree on Ahmadiyya,⁴⁵ and local MUI leaders have invoked it to persuade local governments to ban the sect.⁴⁶ Local MUI chapters have also been involved in individual blasphemy cases. In one case in January 2006, Muslim high school teacher Sumardi Tappaya was reportedly arrested and jailed on the island of Sulawesi for whistling during prayers.⁴⁷ The local MUI chapter declared the whistling to be deviant and therefore blasphemous. Sumardi was sentenced to six months' imprisonment.⁴⁸

Incompatibility with International Law

Indonesia's blasphemy law in Article 156(A) of the Penal Code, and the 1965 presidential decision that established it, contravene international human rights standards on freedom of expression and freedom of religion. The laws' application gives rise to a host of other human rights abuses, including the right to due process, freedom from arbitrary detention, the right to security and privacy, and freedom from discrimination. The measures lack clarity as to what acts constitute blasphemy or "religious defamation," leaving them open to further abuse.⁴⁹ In practice, the laws are used to target religious minorities, and particularly those who adhere to heterodox forms or interpretations of Islam that are not sanctioned by the government.⁵⁰

Moreover, the blasphemy laws help to foster a climate of intolerance, and are used to justify extralegal discrimination against religious minorities. According to one Islamic scholar, the laws are problematic because "radical and literal-minded Muslims use [them] as justification to take things into their own hands."⁵¹ Islamic extremist groups have mounted dozens of violent attacks on churches, Ahmadiyya mosques, and businesses that serve alcohol, claiming they were protecting Islam from insult.⁵² In some cases police have allegedly assisted in the attacks or stood by without intervening.⁵³ The radical groups include the FPI, Hizb ut-Tahrir, Islamic Ulema Forum, Islam Troop Command, and the Anti-Apostate Movement Alliance. In addition, the laws were used to justify the 2008 Joint Ministerial Decree on Ahmadiyya, which severely restricts Ahmadis' ability to practice their faith and bans them from proselytizing. The decree effectively falls just short of an outright ban on Ahmadiyya.

In 2006, Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR). The country is also a state party to a number of other human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention Against Torture (CAT). Indonesia was elected to the UN Human Rights Council for a one-year term in 2006, and reelected for a three-year term in 2007. As a member of the council, Indonesia was expected to robustly uphold and protect human rights norms enshrined in the Universal Declaration of Human Rights,⁵⁴ but these rights are jeopardized by the application of Indonesia's blasphemy laws.

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom from Discrimination

Although the blasphemy laws do not specify any particular religion, in practice they have been used mostly to target blasphemy against Islam. The suspects and defendants in blasphemy cases are sometimes Christians or followers of indigenous religions,⁵⁵ and the climate of intolerance fostered by the laws have contributed to extralegal attacks on Christian churches, but more often the alleged blasphemers are members of minority Islamic sects that are not recognized by the government and therefore considered heretical. Indeed, the Constitutional Court's review of the blasphemy laws was requested because NGOs and supporters of pluralism found that the laws served to "discriminate against certain religious groups, specifically minority groups that have been denied their right to practice their beliefs."⁵⁶ As noted above, the MUI in 2005 issued a fatwa declaring Ahmadiyya to be a heretical sect and urged the government to ban the group, citing the blasphemy laws.⁵⁷ A similar fatwa issued in 2007 targeted other Islamic sects including Al-Qiyadah al-Islamiyah, whose founder and leader, Ahmad Moshaddeq, was arrested and jailed on blasphemy charges in October of that year.⁵⁸ However, Ahmadis continue to face the most consistent and severe discrimination.⁵⁹

Ahmadis are considered heretical primarily because of their belief that Muhammad was not the final prophet of Islam.⁶⁰ In addition to the MUI's fatwas and calls for a ban on Ahmadiyya, the government-appointed Bakor PAKEM in April 2008 urged the government to disband the group on the basis of the 1965 blasphemy law,⁶¹ and extremists mounted violent anti-Ahmadiyya campaigns.⁶²

The Joint Ministerial Decree followed in June of that year, prohibiting Ahmadis from worshipping in public or proselytizing, and prescribing five years in prison for violators.⁶³

A number of local governments, empowered by Indonesia's decentralization program, have enacted outright bans on Ahmadiyya and other sects. For example, in October 2005, the provincial Ministry of Religious Affairs in West Nusa Tenggara reportedly banned 13 "deviant" sects, including Ahmadiyya; in July and September 2005, the local regency administrations of Bogor, Kuningan, and Cianjur in West Java province banned Ahmadiyya;⁶⁴ and in September 2008, the provincial government in South Sumatra imposed a ban, reportedly at the request of the local MUI chapter.⁶⁵ The central government, which has final authority on religious affairs, has been criticized for failing to make any attempts to overturn or challenge these bans.⁶⁶ Though they are not always enforced, their existence contributes to the widespread discrimination faced by Ahmadis in Indonesia.

Attacks against Ahmadis have reportedly increased significantly since the 2005 MUI fatwa, and the weak police response has often allowed the perpetrators to act with impunity.⁶⁷ For example, according to the Asian Legal Resource Centre, in June 2007 a mosque and several Ahmadiyya followers in Tasikmalaya, West Java, were attacked by a mob made up of members of the FPI and GERAK, an anticommunist movement.⁶⁸ Police intervened to prevent further violence, but none of the attackers were arrested.⁶⁹ A renewed spate of violence accompanied the 2008 ministerial decree. The U.S. Commission on International Religious Freedom reports that since 2008, 35 Ahmadiyya mosques have been vandalized, and 21 mosques or meeting points have been forcibly closed.⁷⁰ In one recent incident in December 2009, a group of Ahmadis leaving a house where they had been worshipping were attacked by an angry mob. Police reportedly arrived when the situation escalated, but many Ahmadis had fled by then, six were taken to the local police station, and none of the perpetrators of the attack were arrested.⁷¹ A number of Ahmadis have been forced to flee their homes and take refuge in camps for internally displaced persons. A mob attack in 2005 compelled Ahmadis in Lombok to do so, and in April 2009 the local government reportedly urged the camp residents not to return home, saying it would be unsafe.⁷²

Freedom of Expression

Indonesia's blasphemy laws violate the right to freedom of expression on a number of levels. They impede the religious expression of minority groups, particularly heterodox Muslim sects; they impose restrictions on the media; and they

force individuals to engage in self-censorship to avoid prosecution and extralegal pressure.

In October 1990, Arswendo Atmowiloto, then editor of the *Monitor* newspaper, was arrested under Article 156(A) of the Penal Code. He was reportedly responsible for publishing the results of a readers' poll on the most admired person in Indonesia, which showed that the prophet Muhammad came in 11th. The feature was met with outrage from Muslim organizations, and protesters stormed the newspaper's offices, breaking windows and destroying equipment.⁷³ The newspaper was shut down later the same month after its publication license was revoked by the government, allegedly in response to mounting pressure from extremist groups.⁷⁴ In April 1991, Arswendo was sentenced to five years in prison, the maximum penalty possible under Article 156(A), and he went on to serve all but six months of the term.⁷⁵ He later testified on behalf of the petitioners in the recent Constitutional Court review of the blasphemy laws.⁷⁶

The U.S.-based magazine *Playboy* issued its first Indonesian edition in April 2006, reportedly without pictures of nude women.⁷⁷ Religious leaders and extremist groups nevertheless condemned the publication, and shortly after the first edition hit newsstands, an angry mob clad in white (a sign of purity in Islam) gathered in front of the magazine's offices and began pelting the building with stones. The police were present but reportedly "watched passively." A police commander then urged *Playboy* to cease publishing, and another suggested that it relocate outside Jakarta.⁷⁸ The magazine's publisher, Erwin Arnada, was tried for publishing indecent material but was eventually acquitted.⁷⁹ Though not a traditional blasphemy case, the incident is indicative of the state's attitude toward freedom of expression when it is challenged by religious extremists and threatened by restrictive laws. The *Playboy* dispute took place in the midst of negotiations over the antipornography bill that was adopted in October 2008.⁸⁰

Religious expression was specifically targeted in East Java in April 2007, when 41 members of a Protestant umbrella organization, the Indonesian Students Service Agency, were arrested and detained on charges of blasphemy under Article 156(A).⁸¹ The allegations stemmed from a controversial 10-minute video that reportedly depicted the Quran as the "source of all evil in Indonesia, from violence to terrorism."⁸² In September of that year, all 41 defendants were convicted and sentenced to five years in prison.⁸³ According to the U.S. State Department, they were granted reprieves as part of Indonesian Day celebrations in August 2008.⁸⁴

The blasphemy laws are also used to restrict speech by individuals. In one recent case in October 2009, 70-year-old Bakri Abdullah was arrested in eastern

Lombok on blasphemy charges. He had violated Article 156(A) of the Penal Code by claiming to be a prophet, reportedly angering some people in his village. He also claimed to have twice traveled to heaven. The arrest apparently came after Bakri was attacked by villagers and security guards intervened, handing him over to police. In May 2010, Bakri was sentenced to one year in jail for blaspheming against Islam, with the court reportedly showing lenience on account of his age.⁸⁵

Freedom of Religion

The 1965 blasphemy law's identification of six recognized religions violates religious freedom and international norms. Indonesian citizens are required to self-identify as members of one of the six faiths, and they may not profess atheism as an alternative.⁸⁶ The rights of atheists and unrecognized religious minorities are consequently restricted, and even members of the six recognized religions are subject to criminal penalties if their beliefs and practices diverge from the officially sanctioned versions of their faiths.

Sunni Muslims are required to practice Islam within the strict confines set by the various official religious institutions and enforced by the criminal justice system. For example, Muhammad Yusman Roy, the director of an Islamic boarding school in Malang, East Java, was arrested in May 2005 under suspicion of violating Article 156(A) by reciting and providing his students with Islamic prayers in Bahasa Indonesia, the Indonesian language. Earlier the same month, the MUI's Malang chapter had issued a fatwa banning the use of any non-Arabic language for reciting prayers. Roy was not found guilty of blasphemy, but was convicted under Article 157 of the Penal Code for "despoiling" Islam by distributing pamphlets to stir hatred.⁸⁷ He was sentenced to two years in prison, and his boarding school was closed.⁸⁸ The leaders of Indonesia's two largest Muslim organizations, Muhammadiyah and Nahdlatul Ulama, criticized the arrest and conviction, arguing that the police had gone "too far" and that while Roy had perhaps made a mistake, he had not committed a crime.⁸⁹

In October 2007, as noted above, Al-Qiyadah al-Islamiyah was declared heretical by an MUI fatwa. Just days later, the West Sumatran home of the group's leader, Ahmad Moshaddeq, was raided by police, who were reportedly acting on orders from the MUI. Moshaddeq had founded the group in 2000 and eventually drew the MUI's attention by claiming to be a prophet. He was not at home when the raid took place, and he subsequently fled to avoid arrest.⁹⁰ At the end of the month, the Indonesian chief of police, General Sutanto, reportedly ordered all provincial police chiefs to track down, question, and detain leaders of

Al-Qiyadah al-Islamiyah.⁹¹ According to the *Jakarta Post*, Sutanto said the order was necessary to “prevent the sect from spreading false teachings, and to protect sect leaders from possible attacks by Muslim groups.”⁹² Moshaddeq and six of his followers turned themselves in to the Jakarta police on the same day the order was issued.⁹³ A broad crackdown on Al-Qiyadah al-Islamiyah took place over the next few weeks, including police raids on followers’ homes and harassment and intimidation by extremist groups like the FPI.⁹⁴ Moshaddeq publicly apologized to Indonesian Muslims, repenting for his “misguided” teachings and pledging to return to mainstream Islam.⁹⁵ Nonetheless, he was charged with blasphemy under Article 156(A) and in April 2008 was sentenced to four years in prison.⁹⁶

Another sect, known as the Kingdom of Eden or Salamullah, has also faced legal trouble. The group was founded and led by Lia Aminuddin, also known as Lia Eden, who claimed to be a reincarnation of Mary, the mother of Jesus, and a messenger of the angel Gabriel—both important figures in Islam.⁹⁷ She was arrested on blasphemy charges in December 2005 and sentenced to two years in prison in June 2006.⁹⁸ Lia was arrested on blasphemy charges for a second time in December 2008, along with a colleague and follower, Wahyu Anindito.⁹⁹ The alleged offense was disseminating pamphlets, including to government offices, that called on the government to abolish all other religions and adhere to Salamullah. In June 2009, Lia was sentenced to two and a half years in prison, and Wahyu to two years. The judge reportedly cited Lia’s apparent lack of remorse in explaining her longer sentence.¹⁰⁰ Abdul Rachman, Lia’s deputy, claimed to be a reincarnation of the prophet Muhammad, and in 2007 he was arrested and charged with blasphemy. He was initially convicted, but the Central Jakarta District Court ruled in his favor on appeal, acquitting him of all charges.¹⁰¹ The Jakarta prosecutor’s office challenged that ruling, and in November 2007 the Supreme Court found Abdul Rachman guilty of blasphemy and sentenced him to three years in prison.¹⁰²

In May 2009, Nimrot Lasbaun, leader of the Sion City of Allah Christian sect, was arrested along with six of his followers on charges of blasphemy under Article 156(A).¹⁰³ The Sion City of Allah sect, which is reportedly based on the Book of Jeremiah, was found to be deviating from “correct Christian teachings,” such as attending services on Sunday and taking the Holy Communion. The leaders of the Timor Evangelical Church (GMIT), a mainstream Protestant group, objected to the arrests, arguing that they should have been consulted and insisting that they did not consider the sect to be offensive to their faith.¹⁰⁴

In another 2009 case, Agus Imam Solichin, founder of the Satria Piningit Weteng Buwono sect, was arrested and charged with blasphemy for “spreading heretical teachings among his Muslim followers.”¹⁰⁵ Agus reportedly advised sect members to abandon traditional Islamic practices and engage in group sex.¹⁰⁶ In July 2009, he was sentenced to two and a half years in prison.¹⁰⁷

Right to Due Process

The application of Indonesia’s blasphemy laws has raised concerns about the due process and fair trial rights of alleged blasphemers, particularly in light of the MUI’s apparent influence over the criminal justice system. For example, in May 2005, the local MUI chapter in East Java issued a fatwa against the Cahaya Alam Cancer and Drug Addiction Healing Foundation, an Islamic alternative therapy clinic in Probolinggo. The MUI accused the foundation’s director, Ardhi Husain, and several of his colleagues of spreading heretical teachings in a book, reportedly including denial that Muhammad was the final prophet.¹⁰⁸ The fatwa prompted a police investigation and led a mob to attack the clinic, “vandalizing the interior and driving out patients who were waiting to be treated.”¹⁰⁹

Husain and his colleagues were all arrested and charged with blasphemy. In September 2005, Husain was sentenced to five years in prison; five others who assisted in editing the book were sentenced to four years, and an employee who had sold the book to a neighbor was sentenced to three years. Their lawyer described the sentences as excessive and argued that they were the result of MUI pressure. During the trial, no witnesses testified that they had seen the defendants practicing their teachings, and the judge refused without explanation to hear expert testimony on their behalf.¹¹⁰

Accused blasphemers’ right to freedom from arbitrary arrest and detention is also abused, as the broad language in the law allows selective enforcement, and suspects are often jailed throughout the pretrial and trial periods.¹¹¹

The Constitutional Court and Indonesian government officials have defended the blasphemy laws as a means of preventing interreligious violence, which they say could be triggered by deviant practices or offensive remarks.¹¹² However, mob violence in practice has often accompanied criminal blasphemy allegations, while the official recognition of only six religions has led members of other religious groups to be branded as heretics, both in the law and in society.¹¹³ Indeed, Choirul Anam, who represented the petitioners in the Constitutional Court review of the blasphemy laws, asserted that they played an instrumental role in creating sectarian tensions and religious conflict rather than preventing them.¹¹⁴ Similarly,

another critic recently argued that the blasphemy legislation, “instead of maintaining peace and harmony, has been the umbrella under which various militant groups attack, burn and destroy others.”¹¹⁵

Islamic extremist groups have been free to attack Ahmadiyya sites, churches, Shiite mosques, Hindu temples, bars, and nightclubs with relative impunity, because their actions are to some degree legitimized by the blasphemy law and institutions like the MUI.¹¹⁶ Police have been known to stand by while such attacks take place, or even to participate in them, as was found in a comprehensive study of freedom of religion in 12 Indonesian provinces by the Setara Institute for Democracy and Peace.¹¹⁷ While in some instances the government has taken a strong stand against sectarian violence, its overall response has been criticized as weak and inconsistent.¹¹⁸ In June 2010, a group of lawmakers called on President Susilo Bambang Yudhoyono to crack down on the FPI and other hard-line Islamic groups.¹¹⁹

The violent attacks on religious minorities, as well as the fear of such attacks stemming from government-sanctioned impunity, give rise to violations of the right to security of the person and privacy, and in some cases may even amount to torture or cruel, inhuman, and degrading treatment. The case of Welhelmina Holle illustrates the dangers faced by accused blasphemers. In December 2008, Holle, a schoolteacher in Masohi, Central Maluku province (which has a history of religious conflict), was rumored to have insulted Islam in a private tutoring session with a student.¹²⁰ The Muslim student complained to his parents, who reportedly informed the local MUI chapter, which in turn submitted a complaint to the police.¹²¹ Almost five days after the allegation surfaced, a group of some 500 protesters gathered outside the local education agency office, calling for Holle’s dismissal. A small clash broke out, and within an hour a full-scale riot had erupted. Dozens of houses and a church were reportedly burned, and at least six people sustained serious injuries.¹²² The military and riot police had to be deployed to assist local police in quelling the violence.¹²³ The Masohi police faced harsh criticism for failing to take any preventive action in the days leading up to the unrest.¹²⁴

CONCLUSION

Indonesia’s blasphemy laws have given rise to violations of a range of human rights, most notably freedom of expression, freedom of religion, and freedom from discrimination. These breaches result not only from the enforcement of the

laws against individuals, but also from their use as a justification for official discrimination against religious minorities, which in turn has exacerbated religious tensions and hostility in society. The 2010 Constitutional Court review provided an opportunity to amend or repeal the laws, but they were ironically upheld on the grounds of their necessity to prevent religious conflict. Though Indonesia is a strong democracy with a robust civil society, its religious authorities and hard-line activists appear to be wielding an outsized influence on the government and legal system, pushing the country toward further intolerance and instability.

Malaysia

INTRODUCTION

Despite Malaysia's demographic diversity, religious freedom and freedom of expression are threatened by laws banning blasphemy and other forms of religious insult. In terms of religious affiliation, the national population of 28.3 million is 60 percent Muslim, 19 percent Buddhist, 9 percent Christian, and 6 percent Hindu.¹ The main ethnic groups are the Malays (53 percent), Chinese (26 percent), indigenous (12 percent), and Indians (8 percent).² Since the 1970s, the coalition government, led by the United Malays National Organization (UMNO), has slowly but surely pursued policies promoting greater state interference in religious affairs.

UMNO has raised the profile of Shari'a (Islamic law) in Malaysian law, politics, and society to gain support among its Malay constituency, which is predominantly Sunni Muslim. Although blasphemy laws exist in both the secular and Islamic legal systems, the adoption of Shari'a statutes and the establishment of Shari'a courts have brought severe limits to freedom of expression and freedom of religion.³ The Islamization efforts also include the establishment of the Department of Islamic Development (JAKIM), which maintains a list of religious sects deemed unorthodox or "deviant," such as Shia Islam, Ahmadiyya, and the Baha'i faith.⁴ While charges of deviancy do not fall neatly within the scope of traditional blasphemy and religious insult laws, they are illustrative of the Malaysian government's general hostility to the expression of theological differences or dissent, and the negative effects of that hostility on human rights.

BACKGROUND

Modern Malaysia, which gained independence from the British Empire between 1957 and 1963, is a federation of 13 states (plus three federal territories), nine of which are still nominally ruled by hereditary sultans. Before colonization, these monarchs were the political and religious leaders of independent Muslim states.⁵ The Malay sultanates practiced Shari'a as early as the 14th century,⁶ but common law was introduced under British rule and became the main system of jurisprudence, with Shari'a limited to personal and family matters among Muslims only.⁷ The role of Shari'a in modern, federal Malaysia, with its large non-Muslim minorities, has been hotly debated in the political sphere, often by politicians catering to ethnic and religious constituencies.

Religion and the State

Though all ethnic groups are represented in Malaysian politics, UMNO has been the dominant party since independence, maintaining power through coalition governments.⁸ It was influential in the drafting of the constitution and the inclusion of Article 3, which designates Islam as the state religion but does not declare Malaysia to be an Islamic state, and Article 160, which defines "Malay" in part as someone professing the Muslim faith.⁹ The constitution provides for freedom of religion under Article 11, in addition to other fundamental rights guarantees.¹⁰

Experts have argued that in the early 1980s, UMNO responded to a growing Islamic revival as well as the political threat posed by the opposition Islamic Party of Malaysia (PAS) by taking on a more Islamic image.¹¹ As one scholar has explained: "UMNO, like any other political party, aims at maintaining power. Islamization is a convenient tool to achieve this objective."¹² Under Prime Minister Mahathir Mohamed, who led the country from 1981 to 2003, the government established a series of programs and enacted legislation that effectively contributed to the Islamization of Malaysian institutions. This process included expanded influence for JAKIM and Shari'a in governance and the legal system.¹³ Meanwhile, PAS made significant gains in federal and state elections in 1999, taking control of the state governments in Kelantan and Terengganu and working toward the adoption of *hudud* laws that would impose Shari'a punishments for certain crimes.¹⁴

The efforts under Mahathir also brought Muslim religious figures into the government, introduced Islamic banking and insurance systems, and codified Shari'a at the state level by enacting statutes establishing Shari'a courts.¹⁵ JAKIM,

established in 1997, “actively interprets and implements Islam in Malaysia and has widely been accepted as an appropriate authority.”¹⁶ According to its website, JAKIM is responsible for formulating policies for the advancement of Islamic affairs, streamlining laws and regulations, and enforcing mechanisms of laws and administrative procedures pertaining to Islamic affairs.¹⁷ It is also the body that drafts guidelines on what constitutes “deviancy,”¹⁸ monitors religious groups, and maintains the list of banned sects.

UMNO’s Islamization drive has exacerbated communal tensions and resulted in outbreaks of violence.¹⁹ Since the 2008 general elections, in which the ruling coalition lost considerable ground to opposition parties, UMNO has undertaken efforts to rein in divisive rhetoric, most notably through the adoption of the “1Malaysia” concept, which “emphasizes ‘acceptance’ among the various races... so that all of them live as the people of one nation.”²⁰ However, long-standing communal rifts are not so easily mended, as was seen in January 2010 when riots broke out over a court ruling that allowed a Roman Catholic periodical to use the word Allah to refer to God. Moreover, laws that punish blasphemy and deviancy remain in effect and continue to work against ethnic and religious peace.

Dual Legal System

Malaysia has a two-track legal system consisting of civil or secular law, based on English common law, and Shari’a. While the Shari’a system was previously somewhat informal and subordinate to the civil court system, today the two operate in parallel with respect to hierarchy, as the government has steadily “upgraded” the status of the state-level Shari’a court systems. The jurisdiction of Shari’a courts extends only to Muslims and their family, personal, and religious concerns. The civil law applies to both Muslims and non-Muslims. As noted above, both systems criminalize blasphemy.

Shari’a is administered exclusively at the state level; all of Malaysia’s 13 states and the federal territories have adopted their own Shari’a criminal statutes and established courts to enforce them.²¹ The statutes vary from state to state. In some states where PAS has been in power, such as Kelantan, Perlis, and Terengganu, punishments for violations of Shari’a can be particularly harsh and include caning and stoning. In other places, such as the federal territories, punishments range from fines to several years in prison.²² All states have some religious enforcement officers, ranging from five in Perlis to 122 in Selangor, who work with the state-level police to ensure that Shari’a is not violated.²³ In addition, Islamic Religious Councils in each state are tasked with overseeing the enforcement of Shari’a.

Apostasy

The Shari'a offense of apostasy exists only at the state level in Malaysia. People accused and convicted of apostasy are required to repent, and even if they do so, they can be sentenced to imprisonment for up to five years, depending on the state.²⁴ In Kelantan and Terengganu, those who refuse to repent for apostasy can be sentenced to death.²⁵

Emergency Law

Emergency law-enforcement powers associated with the colonial-era fight against leftist insurgents were made permanent through the passage of the Internal Security Act (ISA) in 1960. The ISA provides for detention without warrant or trial for an initial 60 days, but the home affairs minister can extend the detention for an indefinite number of two-year periods. (The home affairs minister has similar authority under the Emergency Ordinance, which was originally issued in response to race riots in 1969.) These expansive detention powers have exacerbated the abuse of Malaysia's blasphemy and other religious insult laws. As outlined below, people accused of religious crimes, and indeed of defamation or criticism of government officials or policies, have been arrested and detained under the ISA.²⁶

BLASPHEMY LAWS

Blasphemy and religious insults are prohibited in both the state-level Shari'a statutes and in federal law. At the federal level, Section XV (Articles 295–298A) of the Malaysian Penal Code addresses religious offenses such as desecrating a place of worship, disturbing a religious assembly, and trespassing on burial places.²⁷ Articles 298 and 298A prohibit “uttering words, etc., with deliberate intent to wound the religious feeling of any person,” and “causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill-will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion.”²⁸ Notably, the laws in Section XV do not specify any particular religion, indicating that all religions in Malaysia (aside from those that have been banned by JAKIM) are nominally protected from blasphemy or insult.

Blasphemy and insulting Islam specifically are prohibited at the state level. For example, according to Section III of the Shari'a Criminal Offences Act 1997 (No. 559) of the Federal Territories:

7. Any person who orally or in writing or by visible representation or in any other manner—
 - (a) insults or brings into contempt the religion of Islam;
 - (b) derides, apes or ridicules the practices or ceremonies relating to the religion of Islam; or
 - (c) degrades or brings into contempt any law relating to the religion of Islam for the time being in force in the Federal Territories, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.
8. Any person who, by his words or acts, derides, insults, ridicules or brings into contempt the verses of *Al-Quran* or *Hadith* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.²⁹

The Shari'a criminal statutes of other states include similar provisions, though the punishments and the degree of enforcement of the statutes varies. These statutes are broad in scope and address a range of other Shari'a violations, which in some cases fall under the rubric of "insulting Islam."

Incompatibility with International Law

Laws at both the federal and state levels contravene human rights norms and place undue limitations on freedoms of opinion, expression, religion, and belief. The Shari'a statutes in particular impose strict regulations on speech and behavior, and violations can draw harsh punishments. Moreover, the federal and state laws lack clarity as to what kind of speech is prohibited as well as safeguards to prevent abusive or selective application, leading to discrimination against certain religious groups.

Malaysia has neither signed nor ratified several core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture.³⁰ However, in May 2010, Malaysia was elected to the UN Human Rights Council. As part of the campaigning and election process, the government pledged to "strengthen capacities for implementation and enforcement for human rights conventions which Malaysia is party to, alongside reconsidering of instruments which it has yet to accede to."³¹ As a member of the Human Rights Council, Malaysia is obliged to robustly uphold and protect the global human rights norms enshrined in the Universal Declaration of Human Rights,³² many of which are violated in practice within its borders as a result of the

blasphemy and religious insult laws.

Lack of Safeguards to Prevent Abuse

Because Malaysia's blasphemy and religious insult laws are so vaguely worded, lacking any clear definition for blasphemy itself, they are prone to abuse. They have been used to harass, intimidate, and silence government critics as well as those deemed to "deviate" from the state-sanctioned version of Sunni Islam. One example is the case of outspoken government critic and blogger Raja Petra Kamaruddin. He is the founder and editor of the online newspaper *Malaysia Today*, and also directed a 2001 campaign in support of opposition leader Anwar Ibrahim, who had been jailed on politically tainted charges of corruption and sodomy.³³ In 2007, Raja Petra was investigated for allegedly insulting Islam; at the time of his arrest, he was also facing charges of sedition and criminal defamation. According to Human Rights Watch, these charges appear to have been politically motivated.³⁴ In September 2008, he was arrested and detained under the ISA for demeaning Islam and thereby posing a threat to national security. He appealed, and he was released in November 2008 after a High Court judge found his detention to be unconstitutionally "unfettered and arbitrary."³⁵

Raja Petra had been arrested under the ISA on similar grounds in 2001, along with nine other activists involved in public protests against Anwar's sodomy and corruption convictions.³⁶ As in 2008, he was detained for over a month before being released.³⁷

These cases indicate that the government is willing to misuse blasphemy laws to justify politically motivated arrests, and to harass and intimidate its most vocal critics. At the time of this writing, Raja Petra was living in London, having fled Malaysia to avoid prosecution under the Sedition Act.³⁸

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom of Expression

The prosecutions for blasphemy and other religious insults have created an environment in which exercising one's right to free expression can carry heavy costs. The government has initiated countless investigations into blogs and online newspapers for a range of suspected speech offenses, including defamation of public officials and blasphemy.³⁹ As seen in the case of Raja Petra, such laws are used to silence government critics and theological dissenters.

In 2004, a police report was filed against the Malaysian Bar Association for an article in its monthly newsletter *Infoline* that was found to be blasphemous and insulting to Islam. The article discussed the possibility that for non-Muslims, the call to prayer (azan) may be a source of noise pollution.⁴⁰ The government also engages in censorship, and in 2009 a total of 57 books discussing religious issues were reportedly banned, including the notable *Muslim Women and the Challenge of Islamic Extremism* by Norani Othman, cofounder of the nongovernmental organization (NGO) Sisters in Islam.⁴¹ The organization appealed, and in January 2010 a judge overturned the ban.⁴²

Also in early 2010, police initiated an investigation into Sisters in Islam over a statement in which the NGO condemned the Malaysian government for allowing the caning of three Muslim women as punishment for “illicit sex.”⁴³ The Selangor Islamic Religious Council lodged the complaint that triggered the probe, objecting to the statement’s allegations of human rights violations including discrimination against women and cruel, inhuman, and degrading treatment.⁴⁴ The ongoing case was filed under Article 298A of the Malaysian Penal Code.⁴⁵ It should be noted that this sort of harassment of civil society groups for legitimate criticism is not always initiated by official bodies. In March 2010, the Malaysian Assembly of Mosque Youth filed a lawsuit against Sisters in Islam regarding the use of the word “Islam” in its name. The plaintiffs reportedly argued: “The use of the word ‘Islam’ in names must be restricted and protected. The so-called Sisters in Islam uses the word to attract attention, but it issues statements that contradict what other Muslims believe. It causes confusion among Muslims who might think that the group represents Islam.”⁴⁶

In a related incident that also took place in early 2010, police reports were filed against P. Gunasegaram, managing editor of the *Star*, an online daily, for articles criticizing the caning of the three women.⁴⁷ According to a news report, the police investigation report read: “The article clearly wants to challenge [and] anger the Muslims and insult Islam. [The author] has no right to comment about Islamic jurisprudence because he is not a Muslim.”⁴⁸ The *Star* received a “show cause” letter from the Malaysian government, giving it 14 days to explain the articles and justify why its publishing license should not be revoked.⁴⁹

Ten of Malaysia’s states have reportedly banned non-Muslims from uttering certain words related to Islam, such as *Allah*, *ulema*, and *hadith*.⁵⁰ In December 2008, a Roman Catholic newspaper, the *Herald*, was banned from using the word Allah for the Christian God in its Malay-language publication.⁵¹ The newspaper appealed the decision, and a court overturned the ban in December 2009. The

government then challenged that ruling, and the court issued a final stay in January 2010.⁵² As mentioned above, the decision to overturn the ban was met with angry protests by Malaysian Muslims, despite the fact that the Arabic word for God—Allah—is used by Christians all over the Muslim world.⁵³ The protests escalated into violent attacks on churches, which were condemned by Prime Minister Najib Tun Razak.⁵⁴ The dispute reportedly stemmed from some Muslims' concerns that "the use of the word by other religions could confuse believers and tempt them to convert from Islam."⁵⁵

Freedom of Religion

The application of Malaysia's blasphemy and other religious insult laws effectively restricts religious freedom for all residents. Non-Sunni Muslims face persecution for their "deviant" beliefs, and are monitored and targeted by JAKIM as well as the state-level Islamic Religious Councils. Meanwhile, Sunni Muslims are forced to practice their religion within the strict confines imposed by the state and its interpretation of Islam. Individuals found to be in breach of these regulations are arrested and prosecuted, and locations where suspected Shari'a violations take place, such as bars and nightclubs, are raided by religious enforcement officers as well as state and federal police.⁵⁶

One case involving a "deviant" form of Islam centered on Abdul Kahar Ahmad, who claimed to be an Islamic prophet; the assertion amounted to blasphemy under state Shari'a statutes.⁵⁷ He was arrested in September 2009 and charged with five counts of "deviationist teachings," including blasphemy and spreading false belief.⁵⁸ In October, he was found guilty by the Selangor Shari'a court. According to the national news service Bernama, the judge noted that the accused was "a Muslim from birth," and admonished him for having "poked fun at Islam's teachings and proclaimed himself as a Malay prophet" rather than tending to his responsibility to ensure his family's proper observance of Islam.⁵⁹ His punishment consisted of a fine of 16,500 ringgit (\$5,000), 10 years' imprisonment, and six cane strokes.⁶⁰

State religious authorities generally follow federal guidelines concerning what constitutes deviant behavior or belief, and JAKIM's list of deviant sects includes 56 different groups.⁶¹ For example, the martial arts organization Nasrul Haq was formed in 1977, and by 1978 it had a membership of approximately 300,000. UMNO had apparently viewed the group as a possible counterweight to PAS, which was gaining popularity among Malay Muslims,⁶² but when attempts to exploit it for this end failed, the government reacted by banning it on the grounds

that it invoked Islam and Allah “inappropriately,” used Sufi-style chanting in its self-defense sessions, and held some sessions in mosques.⁶³ Another group, Al-Arqam, was established in 1968 by Ashaari Muhammad. It was devoted to promoting an Islamic way of life and by 1994 had a strong following and considerable assets.⁶⁴ Fearing that the group had political ambitions, the government banned it in 1994 and arrested Ashaari under the ISA for “deviating from the teachings of Islam.” He made a public apology and was jailed for 10 years.⁶⁵

Freedom from Discrimination

Article 11 of the constitution guarantees freedom of religion, which includes the freedom to change one’s religion, and Articles 8 and 12 ensure equality for all Malaysians and prohibit discrimination based on religion or belief.⁶⁶ Nevertheless, the operation of the civil legal system in practice and jurisdiction of Shari’a courts over any issue related to Islam mean that Muslims and non-Muslims are treated quite differently. When it comes to conversion, it seems that freedom of religion exists only for non-Muslims in Malaysia. Civil courts have set precedents for referring cases of conversion from Islam to Shari’a courts, and the government maintains that renouncement of Islam cannot be recognized without an order from a Shari’a court, despite the fact that such courts have no mechanisms for accepting these conversions.⁶⁷ In fact, Shari’a courts view deliberate departure from Islam as apostasy, a serious and punishable offense.⁶⁸

Although Articles 298 and 298A of the Malaysian Penal Code ostensibly protect all recognized religions from blasphemy and insult, in practice non-Muslim religions do not appear to receive the same level of “protection” as Sunni Islam. This disparity was highlighted in a recent incident in which two Muslim journalists pretended to be Roman Catholics while conducting research for a story. The men attended a church service and took communion.⁶⁹ When it came to light that the men were Muslims, the Catholic community was outraged. Archbishop Murphy Pakiam criticized the government for failing to charge the men with insulting Catholicism. Malaysia’s attorney general responded by saying that the men had not been prosecuted because they had only committed “an act of sheer ignorance,” and that there had been no malicious intent.⁷⁰ The lack of malicious intent has been no defense against prosecution in other cases.

The implementation of blasphemy-related Shari’a provisions in some states has led to instances of discrimination against women. In one incident in 2000, a group of 25 people, including 15 women, were arrested by the Islamic Religious Council in Selangor for being “in premises where alcohol was served.”⁷¹

The women were charged with the crime of “insulting Islam,” a charge that the 10 men reportedly did not face.⁷² Then deputy prime minister Abdullah Ahmad Badawi criticized the arrests, saying it “is not right to arrest Muslims based on the fact that they were in restaurants that served non-halal food and drinks.”⁷³ All of the charges were eventually dropped, and no prosecutions were initiated,⁷⁴ but the harsher treatment meted out to the women drew accusations of gender bias on the part of the religious authorities.⁷⁵

Right to Due Process

The case of Raja Petra, discussed above, illustrates how individuals accused of blasphemy or religious insult can be detained arbitrarily, without charge or trial, under laws like the ISA. The nightclub and bar raids overseen by state-level religious enforcement officers and Islamic Religious Councils have also led to arbitrary arrest and detention, as have enforcement actions against “deviant” Muslim sects. In 2006, the Selangor Islamic Religious Council reportedly detained 107 people, including children, who were suspected of belonging to the banned religious group Al-Arqam. All but four alleged leaders were later released.⁷⁶

Threats to the right to a fair trial and due process in the context of blasphemy and religious insult laws in Malaysia have been most notable in conversion cases and in prosecutions of people accused of “deviancy.” As noted above, former Muslims seeking to have their conversions recognized are shunted to the Shari’a courts, which offer them no legal recourse. Members of banned sects, meanwhile, can encounter considerable obstacles in obtaining counsel.

In August 2005, a group of 45 members of the religious sect known as the Sky Kingdom were arrested following a violent attack on their compound the previous month. They were reportedly charged with “violating Islamic precepts” under the Terengganu Shari’a Criminal Offences Act of 2001.⁷⁷ According to Human Rights Watch and the Malaysian Bar Association, they faced serious difficulties in securing legal representation prior to the start of their trial; the Malaysian Bar Association commissioned a lawyer from another state to speak for the group on the day of the trial, but only to let the judge know that the accused had not secured representation. Shari’a-accredited lawyers in Terengganu were reportedly unwilling to take the case, fearing reprisals from religious extremists.⁷⁸ After three postponements due to the lack of legal representation, lawyer Wan Haidi Wan Jusoh of the firm Ubaidullah Aziz and Company came forward to act as counsel for all of the accused. He asked the judge to bar newspapers from using his name or the

name of his firm when reporting on the case to prevent it from being blacklisted, but the request was denied.⁷⁹

The Terengganu lawyers' concerns about reprisals were not without merit. Lawyers have been subjected to harassment and intimidation for defending such clients. For example, Malik Imtiaz Sarwar, who has represented individuals charged with blasphemy and other religious offenses in the civil court system, has reported receiving death threats as a result of his involvement in these cases. According to the International Federation of Human Rights, Malik received a threat via e-mail consisting of a photograph of himself with the caption "Wanted Dead." The threat was also circulated to other addresses and via mobile-phone text message.⁸⁰

CONCLUSION

The enforcement of Malaysia's blasphemy and religious insult laws has led to a range of human rights violations. Individuals charged with such offenses in both the civil and Shari'a courts have experienced deprivations of their right to freedom of religion and freedom of expression, as well as their right to be free from discrimination and arbitrary detention. In addition, the laws appear to be selectively applied, leading to further discrimination based on religion and gender. More broadly, the use of blasphemy laws to impose narrow interpretations of religious doctrine, impede the work of human rights organizations, and prevent the empowerment of potential political challengers hampers the democratic and social development of Malaysia as a whole.

Pakistan

INTRODUCTION

The issue of blasphemy laws and other restrictions on freedom of expression in Pakistan consistently garners headlines, with controversial decisions ranging from a May 2010 ban on access to the social-networking website Facebook and the video-sharing site YouTube to the imposition of death sentences for blasphemy convictions.¹ Minority leaders and human rights groups have long criticized the country's blasphemy laws for being unduly harsh, arguing that they are regularly exploited by extremists to target and discriminate against minority groups, and misused by others to settle petty disputes or exact personal vengeance.

The blasphemy laws can be found in the Pakistan Penal Code (PPC), Section XV, Articles 295–298. They address a number of offenses, including defiling a place of worship, damaging the Quran, and what amounts to apostasy. Perpetrators face possible fines, short-term or life imprisonment, and even the death penalty; while several individuals have been sentenced to death for blasphemy, no one has yet been executed for the crime.² The majority of cases of blasphemy filed in Pakistan fall under Articles 295 or 298 of the PPC. These are the most stringent provisions in Section XV, and the least compatible with international legal standards.

According to data compiled by nongovernmental organizations (NGOs) and cited by the U.S. State Department, a total of 695 people were accused of blasphemy in Pakistan between 1986 and April 2006. Of those, 362 were Muslims, 239 were Ahmadis, 86 were Christians, and 10 were Hindus.³ The Pakistani daily newspaper *Dawn* has reported that some 5,000 cases were registered between 1984 to 2004, and 964 people were charged with blasphemy. The religious breakdown of the defendants was similar to that cited by the State Department.⁴ The population of Pakistan is estimated at 173 million people,⁵ and according to the

1998 census, 97 percent of the population is Muslim; most are Sunni Muslims, with Shiite Muslims accounting for about 20 percent. The remaining 3 percent of the population is made up of Hindus, Christians, Ahmadis, Parsis, and Baha'is.⁶

From these figures, it is clear that Pakistan's blasphemy laws are used prolifically and applied disproportionately to non-Muslims. Although many other countries have laws against blasphemy, the situation in Pakistan is unique in its severity and its particular effects on religious minorities.

BACKGROUND

Over the past several decades, Pakistan has undergone a process of Islamization in law and society and a decline in respect for pluralistic ideals. The country was formed as a Muslim homeland in 1947, following the end of British colonial rule in the Indian subcontinent. Since independence, it has seen considerable political instability, with frequent changes in government through democratic elections as well as military coups. Though it was formed as a state for Muslims, Pakistan was not initially an Islamic state in the strictest sense. However, the political landscape has been heavily influenced by the ulama, or Muslim clerical elite, who have sought to bring Pakistani law into compliance with their interpretations of Shari'a (Islamic law).⁷

The Objectives Resolution, passed in 1949 by newly independent Pakistan's Constituent Assembly to help guide the process of drafting a constitution, officially proclaimed that the "principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed." The document also emphasized and defended pluralism, minority rights, and freedom of expression and belief.⁸

In 1956, Pakistan's first constitution was adopted, and though it did declare Pakistan to be a state "based on Islamic principles of social justice," it did not make any explicit reference to Shari'a as the authoritative source for Pakistani law. The constitution included a "repugnancy" clause, stipulating that "no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah," but no governmental body was established to enforce this.⁹ The 1956 constitution was dissolved after two years when the military seized power. A new constitution adopted in 1962 did not include a repugnancy clause and had fewer references to Pakistan as an Islamic state.

Mounting pressure from the ulama and others in favor of the Islamization of Pakistan's laws led to constitutional amendments in 1964, including the addition of a new, stricter repugnancy clause: "No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah, and all existing laws shall be brought into conformity therewith."¹⁰ An Advisory Council of Islamic Ideology was established to implement this clause.¹¹

In 1973, following a war in which East Pakistan broke away to form what is now Bangladesh, a new civilian government took power in Pakistan and a new constitution was drafted. Under this charter, the Advisory Council of Islamic Ideology was renamed the Council of Islamic Ideology, and its mandate was expanded to include the task of advising Parliament and provincial governments on "whether or not a certain law is repugnant to Islam, namely the Quran and Sunnah."¹² In 1974, the constitution was amended to add a provision that defined "Muslim" to exclude groups that were seen as heretical,¹³ such as Ahmadis, who consider themselves Muslims despite their heterodox beliefs.¹⁴

General Muhammad Zia ul-Haq, who ruled from 1977 to 1988, continued and arguably accelerated the Islamization process as he sought to secure support among religious radicals and the middle classes.¹⁵ During this period, the PPC and the Code of Criminal Procedure underwent a series of changes, including the imposition of the Hudood Ordinance, which allows harsh Shari'a punishments for extramarital sex, theft, and violations of the prohibition of alcohol. Five ordinances were added to the PPC that explicitly targeted religious minorities and criminalized blasphemy. In addition, Shari'a benches were introduced into Superior Courts through a constitutional amendment. These benches were soon replaced by the Federal Shari'a Court, whose mandate includes reviewing all Pakistani laws, with the exception of the constitution, for compliance with Shari'a.¹⁶

Though the PPC had always featured provisions addressing offenses to religion, the Islam-specific articles were adopted only in 1982. And the punishments for blasphemy and other religious offenses were amended during the Zia administration to include the possibility of life imprisonment and the death penalty. Most of these changes were made by presidential decree.

The drift away from pluralism in Pakistan has had severe consequences for minorities and religious freedom in general. It has created an atmosphere that encourages intolerance and violence, and the increased influence of religious extremists in the political system has compromised the ability of lower-level judges, police, and government officials to uphold pluralistic values. As one commentator pointed out, "It is...the responsibility of the elected politicians to provide the law

and order without which no judiciary can work. Today, for instance, a judge in the districts dare not release the victims of blasphemy for fear of being harmed by violent mullahs.”¹⁷ The influence of religious extremists has also prevented both elected and unelected governments from working to amend or repeal harmful laws in any substantive way. Former Prime Minister Benazir Bhutto and former military ruler Pervez Musharraf both expressed their commitment to amending the religious laws, but backtracked in the face of demonstrations by extremists and pressure from Muslim clerics.¹⁸ Under Musharraf, who ruled from 1999 to 2008, a new amendment required police to investigate blasphemy allegations before making an arrest, but this rule is rarely observed in practice.

In February 2010, Minister of Minority Affairs Shahbaz Bhatti told the media that he expected a change in the blasphemy laws by the end of the year.¹⁹ The proposed amendments would require judges to investigate cases of blasphemy before they are registered, and would impose punishments equivalent to those faced by blasphemers for false accusations.²⁰ At the European Parliament in May 2010, Bhatti reiterated his confidence that the laws would be amended by the end of 2010, and stated that Pakistani authorities have “made a commitment to amend these laws.”²¹

At the same time, Pakistan’s government has consistently supported UN Human Rights Council resolutions on “defamation of religions,” which aim to protect religions as such from insult or offense. This effort has been condemned by human rights groups as a threat to freedom of expression and other fundamental rights.²² Since Pakistan introduced the first resolution in 1999, it has actively advocated for the “defamation of religions” concept in other UN forums as well, including the Durban Review Conference; the Ad Hoc Committee on Complementary Standards; and the 2008 Office of the High Commissioner for Human Rights Conference on Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR).

BLASPHEMY LAWS

The blasphemy laws in Section XV of the PPC are quite expansive. In addition to prohibiting expression that is intended to wound “religious feelings,” and deliberate or malicious acts intended to “outrage religious feelings of any class by insulting its religion or religious beliefs,” the blasphemy laws specifically prohibit defiling the Quran and insulting the prophet Muhammad or any of his wives, fam-

ily, or companions. The “misuse of epithets, descriptions, and titles, etc.” that are reserved for “holy personages or places” is also prohibited. These laws were added to the PPC between 1980 and 1986, with the most stringent amendment being adopted in 1986. Article 295(C) made it an offense punishable by life imprisonment or death to use any derogatory language about the prophet Muhammad. In 1991, the Federal Shari’a Court ruled that the punishment for this offense should be harsher, and Article 295(C) was amended to make the death penalty mandatory for individuals convicted of making derogatory remarks about the prophet.²³

Incompatibility with International Law

Pakistan’s blasphemy laws are incompatible with international human rights standards not only because they impose undue restrictions on freedom of expression, freedom of religion, and other human rights, but also because they are discriminatory in their effect. Moreover, they lack the necessary safeguards against abuse, providing no clear definition of what constitutes blasphemy, weak evidentiary standards for convictions in lower courts, and no *mens rea* (criminal intent) requirement.²⁴ This makes it possible for the laws to be exploited to persecute minorities or exact revenge in personal disputes. The blasphemy laws have also been invoked to instigate and justify sectarian or communal conflict, with allegations of blasphemy often serving as the trigger for mob violence that has in some cases been implicitly, if not explicitly, condoned by police and government officials.

Pakistan formally ratified the ICCPR in June 2010, pledging its commitment to the treaty’s protections. Many of the rights violated by Pakistan’s blasphemy laws are also enshrined in the Universal Declaration of Human Rights, and are nominally protected by the Pakistani constitution and other domestic legislation.

Lack of Clarity

Despite their harsh penalties, the blasphemy laws provide no clear guidance on what constitutes a violation. This determination is left to police and judicial officials to make, often relying on their own personal beliefs and interpretations of Islam. As one commentator has argued, “interpreting what falls under Pakistan’s anti-blasphemy laws is essentially a theological question and, since there is no black-letter definition of the crime in the Quran or other authoritative Islamic sources, it is one that remains unsettled.”²⁵ The vagueness of the laws lend to their utility for settling personal vendettas and targeting religious minorities at will.

In addition, Pakistan’s blasphemy laws fail to consistently distinguish between malicious, deliberate acts of blasphemy and unintended ones—a distinction nor-

mally provided for in criminal law. While Articles 295 and 295(A) specify the criminalization of “deliberate and malicious” acts, or acts intended “to insult the religion of any class,” the other articles in Section XV of the PPC do not include any such language.

The effects of this shortcoming in the law are apparent in the case of Anwar Kenneth, a Pakistani Christian who was arrested and charged with blasphemy in 2001 for distributing a Christian pamphlet and declaring that Muhammad was a false prophet, one of the most serious forms of blasphemy in Pakistan.²⁶ Kenneth also claimed he was a reincarnation of Jesus Christ, and that he had received revelations from God.²⁷ According to a number of sources close to the case, he suffered from severe psychiatric problems.²⁸ His lawyer, Saadia Khalid, reportedly requested an exam to determine whether he was mentally fit to stand trial, but the request was denied. The judge argued that Kenneth’s mental status was irrelevant as he had already admitted to declaring that Muhammad was a false prophet.²⁹ Khalid reportedly insisted that the allegedly blasphemous statements were not “the hateful sacrilege of an infidel, but the demented ravings of a sick man.”³⁰ Nevertheless, in July 2002 Kenneth was sentenced to death.³¹ Authoritative interpretations of international law since 1999 have stipulated that the death penalty should not be applicable to persons suffering from mental retardation, mental disorder, or limited mental competence.³²

Lack of Safeguards to Prevent Abuse

Pakistan’s blasphemy laws are routinely used to exact revenge, apply pressure in business or land disputes, and for other matters entirely unrelated to blasphemy. Critics ranging from academics to civil society activists and journalists have argued that in most instances, charges of blasphemy are leveled for ulterior motives.³³

In September 2006, police refused to register a case of alleged theft by Shahid Masih and Mohammad Ghaffar due to insufficient evidence provided by the complainant, Arshad Khan.³⁴ According to the Asian Commission for Human Rights, police advised Khan to instead lodge a complaint of blasphemy against them.³⁵ He subsequently filed a police report alleging that the two men had stolen and burned an Islamic religious text. Despite knowing that the charges were fabricated, the police arrested Masih and Ghaffar for blasphemy under Section XV of the PPC.³⁶ Both men were eventually acquitted of the charges and released.³⁷ In another case, Parvez Masih, the headmaster of a Christian high school in Sialkot, was arrested in 2001 for alleged blasphemy under Article 295(C).³⁸ According to

numerous reports, Mohammed Ibrahim, the owner of another school in the area, fabricated the accusation due to his displeasure with the competition created by Masih's school.³⁹

The low evidentiary threshold required to register cases of blasphemy, coupled with the sensitive nature of the crime, exacerbates the laws' potential for abuse. Until 2004, when a legal amendment began requiring a senior police official to conduct an investigation before arresting a suspect on blasphemy charges, an individual could be charged and arrested based solely on the accusation of a reliable person.⁴⁰ In a positive ruling in 2007, the Punjab High Court found a blasphemy case against defendant Muhammad Sharif to be inadmissible, citing the failure of the police to investigate and substantiate the allegations.⁴¹ However, this appears to have been an exception rather than the norm. In some cases, police officers may lack the resources necessary to carry out effective investigations. There have also been reports of a lack of willingness to investigate the allegations. Police officers have allegedly been harassed and intimidated by Islamic radicals who demand the arrest of suspected blasphemers regardless of whether the accusations have been substantiated.

This kind of pressure was reported in the case of Robin Sardar, who was arrested on blasphemy charges in 2008. His accuser had tried to set up a shoe stall outside of Sardar's medical practice but was told to remove it. He then filed a complaint claiming that the doctor had blasphemed against the prophet Muhammad and threatened to burn down Sardar's house and kill his family if police did not arrest him. Sardar was then arrested and charged without any preliminary investigation.⁴²

In another example from January 2009, five members of the Ahmadiyya community were arrested in Punjab for allegedly writing the name of the prophet Muhammad on a bathroom wall at a mosque.⁴³ Several reports on the incident have indicated that there was no evidence implicating the arrested individuals, and police did not carry out any investigation prior to their arrest. According to the Asian Human Rights Commission (AHRC), militant Islamists pressured police to detain the five Ahmadis, threatening to "close down the whole city and attack the houses of Ahmadi sect members."⁴⁴

Intimidation by Islamic extremists takes place at the trial stage as well. Lawyers who have refused to prosecute cases of alleged blasphemy have been harassed, threatened, and even subjected to violence. As a result, judicial officials have been known to take complaints of blasphemy at face value, demanding no investigation or critical assessment of the facts by authorities and effectively violating the rights

to a fair trial and due process. The serious punishments at stake in such cases make the procedural shortcomings even more problematic.

Disproportionate Penalties

The penalties for violating Pakistan's blasphemy laws are excessively severe, giving rise to a range of possible human rights violations. As noted above, Pakistan's Federal Shariat Court ruled in 1991 that the punishment for blaspheming against the prophet Muhammad is "death and nothing else."⁴⁵ Many defendants have been sentenced to death on blasphemy charges, and although none have yet been executed for this crime, several remain on death row.

The death penalty has not been banned by international law, but the United Nations has set important and necessary limitations on its application, reserving it only for "the most serious crimes."⁴⁶ The UN Human Rights Council has routinely interpreted "the most serious crimes" to mean those offenses that result in loss of life.⁴⁷ The UN Human Rights Committee's General Comment 6 similarly states that the committee "is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."⁴⁸ The UN special rapporteur on extrajudicial, summary or arbitrary executions has found that under no circumstances and for no offense is a mandatory death penalty ever compatible with international human rights law.⁴⁹ In the same study, the special rapporteur cited instances in which the Human Rights Council has articulated its concern that crimes carrying the death penalty are "excessively vague," "loosely defined," and "couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria."⁵⁰ Article 295(C) of the PPC suffers from all of these shortcomings. And as the former special rapporteur for freedom of religion or belief has stated, "applying the death penalty for blasphemy appears disproportionate and even unacceptable."⁵¹

As described above, due process and fair trial protections are often lacking in blasphemy cases, and the UN member states have made clear that such guarantees are essential when dealing with the death penalty: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights."⁵²

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

Freedom from Discrimination

The overarching human rights violation resulting from Pakistan's blasphemy laws is discrimination based on religion or belief. The laws serve to legitimize discriminatory practices, enabling extremists and opportunists to use the forces of the state against members of minority faiths. As the Institute on Religion and Public Policy has argued, "they give the spirit of intolerance a means to an end."⁵³ Moreover, the discrimination is multilayered. The laws as written are themselves discriminatory (specifically against Ahmadis), they are misused to target religious minority groups for their beliefs, and those facing blasphemy accusations encounter further hostility from society as a result of the stigma associated with the charge.

As noted above, the ratio of Muslims to non-Muslims among blasphemy defendants illustrates the extent to which these laws are used to persecute religious minorities. Pakistan's minister for minority affairs, Shahbaz Bhatti, has publicly argued that "the blasphemy law is being used to terrorize minorities in Pakistan."⁵⁴ Ahmadis are the most affected, followed by Christians.

However, Muslims are not exempt. Almost half of all blasphemy cases lodged over the last two decades have been against Muslims, including both Sunnis and Shiites. The Human Rights Commission of Pakistan (HRCP) reported in 2006 that while minority groups were often victims of false blasphemy accusations, "the number of instances in which [blasphemy laws] were abused to settle petty scores with other Muslims had risen sharply over the past years."⁵⁵ Shiite Muslims are a religious minority in their own right, and they have faced periodic attacks by Sunni extremists.⁵⁶ However, the use of blasphemy laws against Sunni and Shiite Muslims does not appear to be based on sectarian differences so much as personal disputes.

Regardless of the motives behind their charges and the outcome of their cases, those accused of blasphemy are subject to job discrimination, ostracism from their communities and neighborhoods, and even physical violence and murder at the hands of angry mobs, forcing many to live in fear.⁵⁷ The case of Anwar Masih, a Christian in Lahore who was charged with blasphemy in 2003, provides an example of such stigmatization. In 2004, following his trial proceedings, Masih was acquitted of all charges and released from jail, but he was forced to go into hiding as a result of death threats.⁵⁸ In 2007, he was fired from his job at a factory, reportedly because his employer was threatened by religious extremists for hiring

a blasphemer.⁵⁹ According to the NGO International Christian Concern, Masih was then compelled to move from village to village out of safety concerns, and faced serious difficulties in finding employment.⁶⁰ In a separate case, two Christians who were charged with blasphemy in 1999 and eventually acquitted in 2006 reportedly faced poverty and unemployment as a result of their ordeal.⁶¹

Such discrimination is experienced not only by the accused blasphemers, but also by their families, who in some cases have been forced to flee their homes and go into hiding. The experience of physiology professor Younus Shaikh, described in detail in the box below, is a case in point. Following his acquittal on blasphemy charges and release from jail, Shaikh reported receiving numerous death threats from the clerics who had been involved in bringing the charges against him. Fearing for his safety, he was forced to flee to Europe and ultimately secured asylum in Switzerland. Parvez Masih, the Christian headmaster, was also forced to live in hiding following his acquittal on blasphemy charges. According to the U.S. State Department, Masih told ASSIST News Service, "I am forced to stay in hiding. I cannot move in any public place. Fearing attacks by the fundamentalist Muslims, even my relatives have abandoned me and they no longer entertain me."⁶² In another example, Shahid Masih, who along with Mohammad Ghaffar was falsely accused of defiling a religious text, was released on bail four months after his arrest and while his trial was still ongoing. He was reportedly unable to live with his family during his trial for fear that their house would be attacked by Muslim extremists.⁶³ The AHRC reported that following the accusations against Masih and his codefendant, angry mobs besieged their houses and threatened their families.⁶⁴ According to the U.S. Commission on International Religious Freedom, "in virtually all cases those acquitted have been forced into hiding or even exile, out of fear of attacks by religiously motivated extremists."⁶⁵

Freedom of Expression

While they are not the only provisions in Pakistan's legal system that impose restrictions on freedom of expression, the blasphemy laws found in Section XV of the PPC clearly breach the free expression guarantees found in Article 19 of the Universal Declaration of Human Rights and Articles 19 and 20 of the ICCPR.⁶⁶ The explicit purpose of the laws is to restrict certain forms of speech and expression, and they are used to justify the banning of books, movies, and other media, creating an environment conducive to intolerance and sectarian tension.⁶⁷

Writer Mohammed Younus Shaikh published a book entitled *Satanic Cleric* in which he argued that death by stoning as a punishment for adultery was not

THE CASE OF YUNUS SHAIKH

The case of Younus Shaikh, which drew much international attention, serves as a striking example of the broad range of human rights violations that result from Pakistan's blasphemy laws. Shaikh, a professor at a medical college in Islamabad, was arrested and detained on charges of blasphemy in October 2000. He was accused by one of his students of violating Article 295(C) of the Pakistani Penal Code by making derogatory remarks about the prophet Muhammad. Shaikh spent three years in detention while his case unfolded, including two and a half years in solitary confinement.⁶⁸

During his detention, Shaikh articulated his belief that the case was not really about any blasphemous remarks, but rather was a result of his political views on Kashmir, the disputed territory that remains divided between Pakistan and India.⁶⁹ According to the International Humanist and Ethical Union and a letter written by Shaikh from prison, he had attended a meeting of the South Asian Union just days before his arrest on blasphemy charges. At the gathering, which was addressed by an official from Pakistan's military intelligence service, Shaikh expressed his view that the line of control between India and Pakistan in Kashmir should be recognized as the permanent international border.⁷⁰ Two days later, one of Shaikh's students, who was also a Foreign Office employee at the meeting, prepared the blasphemy case against him and took it to a Muslim cleric, who added further details and filed the case with the police.

The lower court that first heard the case found the cleric's evidence to be hearsay and uncorroborated, and the student who initiated the complaint was found to have been absent on October 2, the day of the lecture in which Shaikh supposedly made the blasphemous remarks. However, two other students then came forward and claimed that they heard the remarks. Shaikh presented evidence to show that he did not give any lectures at the stated time on October 2, arguing not only that the incident never took place, but also that there was no evidence to prove that any of his remarks at any time were blasphemous.

Nevertheless, Shaikh was found guilty of violating Article 295(C) and sentenced to death. He and others have described the severe intimidation by religious extremists that took place during the trial. His lawyers were reportedly threatened so much that the proceedings had to be moved to the central jail in Rawalpindi. Shaikh appealed the verdict, and a retrial was ordered. In November 2003, following two hearings of his retrial, he was acquitted of all charges and released from jail. Fearing for his safety, the judge ordered that his release take place in secret, and he was offered a police bodyguard. Shaikh lived in hiding in Pakistan for several months before securing asylum in Switzerland.

mentioned in the Quran and allegedly insulted historical imams by describing them as Jews. He was arrested in August 2005 and charged him with blasphemy, and was eventually convicted and sentenced to life in prison. He appealed the verdict but his case was still pending in 20.⁷¹

The blasphemy laws have also been used to censor journalists.⁷² Munawar Mohsin, a subeditor for the Pakistani daily the *Frontier Post*, was charged with blasphemy in 2001 and sentenced to life in prison for printing a letter containing blasphemous material on the editorial page of the paper. The letter was reportedly entitled “Why Muslims Hate Jews” and included derogatory remarks about the prophet Muhammad. Police also arrested six other staffers from the *Frontier Post*, but Mohsin was singled out in a judicial investigation as the person responsible for printing the letter.⁷³ It is noteworthy that the investigation came only after the seven arrests. Mohsin became the focus of the case despite a doctor’s finding that he was unfit for trial due to his mental state. He had been released from Peshawar Mental Hospital days before the incident,⁷⁴ which marked the first time he was tasked with selecting letters and articles to appear on the editorial page.⁷⁵ The other six defendants in the case were acquitted.⁷⁶

In May 2010, a Pakistani court applied the blasphemy laws to online content, ordering a ban on the popular websites Facebook and YouTube.⁷⁷ The block on Facebook was triggered by a page promoting a competition to draw the prophet Muhammad, which some Muslims consider blasphemous.⁷⁸

Freedom of Religion

Although Pakistan was created as a state for Muslims, it was not an Islamic state at the time of its independence in 1947. The country’s founding father, Mohammed Ali Jinnah, emphasized the importance of freedom of religion in his speech to the opening session of the Constituent Assembly of Pakistan:

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State.... We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State.”⁷⁹

In today’s Pakistan, however, intolerance is endorsed and even encouraged by stringent laws that discriminate against religious minorities and even criminalize the religious practices of the Ahmadiyya community.

Because the blasphemy laws are so open to abuse and are disproportionately

used to target religious minorities, members of minority faiths are unable to practice openly and freely without fear of persecution. However, while Shiites are a minority, they are a significantly larger one than the Christians, Hindus, Ahmadis, and other groups, and they do not appear to face the same degree of discrimination as the others when it comes to the blasphemy laws. Shiites are sometimes prosecuted in cases instigated by Sunni extremists, but in many instances the laws are invoked by fellow believers in the context of personal disputes.

There are a few particularly notable blasphemy cases involving non-Sunni Muslim defendants. In 1998, Ghulam Akbar, a Shiite, was arrested and convicted of blasphemy for allegedly using the name of the prophet Muhammad in vain during an altercation at a Sunni-owned restaurant in 1995.⁸⁰ He received a mandatory death sentence, reportedly making him the first Muslim to face this penalty for blasphemy.⁸¹ He appealed the verdict but remains in jail while his case makes its way through the courts.⁸² In another case, Sufi Muslim spiritual leader Mohammed Yusuf Ali was convicted of blasphemy in 2000 for allegedly claiming to resemble the prophet. His religious teachings were deemed by Islamist groups to be “working against Islam.”⁸³ In 2002, Ali was shot dead in Lahore’s Kotlakpat Jail, where he was awaiting his death sentence. His killer was identified as a member of the banned Sunni militant group Sipah-e-Sahaba, which has been responsible for numerous attacks on non-Sunni Muslims.⁸⁴

While Pakistan’s blasphemy laws affect the religious freedom of all minority groups, Ahmadis are singled out in Articles 298(A) through 298(C), which equate Ahmadi beliefs and practices with blasphemy against Islam. These provisions are frequently referred to as the anti-Ahmadi laws. Though they consider themselves to be Muslims and worship accordingly, Ahmadis are explicitly barred from referring to their places of worship as mosques or worshipping in any non-Ahmadi mosques or public prayer rooms. Similarly, they are prohibited from using the Muslim call to prayer, quoting the Quran, participating in the pilgrimage to Mecca or the activities associated with the holy month of Ramadan, proselytizing, holding gatherings, or distributing any Ahmadiyya-related literature. Moreover, an individual’s religion must be identified on all government forms, such as passport applications and voter registration documents, and there is no Ahmadi option. Anyone wishing to be listed as Muslim is required sign a declaration denouncing the founder of Ahmadiyya.⁸⁵

Human Rights Watch has concluded that “the persecution of the Ahmadiyya community is wholly legalized, even encouraged, by the Pakistani government.”⁸⁶ In a seminal case in 1993, the Pakistani Supreme Court upheld the anti-Ahmadi

legislation, arguing that if an Ahmadi were allowed to worship in public as a Muslim, he would be exposed to extremist violence. The court asked, "Can the administration in that case guarantee his life, liberty and property, and if so, at what cost?"⁸⁷ Many members of the Ahmadiyya community have been arrested under the anti-Ahmadi laws, and they face extralegal persecution even if charges are dropped or they are released on bail. For example, according to the U.S. State Department, in January 2008 an Ahmadi in Punjab was arrested on charges of distributing Ahmadiyya-related pamphlets. He was granted bail three months later, but received a series of death threats and was forced to leave the area.⁸⁸

Freedom from Arbitrary Arrest and Detention

Pakistan's blasphemy laws and their implementation in practice lead to routine violations of the right not to be held in extended arbitrary detention, as provided for in Article 9 of the Universal Declaration of Human Rights and the ICCPR. Despite the 2004 amendments requiring a police investigation prior to an arrest, individuals accused of blasphemy are routinely arrested and detained without any preliminary inquiry. Furthermore, the lower courts issue convictions based on minimal evidence, often in the context of intimidation and threats by religious extremists. This has led to accused blasphemers spending years in jail before higher courts overturn their convictions and clear them of all charges.⁸⁹ According to one commentator, it takes approximately eight years for a convicted defendant to be exonerated by the Supreme Court.⁹⁰

In one case, alleged blasphemer Ayub Masih was detained for six years before being acquitted. He was arrested in October 1996 after one of his neighbors, with whom he reportedly had a dispute, claimed to have heard Masih utter praise for author Salman Rushdie's *Satanic Verses*, a book that was considered blasphemous by many Muslims. This was reported to police, who arrested and detained Masih.⁹¹ In April 1998, he was sentenced to death for insulting the prophet Muhammad. In 2001, the UN Working Group on Arbitrary Detention issued an opinion on Masih's case, finding a violation of his right not to be arbitrarily detained and his right to a fair trial.⁹² He was eventually acquitted and released in 2002, after his lawyer was able to show that the sole complainant in the case, Masih's neighbor, had forced Masih's family off the disputed land and taken it as his own.⁹³ Similarly, Younus Shaikh, the physiology professor who eventually secured asylum in Switzerland, was imprisoned for three years before being acquitted and freed. Two and a half of those years were spent in solitary confinement due to threats on his life by religious extremist inmates.

Though bail is allowed for blasphemy charges, judges typically deny bail motions out of fear for the suspect's safety as well as their own.⁹⁴ According to the U.S. State Department, "lower courts frequently delayed decisions [on bail], experienced intimidation, and refused bail for fear of reprisal from extremist elements."⁹⁵ In January 2009, Hector Aleem, the country director of the Christian human rights organization Peace Worldwide, was arrested and detained on charges that he had sent a blasphemous mobile-phone text message to a Muslim cleric. Aleem's lawyers from the Centre for Legal Aid, Assistance, and Settlement (CLAAS) were able to prove that the messages were not sent from his phone, and the blasphemy charges were dropped. However, he was instead charged with abetting blasphemy, and his bail request was denied.⁹⁶ His lawyers petitioned for his release in light of the reduced charges, but Aleem was remanded into custody "for his own protection" after a religious extremist lawyer threatened his life in a court hearing.⁹⁷ Aleem remained behind bars at the time of writing, and his family has been persistent in calling international attention to his case.⁹⁸

Right to Due Process

Blasphemy trials in almost all cases lack essential safeguards to ensure that the accused enjoy due process and a fair hearing. Muslim extremists reportedly attend these trials en masse, harassing and intimidating both judges and defendants.⁹⁹ According to the NGO Christian Solidarity Worldwide, defense lawyers also face death threats and physical assault.¹⁰⁰ In the case of physiology professor Younus Shaikh, defense lawyers received so many threats that the trial had to be moved to the Rawalpindi Central Jail for their safety.¹⁰¹ In January 2006, religious extremists attacked and beat human rights lawyer Parvez Aslam Choudhry, reportedly because of his work defending blasphemy suspects.¹⁰² Choudhry has also reported receiving numerous threatening phone calls, some of which have included death threats.¹⁰³ In some cases, even the worst threats have been carried out. A Lahore High Court judge, Arif Hussain Bhatti, was killed in 1996, reportedly by Muslim extremists angry with his decision to acquit a blasphemy defendant.¹⁰⁴

Ayub Masih has said that during his trial, "Islamic extremists packed the courtroom and shouted loud threats against me, my lawyer, and the judge."¹⁰⁵ The UN Working Group on Arbitrary Detention also raised serious questions about the fairness of his trial, finding that the accusation and subsequent verdict were based on the testimony of "a single, biased witness,"¹⁰⁶ and that extremists issued threats against Masih and his lawyer during the trial, creating a hostile atmosphere. In addition, the Working Group argued that Masih had not been

provided with “any documentary or other evidence against him,” preventing him from preparing an adequate defense.¹⁰⁷ The Working Group concluded, “These serious deficiencies in proceedings where capital punishment is provided by law not as an alternative penalty, but as a mandatory one if the accused is found guilty, basically strips the procedure of its requisite fair character.”¹⁰⁸

Younus Shaikh has also described disturbances surrounding his trial, reporting that “the religious students of the claimant clerics of Deeni Madrassa used to demonstrate against me.”¹⁰⁹ The International Humanist and Ethical Union, which was heavily involved in campaigning for his release, stated that Shaikh’s trial “took place in a hostile courtroom packed with Islamic fundamentalists who warned the defense lawyers: ‘think of your families and children.’”¹¹⁰ In the case of Shahid Masih, who was unexpectedly acquitted of all charges by a lower court, religious extremists attending the trial were reportedly angered by the verdict. Compass News Direct quoted Masih’s lawyer, Khalil Tahir as saying that “there were about 100 fanatics inside and outside the courtroom who were astonished when their own witnesses claimed that the accused were innocent. They were very, very angry.”¹¹¹ These kinds of conditions make it virtually impossible for persons accused of blasphemy to enjoy a fair trial.

Freedom from Torture and Cruel, Inhuman, or Degrading Treatment & Right to Life and Security of the Person

Pakistan’s human rights record is marred by numerous reported incidents of abuse that amount to violations of the prohibition on torture and other cruel, inhuman, or degrading treatment. According to Human Rights Watch, “torture by Pakistan’s police and the military’s intelligence services continues to be routine.”¹¹² Individuals accused of blasphemy are not exempt from this pattern, and some have alleged that they were tortured or mistreated in detention, either by fellow inmates or by police and prison guards. Security forces have also allegedly stood by while extremist vigilantes took blasphemy accusations into their own hands. The newspaper *Dawn* has reported that 32 people accused of blasphemy were the victims of extrajudicial killings between 1984 and 2004.¹¹³

In July 2009, Imran Masih (also reported as Imran John), a shopkeeper in Faisalabad, was accused by a neighboring shopkeeper of burning pages of the Quran and desecrating it.¹¹⁴ After the accuser informed nearby vendors, they proceeded to beat and torture Masih. Police then arrived at the scene and arrested Masih for blasphemy. None of his attackers were detained. Masih was found guilty and sentenced to life imprisonment in January 2010.¹¹⁵ In another incident, Hindu

Blasphemy-related vigilante violence in the town of Gorja, Punjab province, in August 2009 resulted in the destruction of more than 50 houses. At least seven Christians were burnt alive in the attacks, and 18 others were injured.¹¹⁶ The assault was first reported to have been triggered by allegations that some Christians had desecrated the Quran. However, according to the HRCP, which investigated the incident, the violence was planned in advance, police were aware of it, and the blasphemy allegation was simply a pretext.¹¹⁷ Several days before the attack, announcements made from mosques in the area reportedly called on Muslims to “make mincemeat of the Christians.”¹¹⁸ The HRCP’s investigation also showed that the violence was organized and methodical, that perpetrators were well equipped with gasoline and other flammable chemicals, and that a police contingent in the area did nothing to prevent or stop the assault.¹¹⁹ A government inquiry similarly concluded that police and local officials had failed to take any preventive action or intervene once violence broke out.¹²⁰

factory worker Jagdish Kumar was beaten to death in April 2008 by coworkers who alleged that he had made blasphemous remarks about the prophet Muhammad.¹²¹ Police were summoned but did little to intervene or protect Kumar. The three leaders of the attack were arrested—not for murder, but for failing to report a case of blasphemy.¹²² Some policemen were eventually suspended for their lack of action in the incident.¹²³

In July 2010, two Christian brothers accused of blasphemy were shot and killed as they were leaving a hearing at a Faisalabad courthouse. They were accused of writing a pamphlet that was critical of the prophet Muhammad, but church supporters, government officials, and the Pakistan Minorities Democratic Foundation said it appeared that the men had been set up.¹²⁴ Their deaths sparked violent clashes between Muslims and Christians in their community.¹²⁵

The death of another blasphemy suspect, Robert Fanish (also reported as Robert Danish and Fanish Masih), took place in police custody. Fanish, a Pakistani Christian, was arrested on blasphemy charges in August 2009. On September 15, the 22-year-old was found dead in his cell in the Sialkot Central Jail.¹²⁶ The death was initially reported as a suicide by hanging, but many questioned this assessment,¹²⁷ and witnesses reportedly stated that Fanish’s body bore signs of torture.¹²⁸ Shahid Masih and Mohammad Ghaffar, the two men who were falsely accused of blasphemy after their accuser’s theft complaint was rejected for lack of evidence, were also allegedly tortured while in police custody.¹²⁹

In July 2010, two Christian brothers accused of blasphemy were shot and killed as they were leaving a hearing at a Faisalabad courthouse. They were ac-

cused of writing a blasphemous pamphlet critical of the Prophet Mohammed, but church supporters and the Pakistan Minorities Democratic Foundation said the men had been set up and arrested on trumped up charges.

Detained blasphemy suspects face other forms of cruel, inhuman, and degrading treatment. Several have reported being held in solitary confinement, allegedly for their own safety. Younus Shaikh has written about his experience as a death-row inmate convicted of blasphemy: "I was held in solitary confinement, in a very small death cell in the Central Jail, Rawalpindi, a dark and dirty death cell.... I remained constantly under threat of murder by Islamic inmates in jail for murder and gang rape, and by some religiously-minded prison wardens."¹³⁰ Parvez Masih said he was held in a six foot by four foot cell that reached temperatures of over 120 degrees Fahrenheit.¹³¹

The prolonged detention of individuals accused of blasphemy coupled with the threat of being sentenced to death, or with an actual sentence of death, may also amount to cruel, inhuman, and degrading treatment. In *Soering v. UK*, the European Court of Human Rights ruled that extraditing an individual to the United States, where he would most likely be sentenced to death, would amount to a breach of Article 3 of the European Convention on Human Rights because of the lengthy and complex postsentencing procedures involved. The court stated that as a result, "the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death."¹³² As described above, individuals facing death sentences in Pakistan for blaspheming the prophet Muhammad have been detained for several years during the trial and appeals process.

CONCLUSION

Pakistan's blasphemy laws foster an environment of intolerance and impunity, and lead to violations of a broad range of human rights, including the obvious rights to freedom of expression and freedom of religion, as well as freedom from arbitrary arrest and detention; the right to due process and a fair trial; freedom from torture and cruel, inhuman, and degrading treatment; and the right to life and security of the person. The country is unique in the severity of abuses arising from the application of its blasphemy laws, and in the frequency with which the laws are invoked to prosecute individuals and justify vigilantism. The overall effect is a serious erosion of the rule of law itself, with police and courts seemingly

at the mercy of Islamist extremists and other extralegal forces. Basic injustices are meted out not just to religious minorities and Muslims with dissenting views on Islam, but also to ordinary people whose personal disputes, opinions, or weaknesses make them ready fodder for the broader conflicts that trouble Pakistani society.

Poland

INTRODUCTION

Though freedom of expression is guaranteed in Poland's constitution and for the most part upheld by the government, there are some legal restrictions on this fundamental right. In addition to laws prohibiting libel and defamation of government figures, the constraints include Article 196 of Penal Code, which bans offenses toward religious feelings or sentiment. There have been several investigations and charges under Article 196 in recent years. While they remain fairly infrequent, most have been initiated by members of conservative, Catholic-oriented political parties or groups, and have targeted writers, musicians, and other artists.

Poland's population is fairly homogeneous with respect to religion, as Roman Catholics account for 94 percent of the country's 38 million people. The remaining 6 percent consists largely of smaller Christian groups, including Orthodox Christians, Greek Catholics, various Protestant denominations, Jehovah's Witnesses, and Mariavites. Jewish organizations estimate the Jewish population to be 30,000 to 40,000, and Muslim organizations estimate the Muslim population to be 25,000.¹

BACKGROUND

Poland's 20th-century history, including the roughly four decades of communist rule following World War II, has had a significant impact on the state of freedom of expression and the position of the Catholic Church in the country today. Poland was restored as an independent state after World War I, having been partitioned by neighboring monarchies at the end of the 18th century.² However, the country faced partition again in 1939, when Nazi Germany and the Soviet Union occupied western and eastern Poland, respectively. During World War II,

millions of Polish Jews were systematically killed by Nazi forces,³ and both the Germans and the Soviets executed tens of thousands of Poles who represented the country's political, military, religious, and intellectual elite. Millions of others were uprooted, sent to labor camps, or killed in the course of the war and occupations.⁴ By the end of the conflict, Poland's borders and population had been radically altered, leaving it with little of its previous ethnic and religious diversity.

Poland's formal independence was restored, albeit under Soviet occupation, in 1945, and communist factions took power in Soviet-administered elections in 1947.⁵ For the next four decades, the country was governed by the Polish United Workers' Party, which tightly restricted freedom of expression and other fundamental rights. The democracy movement that eventually ended communist rule in 1989 was led by the Solidarity labor organization, but the Catholic Church also played a prominent role.

Though Catholicism is not the state religion of Poland, it has enjoyed such a status at various times in the country's history, and represented an important component of Polish national identity during periods of foreign domination.⁶ Today, the state's relations with the Church are determined by a treaty with the Vatican, as laid out under Article 25 of the constitution.⁷ Article 25 also guarantees that other religious groups will have equal rights, and states that relations between such groups and the government are to be determined by separate legislation.⁸ There are now some 15 religious groups whose status has been defined and clarified by law, but the rights of dozens of other groups are also upheld.⁹ The U.S. State Department reports that religious groups are not subject to limitations or government interference in the selection and appointment of their personnel, in the maintenance of their places of worship, or in their ability to worship.¹⁰ Article 25 specifically requires Polish authorities to be "impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life."¹¹

Despite these legal provisions, Catholic clergy and activists wield significant social and political influence in Poland, and the blasphemy cases brought under Article 196 of the Penal Code afford them an important means of asserting their power in the public sphere.

BLASPHEMY LAW

Poland's blasphemy law, Article 196 of the Penal Code, states that "anyone found guilty of offending religious feelings through public calumny of an object

or place of worship is liable to a fine, restriction of liberty or a maximum two-year prison sentence.”¹² Because of the focus on objects or places of worship, as opposed to religious ideas, personages, or divinities, many Article 196 cases have involved the use of religious symbols in different forms of art. However, the effect of the law is the same as that of other blasphemy laws, in that it places undue limits on freedom of expression and encourages self-censorship.

The League of Polish Families (LPR), a small right-wing and Catholic-themed political party that lost its parliamentary representation in the last elections in 2007, has initiated a number of high-profile cases or investigations under Article 196. For example, in 2004, the LPR accused Norwegian artist Børre Larsen of blasphemy and offending religious feelings in a piece that was displayed in Warsaw’s Zacheta gallery.¹³ The sculpture reportedly consisted of two miniature statuettes of Jesus, one with his hands signaling impotence, placed next to a broken statuette of the Virgin Mary. Sylwester Chruszcz, then deputy president of the LPR, was quoted as saying, “It is unacceptable that part of our faith, a tradition, should be made a mockery of.” He reportedly threatened to file a lawsuit against the gallery’s directors under Article 196 unless the statuettes were removed from the exhibition.¹⁴

Incompatibility with International Law

Poland’s religious insult law conflicts with international standards on freedom of expression, in large part because its vague wording does not identify the legal threshold for “offending religious feelings.” As one member of the Council of Europe’s Venice Commission remarked, “The religious feelings of the different members of one specific Church or confession are very diverse. The question is: whose level of religious sensibility should we treat as the average level—the sensibility of a group of fundamentalist or tolerant members?” The decision to investigate an alleged offense under Article 196 of the Penal Code is at the discretion of the prosecutor. Though there must be at least two “victims,” there is no requirement for individuals to submit complaints.¹⁵ In practice, the law appears to be applied mostly at the instigation of conservative Catholics. There are few cases overall, and they usually result in acquittals when pursued to the end, but the legal process involved is itself a deterrent that encourages individuals, notably artists, to engage in self-censorship.

Poland is a party to several regional and international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights, the International Convention on the

Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These agreements, in addition to Poland's own constitution, oblige the country to uphold and protect freedom of expression and opinion.

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

The application of Poland's blasphemy law, including the threat of enforcement posed by prosecutorial investigations, does appear to affect individuals' ability to enjoy freedom of expression. In addition, while the law does not single out any religion for protection, it is in practice invoked only to investigate or prosecute perceived insults against Christian religious symbols. However, Article 196 does not seem to affect enjoyment of human rights in any other way.

Freedom of Expression

Over the past decade, there have been several notable cases of alleged religious insult in Poland. Though not all of these investigations result in prosecutions under Article 196, they have negatively affected freedom of expression, as individuals—particularly artists, writers, curators, publishers, and others working in creative fields—are forced to engage in self-censorship to avoid legal entanglements.

An early case launched just a few years after the end of communist rule involved a cover image printed by the Polish weekly magazine *Wprost* that depicted the Virgin Mary and Jesus Christ wearing gas masks.¹⁶ Prosecutors initiated an investigation in August 1994, reportedly consulting experts to determine whether the image was offensive to religious feelings.¹⁷ The investigation was dropped in October of that year.¹⁸

One of the more prominent prosecutions under Article 196 was that of Polish artist Dorota Nieznalska in 2002. She was charged with blasphemy for a piece of art entitled *Passion*, which she exhibited at a gallery in Gdansk. LPR leader Robert Strak and lawmaker Gertruda Szumska had filed complaints after seeing the work, part of which consisted of a photograph of male genitalia attached to a cross.¹⁹ In July 2003, Gdansk judge Tomasz Zielinski found Nieznalska guilty of offending religious sentiment and sentenced her to six months of community service and "restricted freedom."²⁰ The prosecutor in the case had reportedly asked only for a fine, but Zielinski opted for a harsher sentence.²¹ Nieznalska ex-

pressed her surprise and dismay at the ruling, saying, “This is a shock for me, such a high sentence.... This court is completely unobjective as regards the work of artists.”²² Some Poles, notably artists but also a member of parliament, were deeply concerned by the complaints, prosecution, and verdict. Several artists accused the LPR of “imposing an ideologized version of a religious state.”²³ Marek Borowski, then speaker of the Sejm, Poland’s lower house of parliament, reportedly told Nieznalska that while he did not agree with her views, he would work to ensure that she was free to express them.²⁴ Nieznalska appealed her conviction, arguing in part that she had not intended to offend anyone with the piece, which was aimed at criticizing the excesses of male exercise and body-building. She was eventually acquitted in June 2009.²⁵

In 2004, an investigation was launched into a possible violation of Article 196 by the Norwegian heavy metal band Gorgoroth. The probe focused on stage decorations at a concert in Krakow that included naked women tied to crosses and covered in blood.²⁶ The prosecutor’s office eventually dropped the investigation in 2006, and no charges were pressed against the band members. However, the band’s agent and organizer in Poland, Tomasz Dziubinski, was fined 10,000 zloty (US\$3,000) for his involvement in the incident, on the grounds that he knew the laws of Poland and should have prevented the concert from going ahead.²⁷ In addition, investigators reportedly consulted Catholic theologians in Krakow, who found the stage decorations to be offensive to the religious feelings of Christians.

A similar case in 2008 centered on Adam Darski, the lead singer for the heavy metal band Behemoth. His alleged offense was tearing and burning a Bible on stage during a concert in Gdynia in September 2007, and calling the Catholic religion the “most murderous cult on the planet.”²⁸ A complaint was reportedly brought to the prosecutor’s office by Ryszard Nowak, chairman of the Polish Committee for the Defense Against Sects, an organization devoted to upholding and defending Christian values.²⁹ During an investigation launched in February 2008, prosecutors consulted with experts from Jagiellonian University who argued that “each copy of the Bible may be the subject of religious worship,” and that therefore a breach of Article 196 had occurred.³⁰ However, Polish law requires at least two complainants or “victims” of religious insult for legal proceedings to move forward, and because Nowak was the only complainant or victim to emerge, the investigation was dropped. The case was revived in January 2010, when four members of Law and Justice (PiS), a mainstream conservative party, filed a complaint against Darski for the 2007 incident.³¹ In May 2010, the prosecutor’s office reportedly requested an indictment, but according to the band, a court in Gdynia

dismissed the case on June 28, finding that Darski's actions did not constitute a crime under Article 196.³²

In an ongoing case, Polish pop star Dorota Rabczewska, known as Doda, was charged in April 2010 with violating Article 196 by stating in a 2009 interview that she believed more in dinosaurs than in the Bible because "it is hard to believe in something written by people who drank too much wine and smoked herbal cigarettes."³³ The complaints in the case were reportedly submitted by Catholic groups. Nowak was quoted in the press as saying, "I believe that she committed a crime and offended the religious feelings of both Christians and Jews."³⁴ In August 2009 the prosecutor's office of Warsaw had refused to launch an investigation, arguing that the singer's statements did not constitute an offense against religious feelings. However, under pressure from conservative groups, prosecutors spoke with secular and religious linguistic experts before submitting the indictment in 2010.³⁵

CONCLUSION

Despite their relative rarity and tendency to end in acquittal, blasphemy prosecutions under Article 196 of the Penal Code represent undue restrictions on freedom of expression. The threat of lengthy legal cases and potential criminal penalties inevitably encourages artists, writers, publishers, and others to censor themselves. Moreover, the complaint mechanism and prosecutors' practice of consulting theologians and other experts to determine the boundaries of the vaguely worded law effectively imposes the subjective views of a few on the rest of society. Nevertheless, the application of Article 196 does not appear to result in a broad range of human rights violations, meaning the effects of Poland's blasphemy law are limited compared with other countries examined in this study.

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ALGERIA

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forbidden as well as notifying, suspending or cancelling them by administrative methods. In a state of emergency or in time of war, a limited censorship maybe imposed on the newspapers, publications and mass media in matters related to public safety or for purposes of national security in accordance with the law.” Constitution of Egypt, September 1971 (as amended in 1980, 2005, and 2007).

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For more than a decade, a handful of Muslim-majority countries have engaged in a campaign to insinuate the concept of “defamation of religions” into international law. By winning passage of annual resolutions entitled “Combating Defamation of Religions” at both the UN Human Rights Council and the UN General Assembly, these countries claim to be responding to what they see as a global increase in intolerance and incitement to religious hatred, particularly against Islam.

The ultimate goal of the campaign, an international treaty or covenant on defamation of religions, would amount to a global blasphemy law. Its potential consequences can be seen in the experiences of countries where blasphemy laws are already on the books and are actively enforced. This report—based on case studies of blasphemy laws in Algeria, Egypt, Greece, Indonesia, Malaysia, Pakistan, and Poland—suggests that such laws pose serious threats to freedoms of expression and religion, violate minority rights, undermine due process, and in some cases encourage the religious violence they are supposedly designed to prevent.

