

Being Ambitious on Freedom of Religion or Belief and Implementation of HRC Resolution 16/18

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Introduction

1. Five years after the adoption of Human Rights Council (HRC) resolution 16/18,¹ the UN's principal human rights body is witnessing attempts by some states to revive the human rights-incompatible concept of “**defamation of religion**” and to challenge international standards on the rights to freedom of religion or belief and freedom of opinion and expression.

2. In his action plan to prevent violent extremism, which was released in January 2016,² the UN Secretary-General underlined the importance to address its root causes – among them disregard for human rights and the rule of law, injustice and alienation, and marginalization of minorities. HRC resolution 16/18, whose strength lies in its action-oriented and operational character, provides a platform to tackle these, as well as a number of related issues, from religious pluralism and protection of religious minorities to giving the fight against religious intolerance its full meaning so as to cover acts, including by state authorities, committed against followers of *all* religions and beliefs and those who do not follow any religion or belief.

3. At this critical juncture, as the last report of the UN Special Rapporteur on freedom of religion or belief focuses on the mutually reinforcing relationship between freedom of religion or belief (FoRB) and freedom of expression (FoE) and builds on the importance of practical implementation of HRC resolution 16/18,³ FIDH recommends that the Human Rights Council steps up its action on freedom of religion or belief and on combating religious intolerance by tackling sensitive issues as a matter of urgency with a view to strengthening ***on-the-ground implementation and protecting the rights of everyone***.

I. Context: Fifth meeting of the Istanbul Process (Jeddah, 2015)

(For considerations on international standards and consensus, including the Istanbul Process, and their implementation, see annex)

4. On 3-4 June 2015, the Organization of Islamic Cooperation (OIC) hosted the fifth meeting of the Istanbul Process (entitled “*From Resolution to Realization – How to promote effective implementation of HRC Resolution 16/18*”) at its General Secretariat in Jeddah, Kingdom of Saudi Arabia. In a concept paper, the organizers made public their will to have a “frank exchange of ideas” and to “frankly discuss practical problems and share best practices”⁴ in three main panels (see below). States and other stakeholders, including several civil society organizations, were invited.

¹ “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief”: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/18

² See www.un.org/counterterrorism/ctiff/en/plan-action-prevent-violent-extremism

³ A/HRC/31/18. See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx

⁴ 5th Session of the Istanbul Process, Jeddah, 03-04 June 2015, *Concept Paper*, available at www.oic-oci.org/oicv2/subweb/istanbul_process/5/en/main.asp

5. The mere fact that states and other stakeholders hold a regular dialogue on how to combat advocacy of religious hatred, within a structured framework, is an achievement. Discussions that have taken place as part of the Istanbul Process so far have allowed to tackle many issues. Nevertheless, some key aspects of resolution 16/18 have not been given sufficient attention within meetings of the Istanbul Process. For instance, paragraph 5(b) of resolution 16/18, which deals with identifying and addressing potential areas of tension between members of different religious communities, was addressed for the first time in Jeddah (in **Panel I** – with sub-elements of the panel referring to elements from paras. 5(c), 5(a) (outreach strategies, collaborative networks) and 5(c), 5(d) and 6(a) (training, addressing discrimination)). The holding of this panel was welcome, as it allowed best practices to be shared in order to establish effective outreach strategies and collaborative networks in all countries. **Panel II** (on “countering and combating advocacy of religious hatred that constitutes incitement to discrimination, hostility and violence through affirmative/positive measures”) also had a positive tone thanks to the adjunction of the expression “affirmative/positive measures.” Emphasis was placed on dialogue and positive strategies to counter religious hatred, rather than on judicial measures. Sub-elements of the panel included speaking out against hate speech (para. 5(e) of resolution 16/18) and interfaith/intercultural dialogue (para. 5(h)), which provided grounds for addressing all instances of punishable hate speech (as per international standards) in all countries.

6. However, some of the presentations and statements delivered during **Panel III** (on “understanding the need to combat denigration; negative religious stereotyping of persons and incitement to religious hatred through adopting measures to criminalize incitement to imminent violence based on religion or belief”) ended up materializing fears of attempts by some parties to challenge the consensus embodied by resolution 16/18 by reviving the concept of “defamation of religion” and rejecting international standards on freedom of expression and advocacy of hatred.⁵

- Firstly, one of the panelists attempted to argue that “**defamation of religion**” was an evolving norm of customary international law⁶ and proposed legal elements for the “offense of ‘defamation of religions’.” He concluded by calling for the adoption of a “universal legal framework [...] for handling transnational effects of the issues covered by 16/18” with a focus on para. 5(f) of resolution 16/18 (criminalization of incitement to imminent violence based on religion or belief). In essence, he argued that freedom of expression should be limited beyond what existing international law sets out, on the basis of a broad public order exception which would be invoked whenever an act is deemed defaming religion and causes violent reactions – irrespective of the objective criteria and tests set out by international law.

- Secondly, statements by representatives of several states⁷ openly **disregarded existing international standards and challenged resolution 16/18**. For instance, one delegate alleged that “freedom of expression is not freedom to insult” and that “insult to prophets is not acceptable”; another delegate claimed that while violence was not acceptable “Charlie Hebdo had violated the dignity of human beings” by publishing drawings he deemed offensive. Another delegate argued that “verbal violence” against religion should be criminalized and that freedom of expression “should not be against other freedoms.” A new low was hit when one state representative urged the Human Rights Council to take steps to “combat incitement to violence and **defamation of religion**”

⁵ See annex. Beyond the difference between free speech and hate speech, the key legal issue is that of the threshold between punishable hate speech (that constitutes incitement to discrimination, hostility or violence, as per article 20(2) of the ICCPR, and hate speech that should not be criminalized.

⁶ Mr. Ahmer Bilal Soofi, member of the UN Human Rights Council Advisory Committee, did so on the basis of various UN General Assembly, Commission on Human Rights and Human Rights Council resolutions and the allegation that para. 5(f) of HRC resolution 16/18 is “reflected in certain jurisdictions.” However, he did not mention that many of the UN resolutions which he referred to were adopted by vote, not consensus (which reflects the existence of persistent objection by a large number of states), and that the national laws on blasphemy he included in his presentation had actually not been implemented, in some countries for several decades (which invalidates the claim that there is consistent state practice). Moreover, he ignored the jurisprudence developed by UN special procedures and other international expert bodies, which explicitly discarded the concept of “defamation of religion” as being incompatible with international human rights standards.

⁷ Saudi Arabia, Qatar and Algeria.

(emphasis added). He stated: “We should revisit [international] norms so that freedom of expression and freedom of religion do not collide.”

7. For anyone who is serious about implementing HRC resolution 16/18, these developments did not bode well. Some of the statements made at the Jeddah meeting used essentially the same concepts – and for some participants, the very same expressions – as those that were used prior to the adoption of resolution 16/18, which indicates their intent to re-open the “defamation of religion” agenda and to directly challenge 16/18 and everything that has been achieved with and since the adoption of this resolution.

II. Mounting threats to the consensus embodied by HRC resolution 16/18

From Jeddah (back) to Geneva

8. The international community is now at a crossroads. Since the added value of resolution 16/18 lies in its action-oriented character, making it a success in terms of actual impact on the ground requires its urgent and full implementation at the domestic level in the face of rising religious intolerance and human rights violations and abuses committed in the name of religion. Further delays in implementing the package of practical measures contained in resolution 16/18 risk bringing the international community back to the pre-2011 situation. Obstacles, bad practices and sensitive issues must therefore be addressed at the domestic level as a matter of urgency.

9. As the third panel held in Jeddah demonstrated, far from implementing the action plan of resolution 16/18, a number of states are now ***openly challenging the consensus*** the resolution embodies, as well as international standards on FoRB, FoE and the prohibition of advocacy of hatred. There is reason to believe that some of these states never had the intention of implementing the action plan set out in resolution 16/18 comprehensively and in good faith. Rather, what is increasingly clear is that they have used 16/18 as a weapon against other states and to divert attention from inconvenient domestic issues.

10. Firstly, the ***discourse on “double standards”*** that they have used to highlight (actual and concerning) instances of discrimination or incitement to hatred against religious minorities in other countries *has become a double standard in itself*. Indeed, finger-pointing goes hand in hand with a refusal to discuss domestic issues, including incitement to hatred and violence against religious minorities. In Saudi Arabia, in addition to systematic discrimination against, and marginalization of, Shia Muslims (10-15 % of the country's population) as well as a blanket ban of public manifestation of minority religions, high-profile clerics have publicly called for the physical destruction of Shias, Alawites, Christians and Jews – without triggering any condemnation by government authorities.⁸ This confirms the dichotomy identified in the Rabat Plan of Action (“no prosecution of real incitement cases; persecution of minorities under the guise of domestic incitement laws”). Secondly, attacks against resolution 16/18, which underpin attempts to re-open a debate on the criminalization of free expression around religious matters that were witnessed in Jeddah, have been pursued in other fora, including at the Human Rights Council, and ***have increased*** over the past year.

Direct attacks against resolution 16/18: attempts to re-open the “defamation of religion” agenda?

11. Immediately after the Jeddah meeting, in June 2015 the Human Rights Council held its 29th regular session (HRC 29). During HRC 29, as a draft resolution on freedom of artistic expression (“The right to freedom of expression, including in the form of art”, A/HRC/29/L.20⁹) was put forward,

⁸ See foreignpolicy.com/2015/05/05/preaching-hate-and-sectarianism-in-the-gulf-saudi-arabia-qatar-uae-saad-bin-ateeq-al-ateeq/

⁹ It was later withdrawn.

a group of states led by Saudi Arabia tabled **amendments**¹⁰ that aimed to: (i) introduce language on “deploring the use of print, audiovisual and electronic media, the Internet, cartoons, including in the form of art, and any other means” [of expression] to “incite acts of violence, xenophobia, or related intolerance and discrimination against any religion, as well as the targeting of religious symbols and venerated persons” (A/HRC/29/L.32); and (ii) insert a paragraph on “ensur[ing] that religious places and symbols are fully respected and protected” (A/HRC/29/ L.33). In essence, these proposals amounted to attempting to revive the “defamation of religion” concept by shifting the debate from protection of persons to protection of religions as such.

12. This must be read in conjunction with several **statements** delivered in 2015. During the High-Level Segment held at the opening of the 28th session of the Human Rights Council (HRC 28), Minister and President of the Human Rights Commission of Saudi Arabia Mr. Bandar bin Mohammed Alaiban stated that “freedom of expression should not justify the violation of other rights” and reiterated “the need to redouble efforts to combat the phenomenon of *contempt* [the written version of the speech provided by the Permanent Mission of Saudi Arabia to the HRC secretariat indicates ‘*defamation*’] of religions and religious symbols.” During the interactive dialogue with the UN Special Rapporteur on freedom of religion or belief held at HRC 28, a delegate from Saudi Arabia rejected the Special Rapporteur’s annual report [on violence committed in the name of religion] stating that “[he] ha[d] gone beyond his mandate” and that his country hoped the Special Rapporteur would “call on the mass media to put an end to aggressive rumors as well as hate speech instead of calling for it.”

13. As HRC 31 approaches, **concerns are mounting**. Signals sent by some states indicate that they might attempt to challenge what the Council has achieved with resolution 16/18 more openly while continuing to reject international standards on the mutually reinforcing relationship between FoRB and FoE¹¹ by seeking to restrict free expression on the basis of an overly broad public order/blasphemy exception that goes beyond what article 19 of the Universal Declaration of Human Rights (UDHR) and articles 19 and 20(2) of the International Covenant on Civil and Political Rights (ICCPR) permit. Allowing this human rights-incompatible agenda to gain traction, and ultimately to threaten the legacy of resolution 16/18 would be a heavy blow to the work, relevance and credibility of the Human Rights Council. Every effort must be made in order to ensure that the “defamation of religion” and similar concepts remain outside the Council’s debates and negotiations, and delegitimized.

III. The way forward to protect freedom of religion or belief

14. In the upcoming debates and negotiations at the Human Rights Council, UN member states should focus on *all* aspects and implications of the internationally-recognized right to freedom of religion or belief and of the action plan embedded in resolution 16/18. Avoiding sensitive issues will not allow the Council to defuse tensions and protect the legacy of 16/18.

Realizing religious freedom and pluralism everywhere

15. “Fostering religious freedom and pluralism by promoting the ability of members of all religious communities to **manifest** their religion” (para. 6(b) of resolution 16/18) should be addressed in depth. In the face of growing intolerance and numerous incidents of violence and discrimination by state and non-state actors against members of minority religious groups or beliefs (including atheists and agnostics), **pluralism** needs to be addressed if states are serious about realizing FoRB *for all* and implementing resolution 16/18 *fully*. In this regard, under international

¹⁰ Saudi Arabia bullied members of the OIC into supporting its amendments, which were tabled on behalf of all OIC member states. Several OIC member states disagreed, stating they had never formally supported these amendments. This triggered a formal statement by the President of the Council, reiterating that it was the responsibility of regional/political group coordinators to ensure that members of the group agreed to co-sponsor amendments or resolutions tabled on behalf of the group as a whole.

¹¹ The last report of the Special Rapporteur on freedom of religion or belief (A/HRC/31/18) focuses on the relationship between FoRB and FoE, building on the importance of practical implementation of HRC resolution 16/18 at the national and local levels.

law official domestic characterizations (“religion,” “belief,” “sect,” etc.) and their positive or negative tone, as well as their political usages, are irrelevant for the sake of protection.¹² States that recognize a specific religion or belief as official must address issues that arise from this situation, in particular the fact that members of religious minorities and non-believers, free thinkers, atheists and agnostics may be prevented from manifesting their religion or belief for fear of being targeted by state and non-state actors. In this regard, state authorities have not only an **obligation to respect** the fundamental rights and freedoms of every individual but also an **obligation to protect** all individuals from discrimination, hostility and violence, including from non-state actors. In this regard, a wide range of rights fall within the scope of discussions related to FoRB and combating religious intolerance, in addition to the rights protected under articles 18 and 19 of the UDHR and 18, 19 and 20 of the ICCPR. The rights to freedom of peaceful assembly and of association, in particular, are inherently linked to the realization of FoRB and FoE; they also provide a structured framework within which inclusive discussions can take place.

Protecting religious minorities and independent voices (including protecting them from religious majorities)

16. While religious hatred disproportionately affects religious minorities all over the world, “speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence” (para. 5(e) of resolution 16/18) should include incitement to such acts when it is committed **in the name of a religion or belief that has a state or official status**, and when it targets followers of religions or beliefs that are not recognized as such by national authorities.¹³

17. Moreover, “the freedom to ‘have or to adopt’ a religion or belief necessarily entails the **freedom to choose** a religion or belief, including, *inter alia*, the **right to replace** one’s current religion or belief with another **or to adopt** atheistic or agnostic views, as well as the **right to retain** one’s religion or belief.”¹⁴ This is particularly relevant in a context in which free thinkers and independent voices are targeted for peacefully exercising their rights to free opinion, expression, thought, conscience and religion, as in the cases of Saudi blogger Raif Badawi and human rights lawyer Waleed Abu Al-Khair¹⁵ or in that of poet Ashraf Fayadh.¹⁶ Indeed, domestic legal provisions that criminalize peaceful discussion of religious matters or criticism of religion are based on overly broad and vague terms; as such, they are arbitrary and inconsistent with international human rights

¹² “Religion” does not have a legal definition in international law. And there is no satisfactory definition of religion or belief. Therefore, international human rights standards provide for a broad view of what is protected. According to the Human Rights Committee, “[t]he terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community” (General Comment no. 22, para. 2). In terms of protection, all religions and beliefs benefit from the same fundamental principle (namely, protection) and in terms of their manifestation, all religions and beliefs are subjected to the same rule (one has the right to manifest one’s religion or belief) and to the same permissible limitations (which, according to international law, must meet a number of conditions: they must be lawful (according to certain aims), necessary, proportionate, and not discriminatory, i.e. applied in an objective manner). The Human Rights Committee has elaborated on these limitations in its General Comment no. 22, adding that “[i]n interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination [...]”.

¹³ As a general rule “[t]he fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers” (Human Rights Committee, General Comment no. 22, para. 9).

¹⁴ *Ibid.*, para. 5 (emphasis added).

¹⁵ See www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/saudi-arabia/

¹⁶ www.fidh.org/en/region/north-africa-middle-east/saudi-arabia/rights-groups-urge-the-saudi-authorities-to-release-palestinian-poet

law. And official or state-sponsored religions, as well as blasphemy laws (see below), may be **used to target religious minorities, dissenting voices and free thinkers and to justify discrimination** (direct and indirect), for instance against the Bahá'í community in Iran. In particular, “certain measures discriminating against [adherents of other religions or non-believers], such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 [of the ICCPR].”¹⁷

18. In other cases, violence and discrimination are **committed by non-state actors** (sometimes with the acquiescence of the authorities). In the last few years, a member of the Human Rights Commission of Pakistan, Rashid Rehman, was murdered because he represented a person accused of blasphemy. Several secular bloggers were killed by violent extremists in Bangladesh. In Mauritania, Aminatou Mint El-Moctar, Chair of the Association of Women's Heads of Households, was the target of a fatwa simply because she defended persons accused of apostasy. In Viet Nam, Bui Thi Minh Hang, Nguyen Van Minh and Nguyen Thi Thuy Quynh were sentenced to several years of imprisonment for “causing public disturbances” because they defended freedom of religion. In parallel, in many parts of the world, there has been an upsurge of movements targeting religious groups in the name of religious or cultural protectionism, sometimes promoting or taking part in violent attacks. In Myanmar/Burma, the Rohingya Muslim minority has been subjected to discriminatory laws and policies and to increasingly blatant mob violence with impunity. In Sri Lanka, violence has been incited by a range of actors against non-Buddhist religious minorities. In Europe, anti-Muslim groups like PEGIDA in Germany have taken hate speech to the streets. Members of the Jewish community have been targeted in several countries across the world, most recently in Marseille, France.

19. All of the issues related to the protection of religious minorities and independent voices (including **protection from violations and abuses perpetrated in the name of religion or religious majorities**) need to be addressed, as a matter of priority, in any discussion about FoRB and religious hatred. “Combating religious intolerance” includes combating intolerance of all religious and belief minorities, including non-believers, atheists, agnostics, free thinkers and other independent voices, including when acts of incitement to discrimination, hostility or violence are committed by state actors or condoned by them.

Moving beyond criminalization of hate speech: the need for systematic references to the Rabat Plan of Action and to the mutually reinforcing character of FoRB and FoE

20. Debates on the border between free speech and hate speech, and on what type of hate speech should be criminalized, already reached conclusions. Concomitant reading of international texts (notably the UDHR and ICCPR), HRC resolution 16/18, international jurisprudence (notably case law developed by treaty monitoring bodies) and texts providing guidance on implementation of international standards, such as the Rabat Plan of Action and treaty body general comments, provides answers.

21. However, several states pursue attempts to criminalize freedom of expression with regard to religious matters through phrasing or terminology¹⁸ that are different from, but essentially tantamount to, the human rights-incompatible concept of “defamation of religion,”¹⁹ which was

¹⁷ Human Rights Committee, General Comment no. 22, para. 9. The paragraph goes on: “The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringements of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed toward those groups.”

¹⁸ Be it “contempt of religion,” “contempt of religious symbols” or “venerated persons,” “denigration of religion” or “vilification of religion.”

¹⁹ The first resolution on “defamation of religion” was adopted by the UN Commission on Human Rights in 1999 (CHR resolution 1999/82). It was renewed each year, including at the Human Rights Council, until 2010.

clearly invalidated by UN special procedures and experts from various regions, notably in a joint statement issued by UN and regional special rapporteurs on freedom of expression on 10 December 2008, which explicated that the concept of “defamation of religion” does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals” – while religions, like all beliefs, cannot be said to have a reputation of their own.²⁰

22. Another topic that has already been adequately addressed – i.e., for which answers were provided at the international legal level, is “**incitement to imminent violence.**” And indeed, it is already adequately criminalized in most states. Open, public debate of ideas (including on religions or beliefs) can include peaceful criticism of religion; it cannot be equated with advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. All religions and beliefs can be subjected to criticism; they are not “shielded” by international law. Thus, **criticism cannot be equated with expression that constitutes a criminal offense**, unless the six part test set out in the Rabat Plan of Action is met.²¹ Attempts to single out a specific religion or belief by arguing that it should be subjected to another type of, or lower, threshold test, amount to introducing cultural relativism to challenge international standards. The **six part threshold test set out in the Rabat Plan of Action** (see annex) provides for objectivity. Other criteria or tests (e.g., the level of attachment of people to religion in different parts of the world) for assessing the admissibility of restrictions to free speech would be subjective, therefore inconsistent with the universal nature of human rights. Besides, it should be reaffirmed that criminalization of incitement to imminent violence, albeit needed to protect individuals, should not be regarded as a “magical weapon” to eliminate hate speech and incitement to discrimination, hostility or violence. The most sensible answer the hate speech is *more* speech. Criminalization is one of the tools – but one of last resort – that states may use to counter hate speech, provided they do it in line with international law.

23. The Rabat Plan of Action, in particular its six part threshold test, should be mainstreamed in resolutions on FoRB and combating religious intolerance. It should be systematically referred to and integrated in discussions on these issues. Besides, additional language explicating the mutually reinforcing character of FoRB and FoE should be included in Council resolutions on FoRB and combating religious intolerance, building on elements contained in resolution 16/18, the Rabat Plan of Action and relevant reports of international bodies and institutions, such as the UN Special Rapporteur on freedom of religion or belief, who dedicated his last report (A/HRC/31/18) on the relationship between FoRB and FoE.

Moving towards the repeal of blasphemy laws

24. Religions or beliefs are not protected from criticism or ridicule. Rather, it is individuals, as rights-holders, who are protected from incitement. An additional study on the implementation of national laws based on article 20(2) of the ICCPR, through an “observatory” (as has been proposed) or otherwise, is not necessary as this was the very purpose of the broad OHCHR consultation process that led to the Rabat Plan of Action. The Plan of Action is an authoritative tool with regard to advocacy of hatred that constitutes incitement to discrimination, hostility or violence, and to what states should do at the domestic level (in terms of legislation, jurisprudence, and policies) to fulfill their obligations. There is no need for supplementary mechanisms.²²

²⁰ The statement went on to state that restrictions on free speech “should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.” In his first address to the UN General Assembly as Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, Githu Muigai reiterated one of the recommendations of his predecessor, Doudou Diène, namely that states should “move from the concept of ‘defamation of religion’ to the notion of ‘incitement to racial and religious hatred’.”

²¹ Context; speaker; intent; content of form; extent of the speech; and likelihood of the resulting harm, including imminence (see annex).

²² Regarding proposals for an “observatory” on hate speech, the mandate of such a body would bear the risk of either being too narrow (and not including, for instance, aspects related to religious freedom and tolerance) or overlapping the mandate of the UN Special Rapporteur on freedom of religion or belief. In any case, “voluntary” contributions to an observatory could be counter-productive, as self-reporting by those states

25. Discussions on FoRB and combating religious intolerance at the HRC should cover blasphemy laws, whose repeal has been called for by various international bodies. In addition to being incompatible with international standards on free expression, blasphemy laws are often abused to target and punish religious minorities, political opponents and independent voices, including civil society actors, human rights defenders and journalists. And they are prone to being manipulated by non-state and state actors. In the face of growing use of blasphemy provisions (an offense which is punishable by death in some countries), the Council should address the **use and abuse of blasphemy laws** and discuss steps to be taken by states towards their repeal.

Cross-fertilizing resolutions on FoRB and combating religious intolerance

26. The last resolutions adopted by the Human Rights Council on freedom of religion or belief (28/18²³) and combating religious intolerance (28/29²⁴) have significant common ground. The preamble of resolution 28/18, as well as several of its operative paragraphs (e.g., paras. 3(c), 4, 8, 9(k), 9(m) and 10), refer to the elimination of violence, intolerance and discrimination based on religion or belief, negative stereotyping and stigmatization, advocacy of religious hatred, as well as to the importance of speaking out against intolerance and violence based on religion or belief, and of dialogue in all its forms. On the other hand, resolution 28/29, which largely reiterates the key messages, and action plan, set out by resolution 16/18, mentions international standards on FoRB²⁵ as well as the Rabat Plan of Action. The door remains open to identify more common ground, language and references, including mutual references between resolutions on FoRB and combating religious intolerance. In the near future, the Human Rights Council should seek to further cross-fertilize the two resolutions with a view to **merging them**, as they serve a common objective: realizing the fundamental rights of everyone to freedom of religion or belief and to be free from incitement to discrimination, hostility and violence.

Conclusion

27. **The Human Rights Council must stand firm** in its defense of international standards and what it has achieved. FIDH calls on UN member states to oppose attacks against international norms and consensus by systematically reminding states of their human rights obligations – starting with their obligation to protect *all* persons from violence and discrimination – and by deconstructing the relativist narratives that are used to deprive individuals, including religious and belief minorities, of their rights. Challenges to the universality of human rights on the basis of so-called national, regional, cultural or religious “particularities” are arguments that are deployed to legitimize attempts to preserve the political, social and economic *status quo*, delegitimize dissenting voices, and justify human rights violations. As such, they should be systematically exposed, deconstructed and combated.

28. As the international community is facing rising religious intolerance, persecution of religious minorities and violence committed in the name of religion, the Council should contribute to global efforts, including the UN Secretary-General's work on preventing violent extremism, and **formulate a forward-looking answer** that is based on both full implementation of resolution 16/18 and full promotion and protection of freedom of religion or belief in all its aspects. In particular, the Council should request OHCHR to prepare a report on violence and discrimination committed by state and non-state actors against members of minority religious groups or beliefs, with recommendations to address this issue.

where problems are the most acute are likely to be non-existent, while states with a better record would be more likely to report. In this context, the absence of an observatory would be preferable to a narrowly defined, thus biased, observatory.

²³ ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/18

²⁴ ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/29

²⁵ One aspect of the right to freedom of religion or belief that is noticeably missing from resolution 28/29 is the right to change one's religion or belief (compare operative paragraph 1 of resolution 28/18 with preambular paragraph 4 of resolution 28/29).

Recommendations to member and observer states of the UN Human Rights Council

(i) Strongly oppose attempts to re-open the “defamation of religion” agenda

(i)(a) Strongly oppose any attempt to challenge the consensus embodied by HRC resolution 16/18, to revive the “defamation of religion” or similar concepts, and to reject international standards on freedom of religion or belief, freedom of expression and advocacy of hatred, including through the advocacy of restrictions to free discussion of religious matters;

(i)(b) Condemn criminalization of free expression (including peaceful criticism of religions or beliefs) on the basis of blasphemy laws or laws on incitement to hatred that fail to meet the threshold set out by international law;

(i)(c) Whenever relevant, remind states that attempt to do so of the human rights-incompatible character of the “defamation of religion” and similar concepts, as well as of their obligations under international law, of the action plan contained in resolution 16/18 and of the Rabat Plan of Action's six part threshold test for identifying hate speech that constitutes incitement to imminent violence based on religion or belief.

(ii) Engage in debates and negotiations on FoRB and combating religious intolerance

(ii)(a) States from all regional groups should engage in debates and negotiations on the two resolutions (on freedom of religion or belief and combating religious intolerance, respectively) that will be discussed during the 31st session of the Human Rights Council;

(ii)(b) Strengthen cross-references and common language in order to cross-fertilize both resolutions with a view to merging them in the near future;

(ii)(c) Consult with all stakeholders, including civil society organizations and human rights defenders, that engage in this process.

(iii) Promote and protect international standards, mechanisms and consensus

(iii)(a) Commit to promote and protect international standards on freedom of religion or belief, freedom of opinion and expression, and prohibition of advocacy of national, racial or religious hatred;

(iii)(b) Support international mechanisms such as the UN Special Rapporteur on freedom of religion or belief, the UN Special Rapporteur on the right to freedom of opinion and expression and the UN Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, including by cooperating with them, responding favorably to their requests for country visits and responding in a timely and substantive manner to individual communications and urgent appeals;

(iii)(c) States should unambiguously reaffirm, as a matter of urgency, their commitment to implement the action plan contained in HRC resolution 16/18 in a comprehensive and holistic manner and to pay equal attention to the various components of the action plan.

(iv) Promote and protect religious freedom and pluralism everywhere

(iv)(a) States that recognize a specific religion or belief as official must address issues that arise from this situation, in particular the fact that members of religious minorities and non-believers, free thinkers, atheists and agnostics may be prevented from manifesting their religion or belief for fear of being targeted by state and non-state actors;

(iv)(b) Interpret “interfaith and intercultural dialogue” broadly so as to include members of non-traditional, non-mainstream religious and belief groups, religious minorities, and non-believers, free thinkers, atheists and agnostics;

(iv)(c) Truly address all instances of punishable hate speech in all countries and speak out against everyone, including extremist clerics from religious majorities, who incite violence against religious minorities and independent voices, including non-believers, atheists or agnostics;

(iv)(d) Recognize the right to change one's religion as an integral part of freedom of religion or belief, in line with international law;

(iv)(e) Create and maintain, in law and in practice, a safe and enabling environment for civil society organizations working on religious and belief matters, regularly consult with them, and protect human rights defenders who work to promote and protect freedom of religion or belief and to combat religious intolerance.

(v) *Protect religious minorities and independent voices, including from religious majorities*

(v)(a) Address, as a matter of urgency, all of the issues related to the protection of religious and belief minorities and independent voices (including protection from violations and abuses perpetrated in the name of religion or religious majorities) as an integral part of debates and negotiations on freedom of religion or belief and combating religious intolerance, including the Istanbul Process;

(v)(b) States that recognize a religion or belief as official should address issues that arise from this situation, in particular the fact that members of religious minorities and non-believers, free thinkers, atheists and agnostics may be prevented from manifesting their religion or belief for fear of being targeted by state and non-state actors; in this context, "speaking out against intolerance" should include incitement to such acts when it is committed in the name of a religion or belief that has a state or official status, and when it targets followers of religions or beliefs that are not recognized as such by national authorities, as well as non-believers, free thinkers, atheists and agnostics;

(v)(c) At the domestic level, move towards the repeal of blasphemy laws;

(v)(d) The Human Rights Council should request OHCHR to prepare a report on violence and discrimination committed by state and non-state actors against members of minority religious groups or beliefs with recommendations to address this issue, to be presented at its 34th session (March 2017).

(vi) *Systematize references to the Rabat Plan of Action and to the mutually reinforcing character of FoRB and FoE in all relevant debates and negotiations*

(vi)(a) Strengthen references to the Rabat Plan of Action, in particular its six part test, in resolutions on freedom of religion or belief and combating religious intolerance;

(vi)(b) Strengthen references to documents and reports by international bodies and experts, including the UN Special Rapporteur on freedom of religion or belief and the Rabat Plan of Action, on the interdependent and mutually reinforcing character of freedom of religion or belief and freedom of expression, elaborating on the various aspects of the relationship between the two internationally-recognized rights, in line with the last report of the UN Special Rapporteur on freedom of religion or belief;

(vii) *Fully implement HRC resolution 16/18 and commit to the Istanbul Process*

(vii)(a) Report on implementation, at the domestic level, of resolution 16/18, systematically highlighting the measures taken (legislative, policy or otherwise) since the adoption of the resolution, the progress made against specific paragraphs of the resolution's action plan and against objectives (with targets and indicators) for the next period;

(vii)(b) Address all aspects of resolution 16/18 in state reporting, including religious freedom and pluralism and the protection of religious minorities;

(vii)(c) Use real-world examples to illustrate implementation of HRC resolution 16/18 at the domestic level, including best practices but also challenges and counter-examples or bad practices;

(vii)(d) Send inter-ministerial delegations to the next meetings of the Istanbul Process in order to fully reflect the content of resolution 16/18, challenges in implementing it, and ways of addressing these challenges on the ground;

(vii)(e) Meaningfully engage in the Istanbul Process with all stakeholders, including states, UN bodies and mechanisms, legal experts, civil society organizations and human rights defenders;

(vii)(f) States and organizations that plan to host meetings of the Istanbul Process should make sure states from all regional and political groups attend and participate in the meetings;

(vii)(g) States and organizations that host meetings of the Istanbul Process should extend invitation to all civil society organizations that express an interest in working on issues related to resolution 16/18, including faith-based organizations that represent religious and belief minorities, as well as organizations representing members of non-religious, atheistic or agnostic groups.

* * *

Annex: international standards and consensus, and their implementation

International standards and consensus

International law protects the rights to freedom of religion or belief and to freedom of opinion and expression. It sets out restrictions on the basis of a three part test (legality, necessity and proportionality) and prohibits propaganda for war and advocacy of national, racial or religious hatred.²⁶ A range of international mechanisms have been established in order to, *inter alia*, monitor respect for these rights and provide guidance on their implementation. They include the UN Special Rapporteur on freedom of religion or belief, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance.

International consensus is embodied in relevant texts and initiatives on these matters, including those providing guidance on implementation at the domestic level, in particular HRC resolution 16/18 and other resolutions on combating religious intolerance the Council has adopted since 2011,²⁷ the Rabat Plan of Action,²⁸ and relevant General Comments adopted by treaty monitoring bodies to explicit state obligations, such as the UN Human Rights Committee's General Comments no. 22 (on the right to freedom of thought, conscience and religion) and no. 34 (on freedoms of opinion and expression).

HRC resolution 16/18 and its built-in action plan

In 2011, overcoming deep divisions, the Human Rights Council adopted resolution 16/18 on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief” by consensus, which was hailed by stakeholders from all regions and faiths as “a turning point in international efforts to confront religious intolerance” and remains “one of the most important texts ever adopted by the Council.”²⁹ In a nutshell, HRC resolution 16/18 reaffirms states' obligations with regard to freedom

²⁶ See articles 18 and 19 of the UDHR and articles 18, 19 and 20 of the ICCPR.

²⁷ For instance [HRC resolution 28/29](#), which was adopted at the Council's March 2015 session.

²⁸ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence:

www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf See below.

²⁹ Universal Rights Group, *Combatting Global Religious Intolerance: the Implementation of Human Rights Council Resolution 16/18*: www.universal-rights.org/urg-policy-reports/combating-global-religious-intolerance-

of religion or belief and the positive role that the exercise of freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance. It expresses deep concern about incidents of intolerance, discrimination and violence against persons based on their religion or belief in all regions of the world, and deplors advocacy of discrimination or violence and all acts of violence against persons on the basis of their religion or belief, including cases motivated by discrimination against persons belonging to religious minorities. It also recognizes the importance of dialogue among religious groups, the need to enhance implementation of legal regimes protecting against discrimination and hate crimes, and the importance of interfaith and intercultural efforts.

One of the characteristics of the resolution – and its strength – is that its paragraphs 5³⁰ and 6, read altogether, set out an action plan. This action plan calls on states to, *inter alia*:

- Encourage the creation of collaborative networks to build mutual understanding, promote dialogue and inspire constructive action towards shared policy goals and the pursuit of tangible outcomes (para. 5(a));
- Create appropriate mechanisms within governments to, *inter alia*, identify and address potential areas of tension between members of different religious communities and assist with conflict prevention and mediation (para. 5(b));
- Encourage efforts of leaders to discuss within their communities causes of discrimination and evolve strategies to counter these causes (para. 5(d));
- Speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (para. 5(e));
- Adopt measures to criminalize incitement to imminent violence based on religion or belief (para. 5(f));
- Understand the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred (para. 5(g));
- Recognize that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue can play a positive role in combating religious hatred, incitement and violence (para. 5(h));
- Take effective measures to ensure that public functionaries do not discriminate against individuals on the basis of religion or belief (para. 6(a));
- Foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to the society (para. 6(b)); and
- Encourage representation and meaningful participation of individuals, irrespective of their religion, in all sectors of society (para. 6(c)).

The resolution also encourages states to consider providing updates on efforts made in this regard as part of ongoing reporting to the Office of the UN High Commissioner for Human Rights (OHCHR).

The Istanbul Process and the Rabat Plan of Action

[the-implementation-of-human-rights-council-resolution-1618/](#)

³⁰ Operative paragraph 5 extensively refers to the speech given by the Secretary-General of the OIC, Ekmeleddin İhsanoğlu, at the fifteenth session of the Human Rights Council.

A series of meetings on the implementation of resolution 16/18, held every year since 2011 and known as the “Istanbul Process,”³¹ has allowed states and other stakeholders to meet on a regular basis. In parallel, OHCHR held a series of expert workshops on the prohibition of incitement to national, racial and religious hatred – i.e., on the border between free speech and hate speech. At the final meeting in Rabat, Morocco, a plan of action was adopted. The Rabat Plan of Action³² contains considerations on the context, international standards, and conclusions and recommendations with regard to national legislation, jurisprudence and policies, intended to provide guidance on the implementation of states’ international obligations.

As highlighted by the Rabat Plan of Action, freedom of expression and freedom of religion or belief are “mutually dependent and reinforcing.” Indeed, “[t]he freedom to exercise *or not* one’s religion or belief cannot exist if the freedom of expression is not respected as free public discourse depends on respect for the diversity of deep convictions which people may have. Likewise, freedom of expression is essential to creating an environment in which a constructive discussion about religious matters could be held. Indeed, *free and critical thinking* in open debate is the soundest way to probe whether religious interpretations adhere to, or rather distort the original values that underpin religious belief” (para. 10, emphasis added). The Rabat Plan of Action, *inter alia*:

- Quotes the UN Human Rights Committee in saying that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are counter-productive, since they may result in the de facto censure of all inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism, most of which could be constructive, healthy and needed;

- Recalls that article 20 of the ICCPR requires a high threshold for limitations because, as a matter of fundamental principle, limitation of speech must remain an exception (therefore, the three part test for restrictions (legality, necessity and proportionality) also applies to incitement cases that may fall under the scope of article 20(2) of the ICCPR (para. 18)); and

- Recalls the distinction to be made between three types of expression: (i) expression that constitutes a criminal offence; (ii) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (iii) expression that may raise concern in terms of tolerance, civility and respect for the rights of others but that does not give rise to criminal, civil or administrative liability.

With regard to advocacy of hatred, as stated in the Rabat Plan of Action, “[it] is of concern that incidents, which indeed reach the threshold of article 20 [of the ICCPR], are not prosecuted and punished. At the same time members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. This dichotomy of (1) *no prosecution of ‘real’ incitement cases* and (2) *persecution of minorities under the guise of domestic incitement laws* seems to be pervasive” (para. 11).

The Rabat Plan of Action proposes a six part threshold test for defining limitations on freedom of expression, for defining incitement to hatred, and for the application of article 20 of the ICCPR, including analysis of the: (i) context of the speech (social and political); (ii) speaker (his/her position in the society); (iii) intent; (iv) content or form (provocative and direct nature, form, style, nature of the arguments deployed); (v) extent of the speech (reach, public nature, magnitude, size of the audience); and (vi) likelihood of resulting harm (i.e., degree of risk of violence) (para. 22). Finally, the Rabat Plan of Action calls on ensuring space for minorities to enjoy their fundamental rights and freedoms and makes reference to HRC resolution 16/18.

³¹ After an initial ministerial meeting held in Istanbul at the invitation of the OIC on 15 July 2011, stakeholders successively met in Washington, DC in 2011 (meeting convened by the USA), London in 2012 (meeting convened by the UK and Canada), Geneva in 2013 (meeting convened by the OIC) and Doha in 2014 (meeting convened by Qatar). The fifth Istanbul Process meeting was hosted by the OIC at its General Secretariat on 3-4 June 2015.

³² *Supra* note 27.