



5th Session of the Istanbul Process
OIC General Secretariat, Jeddah, Saudi Arabia, 3-4 June 2015
Written Submission

1. The International Federation for Human Rights (FIDH) extends its appreciation to the Organization of Islamic Cooperation (OIC) for hosting the 5th session of the Istanbul Process (“From Resolution to Realization – How to promote effective implementation of HRC Resolution 16/18”) (hereafter “IP5”) at its General Secretariat in Jeddah, Kingdom of Saudi Arabia, and for facilitating civil society participation. FIDH welcomes the intention of the organizers to have a “frank exchange of ideas” and to “frankly discuss practical problems and share best practices”¹ and looks forward to meaningful engagement.

Background: international standards and consensus

2. FIDH reaffirms its steadfast commitment to promote and protect international standards on freedom of religion or belief, the right to freedom of opinion and expression, and prohibition of propaganda for war and advocacy of national, racial or religious hatred, as set out in articles 18 and 19 of the Universal Declaration on Human Rights (UDHR) and articles 18, 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR). FIDH reiterates its support to the work of international mechanisms, such as the United Nations (UN) Special Rapporteurs on freedom of religion or belief, on the right to freedom of opinion and expression, and on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, as well as to international consensus embodied in relevant texts and initiatives on these matters, including those providing guidance on implementation at the domestic level, including inter alia UN Human Rights Council (HRC) resolution 16/18, the Rabat Plan of Action,² and relevant General Comments by treaty monitoring bodies, 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 action plan

3. In 2011, overcoming deep divisions between its members and observers, 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.”³ In its preambular part, resolution 16/18 reaffirms states' obligations with regard to freedom 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 (preambular paras. 1-4). 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 deplores 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 (preambular paras. 5-9). It also recognizes the importance of dialogue among religious groups, the need

1 5th Session of the Istanbul Process, Jeddah, 03-04 June 2015, *Concept Paper*, available at http://www.oic-oci.org/oicv2/subweb/istanbul_process/5/en/main.asp

2 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

3 Universal Rights Group, *Combatting Global Religious Intolerance: the Implementation of Human Rights Council Resolution 16/18*: <http://www.universal-rights.org/urg-policy-reports/combating-global-religious-intolerance-the-implementation-of-human-rights-council-resolution-1618/>

to enhance implementation of legal regimes protecting against discrimination and hate crimes, and the importance of interfaith and intercultural efforts (preambular paras. 10-11).

4. The operative part of HRC resolution 16/18 reiterates a series of concerns and condemns (in its paragraph 3) any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, in line with article 20(2) of the ICCPR but focusing on its religious aspect. The resolution's paragraph 4 unambiguously recognizes that the open public debate of ideas can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred.

5. One of the characteristics of the resolution (and its strength) is that its paragraphs 5⁴ and 6, read together, set out an action plan. It 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).

Promoting and guiding implementation

6. A series of meetings on the implementation of HRC resolution 16/18, held every year since 2011 and known as the “Istanbul Process,”⁵ has allowed states and other stakeholders to meet regularly (see below). 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.⁶ At the final meeting in Rabat, Morocco, a plan of action was adopted. It contains considerations on the context, relevant 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

4 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.

5 After an initial ministerial meeting held in Istanbul, Turkey 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). IP5 has been convened by the OIC at its General Secretariat (3-4 June 2015).

6 <http://www.ohchr.org/EN/NewsEvents/Pages/TheRabatPlanofAction.aspx>

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).

7. In this context, 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 (paras. 17 and 19);
- Calls on states to repeal blasphemy laws, as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion;
- 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, proportionality and necessity) 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.

8. 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). Because of inadequate domestic legal frameworks, in particular vague terminologies, and their arbitrary application, risks of misinterpretation of international standards are significant. In this regard, 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).

9. Finally, the Rabat Plan of Action contains recommendations to states and other stakeholders with regard to policies to be put in place to create and strengthen a culture of peace, tolerance and mutual respect and to combat intolerance and address its root causes, including ensuring space for minorities to enjoy their fundamental rights and freedoms. It makes reference to HRC resolution 16/18 as a “promising platform for effective integrated and inclusive action by the international community” but warns that “this resolution requires implementation and constant follow-up by States at the national level” (paras. 23-29).

The international community at a crossroads

10. The international community is therefore at a crossroads. Since the added value of HRC resolution 16/18 lies in its action-oriented character, making it a success (in terms of actual impact on the ground) requires 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 HRC resolution 16/18, as well as in the Rabat Plan of Action, risk bringing the international community back to the pre-2011 situation. This sense of urgency is fully shared by FIDH, which calls on states and other relevant stakeholders to move up a gear and implement HRC resolution 16/18 in a comprehensive and holistic manner, addressing obstacles, bad practices and the needed reforms at the domestic level.

11. Indeed, as highlighted in the process that led up to the Rabat Plan of Action and in previous sessions of the Istanbul Process, in particular the last two meetings (Geneva 2013 and Doha 2014), states have applied provisions of HRC resolution 16/18 selectively, and few have reported on the efforts they have made to

implement it. According to the Universal Rights Group, as of the end of 2014 less than 15% of states had submitted information on implementation, while the reports tend to be superficial summaries of national positions and pre-existing policies.⁷ In the first four sessions of the Istanbul Process, unequal attention has been paid to the various components of the action plan contained in HRC resolution 16/18. Throughout the sessions, the following topics were discussed, inter alia:

- Prohibition of discrimination and violence on the basis of religion or belief, engagement with religious minorities, prevention of religious discrimination by state and non-state actors, prosecution of crimes of violence motivated by religion or belief, community engagement and outreach, training of government officials (Washington, DC, 2011);
 - Equal participation of all groups in society, combating intolerance through education, development of collaborative networks between government and civil society (London, 2012);
 - Speaking out against intolerance, criminalization of incitement, role that an open, constructive and respectful debate of ideas can play in combating intolerance (Geneva, 2013);
 - Religious freedom for all, national experiences and frameworks on religious freedom, community interdependence, making common ground (supporting and developing better understanding) (Doha, 2014).
- Therefore, paragraphs 5(a), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h), 6(a), 6(b) and 6(c) of HRC resolution 16/18 have already been addressed, somehow, in the framework of the Istanbul Process.

IP5: Jeddah

12. The mere fact that states and other stakeholders hold a regular dialogue on how best to combat 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 of the core issues. Nevertheless, some key aspects of HRC resolution 16/18 have not been given sufficient attention within previous sessions of the Istanbul Process. For instance, paragraph 5(b), which deals with identifying and addressing potential areas of tension between members of different religious communities, seems about to be addressed for the first time at IP5 (in Panel I – with sub-elements of the panel referring to elements from HRC resolution 16/18 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 is welcome in itself, and it should allow best practices to be shared in order to establish effective outreach strategies and collaborative networks in *all* countries. In this regard, countries that have not yet endeavored to develop collaborative networks to build mutual understanding, promote dialogue and inspire constructive action between religious groups and communities (as was envisioned by HRC resolution 16/18) should do so as a matter of urgency. Against this backdrop, the expressions “religious communities” and “discrimination based on religious and belief” (cf. Panel I.*ii.*) should be interpreted broadly, and networks should be fully inclusive of members of religious/belief groups that are deemed non-traditional or non-mainstream.

13. It is also to be welcomed that IP5 Panel II (on “countering and combating advocacy to religious hatred that constitute incitement to discrimination, hostility and violence through affirmative/positive measures”) has a positive tone, thanks to the adjunction of the expression “affirmative/positive measures.” Emphasis is placed on dialogue and positive strategies to counter religious hatred, rather than on judicial measures. Emphasis is also placed on dialogue and sharing of best practices. Sub-elements of the panel include speaking out against hate speech (para. 5(e) of HRC resolution 16/18) and interfaith/intercultural dialogue (para. 5(h)). In this regard, “speaking out against hate speech” should truly address all instances of punishable hate speech (as per international standards) in all countries, as it is a moral duty of political and religious leaders to condemn such acts, whoever the authors and the targets are. Leaders should speak out against everyone, including extremist clerics from a country's religious majority, who incite violence against religious minorities and independent voices. Furthermore, “interfaith and intercultural dialogue” (cf. Panel II.*ii.*) should be construed widely so as to include members of non-traditional, non-mainstream religious/belief groups, including religious minorities, atheists and agnostics. Last, in the context of Panel III, which focuses on criminalization of incitement, discussions should take place within the perimeter of, and be guided by, international standards, in particular the Rabat Plan of Action (see above, paras. 6-7 and below, para. 15). An open discussion is needed as a matter of urgent priority in order to tackle real-world issues and keep the process meaningful and action-oriented. It is therefore important to keep key conclusions of the

⁷ Supra note 2, p. 21.

Rabat Plan of Action in mind when engaging in discussions, in particular (see above, paragraph 7):

- that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are counter-productive, and that inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism, are constructive, healthy and needed;
- that a high threshold is required for limitations because, as a matter of fundamental principle, limitation of speech must remain an exception; and
- that a distinction should be made between three types of expression, based on the principle that freedom must remain the rule, and criminalization the exception. In this regard, although some forms of expression may raise concern in terms of tolerance, civility and respect for the rights of others, they should not give rise to sanctions.

In Jeddah, and at future sessions of the Istanbul Process, the quality of discussions will be measured against the ability of stakeholders to interact within the perimeter of international standards and consensus, in particular the Rabat Plan of Action and its abovementioned conclusions.

Moving forward

Realizing religious freedom and pluralism

14. Firstly, “fostering religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion” (para. 6(b) of HRC resolution 16/18) has yet to be addressed as such and in-depth in the Istanbul Process. In the face of growing intolerance and numerous incidents of violence against members of minority religious groups or beliefs, including atheists and agnostics, pluralism needs to be addressed in the framework of the Istanbul Process if states are serious about implementing HRC resolution 16/18. In this regard, under international law official domestic characterizations (“religion”, “belief”, “sect”, etc.) and their positive or negative tone, as well as their political usage, are irrelevant for the sake of protection.⁸ States that recognize a specific religion or belief as official need to address issues that arise from this situation, in particular the fact that members of religious minorities or 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 a duty 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 HRC resolution 16/18, in addition to 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 the rights to free opinion and expression and to freedom of religion or belief; they also provide a structured framework within which discussions can take place.

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

15. Secondly, 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)) needs to 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

8 “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 (i.e., 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 [...]”.

or beliefs that are not recognized as such by national authorities.⁹ 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 views, as well as the right to retain one’s religion or belief.”¹⁰ 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 case of Saudi blogger Raif Badawi and human rights lawyer Waleed Abu Al-Khair.¹¹ Indeed, as was previously mentioned, domestic legal provisions that criminalize peaceful criticism of religion is based on overly broad and vague terms; as such, they are arbitrary and in contradiction with international human rights 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].”¹²

16. In other cases, discrimination and violence are committed by non-state actors (sometimes with the acquiescence of the authorities). In the last few months, a member of the Human Rights Commission of Pakistan, Rashid Rehman, was murdered because he represented a person accused of blasphemy. 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 those prosecuted for 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 Burma/Myanmar, the Muslim Rohingya 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. In the United States, three Muslim students were murdered at the University of North Carolina. Members of the Jewish community have been targeted in several countries across the world. 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) therefore need to be addressed, as a matter of priority, as an integral part of the Istanbul Process and in any discussion about religious hatred and incitement to discrimination, hostility or violence.

Moving beyond criminalization of hate speech

17. Thirdly, 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. Attempting to go beyond what has been agreed and to criminalize acts that do not fall under the scope of article 20(2) of the ICCPR would be tantamount to attempting to criminalize freedom of expression with regard to religious issues, i.e., to break the relationship between freedom of religion or belief and freedom of expression – two sets of rights

9 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).

10 Ibid., para. 5.

11 See <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/saudi-arabia/>

12 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.”

that are interdependent and mutually reinforcing. Unnecessary confrontation and polarization should be avoided. Renewing attempts to challenge international standards and consensus, through phrasing or terminology¹³ that would be different from, but intrinsically tantamount to, the human rights incompatible concept of “defamation of religion,” would be the worst option. Indeed, this concept¹⁴ was 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 stated 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.¹⁵

18. Another key 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 countries. Open, public debate of ideas (including on religions or beliefs) can include 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 subject to criticism, and none is “shielded” by international law. Thus, criticism cannot be equated with expression that constitutes a criminal offence, unless the six part threshold test set out in the Rabat Plan of Action is met.¹⁶ Attempts to single out specific religions or beliefs by arguing that they should be subjected to another type of, or lower, threshold test, are tantamount to introducing cultural relativism and to challenging international human rights standards. The six part threshold test set out in the Rabat Plan of Action 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 – and inconsistent with the universality 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. It is one of the tools – but one of last resort – that states should use to counter hate speech.

Moving towards the repeal of blasphemy laws

19. Religions or beliefs are not protected from criticism or ridicule. Rather, it is individuals, as rights holders, who are protected from incitement, in line with article 20(2) of the ICCPR. 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 Rabat Plan of Action. The latter is an authoritative tool with regard to the relationship between freedom of speech and hate speech (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.¹⁷ Rather, the Istanbul Process should tackle difficult, yet fundamental, topics that have not been adequately addressed so far, such as blasphemy laws, whose repeal is called for by the Rabat Plan of Action and various international bodies. In addition to being incompatible with international standards, blasphemy laws are often abused to target and punish religious minorities,

13 Be it “contempt of religion,” “contempt of religious symbols,” “denigration of religion” or “vilification of religion.”

14 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.

15 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.’”

16 Context, speaker, intent, content of form, extent of the speech and likelihood of the resulting harm, including imminence. See above, para. 6.

17 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 where problems are the most acute might be non-existent, while states with a better record would be more likely to report, thus furthering the divide and increasing the risk of a lack of meaningful dialogue between groups of states. In this context, the absence of an observatory would be preferable to a narrowly defined, and thus biased, observatory.

political opponents and independent voices, including civil society and journalists. And they are prone to being manipulated by non-state actors, as in the case of Asia Bibi in Pakistan,¹⁸ as well as by state actors. In the face of growing use of blasphemy provisions (an offense which is punishable by death in some countries), the Istanbul Process needs to address the use and abuse of blasphemy laws and discuss steps to be taken by states towards their repeal.

Engaging in meaningful dialogue

Real-world examples

20. The purpose of the Istanbul Process is to meet regularly to engage in meaningful dialogue, in good faith, to discuss implementation of HRC resolution 16/18 in order to bring national legislations, policies and practices into compliance with international standards. It concerns all states and should not be seen as a tool for targeting a specific region or group of countries. This would defeat the whole purpose of the process. In this regard, the use of examples to illustrate implementation of HRC resolution 16/18 at the national level (best practices, but also challenges and counter-examples or bad practices) is indispensable. It would be a nonsense, and a mistake, to refrain from mentioning domestic examples to illustrate implementation, or lack thereof, of HRC resolution 16/18 in all its components (including aspects that have been under-addressed so far, namely religious freedom and pluralism, the freedom to manifest one's religion, and violence committed in the name of state or official religions). Aspects of HRC resolution 16/18 that have so far been under-addressed in terms of national implementation should be addressed as a matter of priority. Resolution 16/18 is a package and its implementation can only have an impact on the ground if comprehensive and holistic.

Participation and inclusiveness

21. Regarding participation in the Istanbul process, states should be represented by inter-ministerial delegations in order to fully reflect the contents of HRC resolution 16/18, challenges involved, and ways of addressing them. At the same time, state delegates should have an understanding of Human Rights Council dynamics and an in-depth knowledge of HRC resolution 16/18, while being able to move away from the “Geneva politics” and focus on domestic dynamics and how to overcome obstacles and best achieve implementation. States should continue to meaningfully engage in the Istanbul Process with all stakeholders, including states, UN bodies and mechanisms, legal experts and civil society organizations.

22. At the same time, the Istanbul Process should be truly inclusive. At each session, invitation should be extended to all stakeholders, including civil society organizations, which express an interest in working on issues related to HRC resolution 16/18, including faith-based organizations that represent religious minorities in all countries, as well as organizations representing members of non-religious, atheist or agnostic groups. Several NGOs that have been active around HRC resolution 16/18 and its implementation have not been invited to IP5 in Jeddah, which is regrettable.

Reporting

23. States should report on implementation, at the domestic level, of HRC resolution 16/18, systematically highlighting the measures they have 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 (for instance: up to the following IP session). States should commit to address all aspects of HRC resolution 16/18 in their reporting, including religious freedom and pluralism and the protection of religious minorities.

Conclusion

24. FIDH reaffirms the universal value of all human rights. Challenges to the universality of human rights on the basis of so-called national, regional, cultural or religious “particularities” should be syste-

18 On Pakistan see FIDH's and HRC's report, *Minorities Under Attack: Faith-Based Discrimination and Violence in Pakistan*: https://www.fidh.org/IMG/pdf/20150224_pakistan_religious_minorities_report_en_web.pdf

matically exposed, deconstructed and combated. The Istanbul Process should not be used to divert attention from states' obligations under international law. It should be, as it was designed, a forum for discussing and advancing implementation of HRC resolution 16/18 – not for attempting to reopen old debates that already received answers based on international law. In this regard, it is the responsibility of all government and religious authorities to appease, rather than to exacerbate, tensions. In particular, political leaders should refrain from using religion for political gains. Rather than attempting to reopen old debates or advance unpromising agendas, they should promote domestic implementation of international standards, including the high threshold required for limitations to free speech – even if it means, in the short term, running the risk of losing popularity or support from some of their constituencies. It is a matter of legal obligation, moral responsibility and, ultimately, statesmanship.

25. In this context, there is a need for international vigilance for the protection of fundamental rights and freedoms. In the aftermath of the publication by French satirical newspaper Charlie Hebdo, on 14 January 2015, of a caricature of Prophet Muhammad, several demonstrations took place across the world to protest against “blasphemy,” some of which were incited or encouraged by state authorities, as in Chechnya, Russia. While the right to peacefully assemble is inalienable – and reflection and debates about religious matters, held in good faith and in an open manner, should be encouraged –, unacceptable attacks against religious minorities took place during these protests, adding deaths to the killings committed in Paris early January 2015.¹⁹ Unfortunately, these have been followed by other attacks in Copenhagen, North Carolina, Tunis, Northern Nigeria and, most recently on 22 May 2015, in Qatif, Saudi Arabia. The list is endless. And the atrocities perpetrated on a daily basis by the so-called “Islamic State” in Iraq and Syria, in particular against Christians, Yazidis and Shia Muslims, are yet another evidence of the urgent and critical need for a comprehensive and holistic approach to tackling religious intolerance, of which promoting and protecting international standards on freedom of religion or belief and freedom of expression is a key part. In this regard, the Istanbul Process needs to get back on track, and it needs to do it now.

Recommendations

In this context, states should, at this and the next sessions of the Istanbul Process:

- Reaffirm their commitment 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;
- Support international mechanisms such as the UN Special Rapporteurs on freedom of religion or belief, on the right to freedom of opinion and expression, and on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, including by cooperating with them, accepting their requests for country visits and responding to individual communications and urgent appeals;
- Reiterate their commitment to international consensus, embodied, inter alia, in HRC resolution 16/18 and the Rabat Plan of Action; in this regard, 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;
- Share best practices in order to establish effective outreach strategies and collaborative networks and, for those countries that have not yet done so, develop collaborative networks to build mutual understanding, promote dialogue and inspire constructive action between religious groups and communities; in this regard, interpret the expressions “religious communities” and “discrimination based on religion and belief” broadly and fully include members of religious/belief groups that are deemed non-traditional or non-mainstream in all relevant processes;
- 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 atheists or agnostics);
- Interpret “interfaith and intercultural dialogue” broadly so as to include members of non-traditional, non-mainstream religious/belief groups, religious minorities, and atheists and agnostics;

¹⁹ See Analysis of the FIDH Executive Bureau, “Charlie Hebdo: After the Shock and Mobilisation, Comes Time for Action”: <https://www.fidh.org/International-Federation-for-Human-Rights/europe/france/16892-charlie-hebdo-after-the-shock-and-mobilisation-comes-time-for-action>

- At future sessions of the Istanbul Process, inscribe topics such as “fostering religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion” on the agenda in order to allow for a frank discussion of these issues;
- States that recognize a religion or belief as official should address issues that may arise from this situation, in particular the fact that members of religious minorities or 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 free thinkers, atheists and agnostics;
- Address, as a matter of priority, 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) as an integral part of the Istanbul Process;
- Commit to put an end to attempts to challenge international standards and consensus, through phrasing or terminology that would be different from, but intrinsically tantamount to, the human rights incompatible concept of “defamation of religion,” as well as attempts to equate criticism of religion/belief with expression that constitutes a criminal offence, when the six part threshold test set out in the Rabat Plan of Action is not met;
- Those states that have not yet criminalized incitement to imminent violence should do so in line with international standards (treaty law (article 20(2) of the ICCPR) and the customary rule evolved from it) and the Rabat Plan of Action's six part threshold test;
- Condemn attempts to criminalize free expression (including criticism of religions or beliefs) on the basis of laws criminalizing incitement to hatred or blasphemy laws but failing to meet the high threshold set out in international law;
- Put an end to attempts to single out specific religions or beliefs by arguing that they should be subjected to another type of, or lower, threshold test than the one set out in the Rabat Plan of Action;
- Refrain from creating additional mechanisms with regard to the relationship between free speech and hate speech and to what states should do at the domestic level to fulfill their obligations, as these were adequately covered by the Rabat Plan of Action; instead, use the latter as a guide for implementing obligations at the domestic level;
- Address, as part of the Istanbul Process, fundamental topics that have not been adequately addressed so far, such as blasphemy laws, whose repeal is called for by the Rabat Plan of Action and various international bodies;
- Move towards the repeal of blasphemy laws at the domestic level;
- 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;
- Be represented by inter-ministerial delegations to sessions of the Istanbul Process in order to fully reflect the contents of HRC resolution 16/18, challenges involved, and ways of addressing them;
- Continue to meaningfully engage in the Istanbul Process with all stakeholders, including states, UN bodies and mechanisms, legal experts and civil society organizations;
- States and organizations hosting sessions of the Istanbul Process should extend invitation to all stakeholders, including civil society organizations, that express an interest in working on issues related to HRC resolution 16/18, including faith-based organizations that represent religious minorities, as well as organizations representing members of non-religious, atheist or agnostic groups;
- Report on implementation, at the domestic level, of HRC 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; and
- Commit to address all aspects of HRC resolution 16/18 in state reporting, including religious freedom and pluralism and the protection of religious minorities.