

Jakarta Recommendations on Freedom of Expression in the Context of Religion ⁱ

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1. Introduction

Freedom of expression and freedom of religion are internationally guaranteed, interrelated and interdependent rights to be enjoyed by all individuals without any form of discrimination. Both have come under attack in recent years, while incidents of sectarian and religious violence are on the increase. States across Asia have enacted legislation on hate speech, incitement, ‘blasphemy’ and ‘defamation of religion’, in the name of ‘protecting religion or religious sensitivities’, which have curtailed legitimate expression protected under international law, including religious expression, and institutionalized discrimination against specific religions, faith and believers. These laws and policies have been ineffective at addressing and responding to the increasing number of incidents of sectarian violence and incitement to hatred, and at protecting people from violence and discrimination when they have exercised their right to freedom of expression. Indeed, in too many instances, laws enacted to protect ‘religious sensitivities’ have been abused to target the very people who are seeking to defend fundamental freedom or to exercise their rights to freedom of expression or religion.

2. Regional Trends and Challenges

2.1 Violations of freedom of expression in the context of religion are on the rise in South and Southeast Asia. These include violations of: freedom of expression in the name of ‘protecting religion and religious sensitivities’; expression of religious freedom and of the expression of belief (or non-belief); expression of sexual and gender identity to purportedly ‘protect religious sensitivities’; and the incitement to hatred on the basis of religion, resulting in violence and discrimination on the basis of religion, faith or belief and against individuals speaking up for freedom of expression or freedom of religion, belief and faith. These have led to violation of other rights, including right to privacy, right against arbitrary detention, right to fair trial, right to livelihood, right to freedoms of assembly and association. Even online spaces, previously seen as open mediums for free expression in the context of religion, are increasingly becoming subject to rights violations. Violations targeted against individuals and groups for exercising their rights of freedom of expression in the context of religion are becoming increasingly commonplace online.

2.2 Links between States and religion, and between political parties and religious movements, have emerged as an impediment for the exercise of freedom of expression. In particular, State authorities are reluctant to bring those responsible for abuses of freedom of expression and religion (including attacks and killings), to justice for fear of being portrayed as irreligious and losing political support from some of their constituencies, including religious or nationalist groups. In many cases, States have tacitly supported the actions of non-state actors, including extremist factions, which have oftentimes resulted in the exacerbation of rights violations, including violence, in the name of ‘religion’ and ‘religious sensitivities’.

2.3 Constitutional and legal provisions purportedly aimed at ‘protecting religion and religious sensitivities’, such as ‘defamation of religion’, ‘blasphemy’ and apostasy, along with laws on hate speech, anti-terrorism and national security have resulted in greater illegitimate restrictions on freedom of expression, too often targeting the very people who are seeking to protect freedom of expression and religion and to respond to incitement to hatred and sectarian violence. Restrictions are also placed on literary and artistic work, including satirical forms of expression, involving religious sensitivities and on the visual representation of women’s bodies and sexuality, in the name of ‘religious modesty’, further hindering communication and the free exchange of ideas.

2.4 Persons accused under these laws are rarely afforded fair trial standards and often times are victims of vigilante violence. Perpetrators of such violence are seldom brought to justice and impunity prevails. Persons exercising freedom of expression in the context of religion, and those who defend them, are also subject to attacks. The fusion of socio-cultural expectations with religious norms particularly poses a serious threat to women, LGBT persons and young people in their exercise of freedom of expression.

3. International Standards

3.1 International human rights standards clearly protect human rights and fundamental freedoms including the right to hold opinions and practice religion. State signatories to international human rights conventions in the International Bill of Rights are required to protect fundamental rights and to prohibit discrimination on the grounds of belief or opinion. In particular, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees everyone the right to hold opinions without interference, the right to freedom of expression and the right to receive and impart information; Article 18 of the ICCPR guarantees freedom of thought, conscience and religion; and Article 20 of the ICCPR declares that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

3.2 There are also relevant provisions of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention relating to the Status of Refugees that prevent discrimination on the grounds of belief or opinion.

3.3 In recent years, freedom of expression in the context of religion has been the object of specific focus, resulting in the development and adoption of key norms, including the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and the UN Human Rights Council 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, first adopted in 2011. Both the Rabat Plan of Action and Resolution 16/18 were endorsed by the governments in the region.

4. Recommendations

4.1 Given the problems identified in sections 1 and 2 and the state responsibilities set out in section 3, the Jakarta Regional Consultation on “Expression, Opinion and Religious Freedoms in Asia” makes the following recommendations.

4.1.1 Governments and State Institutions should:

- *Ensure* the protection of freedom of expression in the context of religion for all individuals and all communities at all times, by *recognizing* that freedom of expression is essential to sustaining a pluralistic society and by *respecting* all religious belief and opinions, *creating* an enabling environment for the exercise of freedom of expression in the context of religion, *implementing* laws, and accompanying policy measures relating to freedom of expression in the context of religion in a non-discriminatory manner especially in relation to women & LGBT people.

On Legal Reforms:

- *Ensure* that core legal instruments such as the constitutions provide for equal status to all religions and beliefs, protect freedom of expression online and offline, in accordance with international human rights norms and standards;
- *Repeal* laws at the national and sub-national levels that criminalize ‘defamation of religion’, ‘insult to religion’, ‘blasphemy’, apostasy, as per the Rabat Plan of Action;
- *Repeal* laws at the national and sub-national levels that criminalize the expression of sexuality as well as laws imposing dress codes, including in the name of religion;
- *Revise* and *strengthen* existing anti-discrimination legislation to meet universal standards towards substantive equality across all groups, communities, men and women;
- *Revise* hate speech laws or adopt law on incitement to hatred that may result in violence, hostility and discrimination, based on article 20 of the ICCPR and the recommendations of the Rabat Plan of Action. In particular, such laws should only be applied in situations of imminent violence. They should be

implemented in a non-selective, non-arbitrary and transparent manner. They should not be used to stifle dissent or the legitimate exercise of freedom of expression;

- *Allow* and *enable* religious minorities' parliamentarians to raise issues relating to freedoms of expression and religion, and the intersection of these rights, in the parliament and other fora;

On Justice and Policing:

- *Condemn* and *prevent*, without discrimination, all instances of violations of freedom of expression in the context of religion and incitement of hatred resulting in violence, including those uttered and disseminated in the name of religion;
- *Refrain* from promoting or disseminating incitement of hatred, including in the name of religion, and from censoring individuals engaged in the legitimate exercise of their freedom of expression. This includes ensuring that media and telecommunications regulators, education and agencies concerned with religion abide by this principle;
- Bring perpetrators of violations of freedom of expression in the context of religion and of extra-judicial actions in the name of religion to justice, and end the culture of impunity;
- *Monitor* court, prosecutorial, and police conduct to make sure the rule of just law is upheld;
- *Protect* and *promote* artistic, cultural and intellectual expression, and prevent arbitrary curbs or attacks through judicial or extra-judicial means; and
- *Sensitize* and *train* security forces, law enforcement agencies and judicial fraternity at the national and state levels on issues relating to freedom of expression in the context of religion.

4.1.2 Judiciary and Legal Community should:

- *Initiate* legal reform of laws relating to freedoms of expression and religion, and the intersection of these rights, either through strategic litigation or through suo-moto processes; and
- *Ensure* that the limitations placed on freedom of expression in the context of religion are legitimate, necessary, proportional and meet international standards.

4.1.3 International and Regional Mechanisms/Bodies should:

- *Increase* focus on, and resources to, the human rights issues and violations at the intersection of freedoms of expression and religion;
- *Follow up* and *assess* the implementation of Resolution 16/18 and Rabat Action Plan;
- *Develop* specific indicators for States in relation to its duty to protect freedom of expression in the context of religion;
- Specifically, the relevant UN Special Procedures mandate holders (*in particular, but not exclusively*, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on freedom of religion or belief; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the UN Special Rapporteur on the situation of human rights defenders) should:
 - *Highlight* the issue of freedom of expression in the context of religion by including violations and trends in their thematic reports and statements;
 - *Highlight* cases of state and public persecution or victimization specifically due to the practice of freedom of expression in the context of religion in communications to governments; and
 - *Strengthen* their cooperation on the issue of freedom of expression in the context of religion, including through joint statements.

4.2 We urge governments, the United Nations, regional bodies and other international and regional actors to respond to the threats faced by journalists, activists and human rights defenders working to protect the right of freedom of expression in context of religion urgently. We urge all relevant domestic actors, including political parties and leaders, religious institutions, and civil society to respond to these consolidated civil society recommendations to ensure that an enabling environment for the practice of these rights is created and protected in Asia.

ⁱ The Jakarta Recommendations are the outcome of discussions at a regional consultation on “Expression, Opinion and Religious Freedoms in Asia”, held in Jakarta, Indonesia on 3-5 June 2015. Over 140 people, comprised of experts, including the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, as well as human rights defenders and civil society activists from across Asia, participated in the regional consultation.