



## **Memorandum on concerns regarding the proposed draft resolution, *Combating Religious Hatred and Vilification of Religions***

**November 17, 2010**

On November 12, 2010, Morocco submitted a proposed draft resolution on behalf of the Organization for the Islamic Conference (OIC) on *Combating Religious Hatred and Vilification of Religions* for consideration by the Third Committee of the UN General Assembly. The draft resolution contains a number of textual changes that differentiate it from the resolutions on *Combating Defamation of Religions*, adopted in past years by the UN General Assembly and Human Rights Council. The most significant of these changes is the substitution of the concept of “vilification of religions” in place of the concept of “defamation of religions.”

The proposed draft resolution, if adopted, would serve as a justification for and even endorse harmful “anti-blasphemy” laws already in force in many States, and would seek to expand the concept of incitement in ways that would legitimize unnecessary restrictions on the rights to freedom of expression and freedom of religion or belief.

### **Conflation of the concepts of “vilification of religions” and incitement**

The November 12 draft resolution is particularly harmful in that it, like the “defamation of religions” resolutions approved by UN bodies in past years, characterizes “vilification of religions” as a form of “incitement to religious hatred.” JBI has identified seven instances in the draft resolution in which the phrase “vilification of religions,” and incitement to religious hatred in general” appears. This phrase is significant because it clearly implies that “vilification of religions” is one form of “incitement to religious hatred.” There are a total of 16 references to “incitement” in the resolution—an increase from the 13 mentions in the UN General Assembly’s 2009 resolution on “defamation of religions.”

This attempt to conflate the concepts of “vilification of religions” and “incitement to religious hatred” is significant because “incitement to religious hatred” is one of the few forms of expression not protected by article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of expression. Indeed, article 20 of the ICCPR, which addresses incitement, goes so far as to require States to restrict speech that constitutes “incitement to religious hatred” on human rights grounds.

As a number of UN experts on freedom of religion and freedom of expression, among others, have argued, neither “vilification of religions” nor “defamation of religions” can be properly considered to be a form of incitement under ICCPR article 20. Indeed, this phrasing would greatly expand the concept of “incitement to religious hatred.” Many States around the world have already adopted laws that criminalize blasphemy or other forms of religious insult. The adoption of such language threatens to render such laws defensible, or even commendable, under human rights law, as laws that prohibit incitement in accordance with ICCPR article 20.

While it is true that some States, like the United States, have made reservations to article 20 of the ICCPR and therefore would not have an obligation under human rights law to enact “anti-vilification” laws even if the proposed language was adopted, a great many States have not made such reservations.

### **Endorsement of criminal laws that punish “vilification of religions”**

Like the past “defamation of religions” resolutions, the “vilification of religions” draft resolution strongly encourages States to enact laws and regulations that prohibit the conduct it seeks to address. While the draft resolution does include references to the promotion of tolerance, it is still too heavily focused on legislative responses to “vilification of religions.” The risk is that States will rely on the text of such a resolution in justifying their enactment and implementation of abusive and discriminatory blasphemy laws.

For example, paragraph 19 of the text “[w]elcomes the recent steps taken by Member States to protect freedom of religion through *the enactment or strengthening of domestic frameworks and legislation to prevent the vilification of religions* and the negative stereotyping of religious groups.” This language is extraordinarily problematic, as such language can be read to condone, and even to encourage, the adoption of “anti-blasphemy” laws in force in many States.

Laws criminalizing “vilification of religions” would suffer from the same defects as laws prohibiting “defamation of religions” or “blasphemy.” This is because “vilification” is a vague concept that does not lend itself to a clear definition. Laws prohibiting “vilification of religions” will aim to protect necessarily abstract religious concepts. Additionally, the draft resolution seeks to extend protection not just to “religions” but to “religious symbols.” Determining what sort of conduct or speech would constitute “vilification of a religion” would necessarily require decision-makers to make subjective determinations. It is thus extraordinarily difficult to predict what conduct such laws could be used to prohibit, and what consequences for freedom of expression and religion would result. For example, could it be considered “vilification of Christianity” to claim that Jesus was an alcoholic hippy? In fact, Austrian cartoonist Gerhard Hader was prosecuted for blasphemy in Greece for suggesting this in a novel he wrote.

In sum, the concept of “vilification of religions” is so vague as to create a significant risk that States will rely on the concept in imposing or defending laws that criminalize deviations from very particular religious interpretations, with very negative consequences for freedom of religion and expression. Those “anti-blasphemy” laws that currently exist have been used in many cases in an abusive or discriminatory manner, and have given rise to a significant chilling effect on freedom of expression. They have legitimized the prosecution of artists who have used religious symbols in their art in a way that some consider “disrespectful.” Some Muslim countries have relied on such laws in prosecuting individuals who claimed to be prophets on the basis that their claim was “disrespectful” towards the Prophet Mohammed.

### **Conclusion**

UN Member States should oppose the proposed draft resolution on “Combating Religious Hatred and Vilification of Religions” if it is tabled, along with any other draft resolution that similarly threatens to legitimize unnecessary restrictions on the rights to freedom of expression and religion.