

NUMBER 1

CMI REPORT

JANUARY 2022



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UN Resolution 16/18 and the Istanbul Process:

What has been achieved? A charting of blasphemy trends in Pakistan and Indonesia.

CONTENTS

Preface	3
Introduction	4
Debating ‘defamation of religions’ in the UN	8
Resolution 16/18 and the Istanbul Process: a fragile compromise	10
Pakistan: global and domestic blasphemy politics	14
Istanbul Process and geopolitical tensions	14
Anti-blasphemy laws and the politics of accusation	17
Concluding thoughts	20
Indonesia: Unity in diversity?	22
Post-1998: Democratic openings and discourses of ‘deviance’	24
Revitalising the Blasphemy Law: cases and trends	25
Blasphemy law on trial, the Ahok case and its aftermath	27
References	30

PREFACE

This report is commissioned by the Ministry of Foreign Affairs under a framework agreement between the Ministry and Chr. Michelsen Institute (CMI).

The UN policy framework for combatting religious discrimination is set down in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Adopted in 2011, Human Rights Council Resolution 16/18 was hailed as an important step in efforts to confront religious intolerance, not least because it was endorsed by the Organisation of Islamic Cooperation (OIC). After long negotiations, Resolution 16/18 puts *persons*, rather than *religions*, at the centre of attention, a departure from the OIC's 'defamation of religions' agenda. Ten years on, it is timely to ask what progress has been achieved and what obstacles are evident. The objective is to prepare a state-of-the-art report on policies pertaining to blasphemy/religious defamation controversies in two important Muslim-majority countries in Asia: Pakistan and Indonesia. It seeks to chart trends in blasphemy controversies over the past two decades and to assess how such controversies affect religious minorities and non-mainstream religious groups.

The report is a desk study based on available research and public sources. The section on Indonesia also draws on the author's long-term ethnographic fieldwork and sociolegal research in Indonesia. For this reason, the section on Indonesia provides a more in-depth analysis of historical, political and legal developments than the section on Pakistan.

I thank the Ministry of Foreign Affairs, and Geir Løkken in particular, for helpful input.

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INTRODUCTION

Over the past decades, blasphemy controversies have increasingly become global phenomena. In Europe ‘blasphemy’ is often juxtaposed to ‘free speech.’ Events like the massacre of the editor and staff of the satirical *Charlie Hebdo* magazine (2015) have, as Koltay & Temperman argue, ‘largely functioned to augment most Western states’, politicians’ and legal scholars’ pro-free speech resolve, culminating in the *Je Suis Charlie* mantra.¹ Yet this response is somewhat limiting. As Pope Francis remarked after the *Charlie Hebdo* attacks, ‘if a friend of his insulted his mother, the friend should expect the Pope to punch him.’ The Pope was not calling for bans against blasphemy, nor was he condoning violence, but was rather criticizing the strident will to insult and its divisive implications. The Pope’s response is interesting because the analogy between insulting mothers and insulting the Prophet Muhammad highlights the intimate and affective relationships connecting believers to sacred figures or objects, thus underscoring that ‘religion’ involves far more than abstract ideas or systems of belief.

This report begins by revisiting the ‘defamation of religions’ debate at the United Nations between 1999 and 2010. As blasphemy and religious offence controversies are global phenomena, the UN has also become an important arena where leaders debate such issues. Since the 1990s, religious leaders and faith-based actors have pushed for change both from liberal and conservative platforms, sometimes creating unexpected alliances. The ‘defamation of religions’ resolutions were tabled by the Organisation of Islamic Cooperation (OIC), a powerful alliance of 57 mainly Muslim-majority states. Although the ‘defamation of religions’ agenda ultimately failed to gain traction within the UN system, this decade-long diplomatic battle reveals a deep – and perhaps unbridgeable – gap between proponents of a liberal, pro-speech agenda built around individual rights and freedoms and those favoring legal measures to protect religion and sacred postulates from insult and desecration.

Adopted by consensus in 2011, UN Human Rights Council Resolution 16/18 was hailed as a turning point in efforts to confront religious intolerance, not least because it was endorsed by the Organisation of Islamic Cooperation (OIC). Ten years on, it is timely to ask: what progress has been achieved and what obstacles are evident? In the course of working on this report, it quickly became clear that it is far easier to identify obstacles and challenges than to give an exhaustive answer to the first question, which is beyond the scope of a short desk study. That said, the difficulty of assessing domestic progress is precisely one of the main shortcomings of the Istanbul Process, the inter-governmental framework for implementing Resolution 16/18. The limited documentation of the efforts countries have taken to implement 16/18 and its eight-point action plan is a major shortcoming. Although 16/18 is the only UN resolution with an implementing framework, it is merely a resolution, not an international legal instrument. Despite the optimism surrounding the resolution as bridging the divide between ‘the West’ and the ‘OIC’, it is probably fair to conclude that the Istanbul Process has been a disappointment.

Resolution 16/18 puts *persons*, rather than *religions*, at the centre of attention, a departure from the OIC’s ‘defamation of religions’ resolutions. The full title is, ‘Combating intolerance, negative stereotyping and stigmatization of, and discrimination of, and discrimination, incitement to violence, and violation against persons based on religion or belief.’ While securing Resolution 16/18 was a diplomatic achievement, the resolution was always based on a fragile compromise, which is almost evident from its ‘catch-all’ title. Building on the work of scholars who have followed the Istanbul Process ‘from the inside’, the report shows how different UN member states had widely diverging expectations and views on the scope, meaning and application of what 16/18 was supposed to achieve in the first place. Unfortunately, these divisions may have been further accentuated over time, as incidents like the *Charlie Hebdo* attacks, which inspired Muhammad-caricature drawing contests followed by ‘avenge’ attacks by militant Muslims, have influenced the Istanbul Process meetings.

One of the divisive issues that has surfaced throughout the 16/18 process is the vexing status of blasphemy laws. As the report points out, the ‘defamation of religions’ debate served to direct much critical attention towards the world’s blasphemy laws, their chilling effect on free speech and the marked

¹ Koltay & Temperman 2017:1. The quote of Pope Francis appears on p. 11.

tendency for such laws to protect members of religious majorities. UN Special Rapporteurs on Freedom of Religion or Belief have been particularly critical of such laws, calling for their abolition. The right to ‘freedom of religion or belief’ as the UN Special Rapporteurs and legal scholars have repeatedly argued, ‘includes a right to manifest beliefs that may be heretical, defamatory or blasphemous to another person.’² In 2012, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression stated that anti-blasphemy laws are inherently vague and leave the entire concept open to abuse and underlined that ‘international human rights law protects individuals and not abstract concepts such as religion, belief systems or institutions.’³

Many of these ideas and formulations have found their way into policy documents and now inform the foreign policy objectives of Norway and many European states. Norway’s recently launched strategy for ‘Promoting freedom of expression in foreign affairs and development policy’ (2021),⁴ observes, ‘Anti-terrorism legislation and blasphemy laws often have a discriminatory effect and can be misused to persecute religious minorities and regime critics. In 84 countries blasphemy is a criminal offence, and in several countries blasphemy is a capital offence. To abolish the death penalty and reform blasphemy legislation is important in order to ensure freedom of speech and freedom of religion or belief.’ Whereas Norway signals the importance of legal reform, the EU has signalled a more explicit stance against blasphemy laws in its foreign policy. In 2013, the EU announced that it will ‘at all appropriate occasions’ advocate the position that ‘laws that criminalize blasphemy restrict expressions concerning religious or other beliefs; that they are often applied so as to persecute, mistreat, or intimidate persons belonging to religious or other minorities, that they can have a serious debilitating effect on freedom of expression and on freedom of religion or belief; and recommend the decriminalisation of such offences.’⁵ This statement comes close to a blanket rejection of laws against blasphemy. It gives the erroneous impression that all such laws are similar and equally pernicious.

With reference to the above EU Guidelines, Koltay & Temperman note with some irony that ‘while one may find this an admirable cause, what is problematic in terms of public diplomacy is that a number of EU states themselves still have blasphemy restrictions on their statute books.’ They also take issue with the tendency to trivialize the significance of existing bans, for instance by declaring them as quaint relics, curiosities that soon will be struck down.

However, as these legal scholars point out, although identifiable trends point towards a gradual removing of blasphemy restrictions in Europe, ‘no such thing as a unified European or Western approach exists in terms of the legal interpretation of blasphemy.’⁶ In the context of Resolution 16/18 and the Istanbul Process, OIC diplomats and representatives from Muslim-majority states have thus criticised European actors for practicing ‘double standards’ at home and abroad. Certain rulings of the European Court of Human Rights (ECHR) have served to highlight the necessity of restricting speech that it is ‘gratuitously offensive.’ In light of the ECHR’s history of sanctioning blasphemy, OIC diplomats can hardly be blamed for asking why hurt religious feelings can enjoy protection in Europe, but not in OIC countries, the ECHR’s increasingly restrictive interpretations of blasphemy laws, Moon suggests, ‘reflects a growing commitment to freedom of expression in religious matters in a “secular age”’.⁷

In the decade of Istanbul Process meetings, the most contentious issue has been what counts as ‘incitement to imminent violence based on religion or belief,’ the sole condition that according to Resolution 16/18 permits criminalisation of speech. This fixation on ‘criminalisation’ is unfortunate and has overshadowed the fact that the 16/18 policy framework identifies a number of positive, non-judicial, measures intended to tackle the root causes of intolerance and religious discrimination. While the

2 Koltay & Temperman. Introduction. 2017:3.

3 Report of the Special Rapporteur to the General Assembly on Hate Speech and Incitement to Hatred (A/67/357/7 September 2012), para. 53.

4 Utenriksdepartementet. *Strategi for ytringsfrihet i utenriks- og utviklingspolitikken*. 2021: 20.

5 *EU Guidelines on the Promotion of and Protection of Freedom of Religion or Belief*. 2013.

6 Koltay & Temperman 2017:10.

7 Moon 2018:100.

global human rights community is reaching a consensus against blasphemy laws as ‘counterproductive,’ as stated in the Rabat Plan of Action (RPA) and implied in the 16/18 framework, individual societies have not come to that conclusion. Blasphemy bans have proven to be surprisingly enduring, and in South Asia, the Middle-East and parts of Southeast Asia there have been a rise in blasphemy cases in recent decades.

Leaving the realm of the UN-sponsored 16/18 policy framework, the second part of this report charts recent trends in the politics of blasphemy in Pakistan and Indonesia. The discussion will address how these countries address blasphemy in their hybrid, modern legal frameworks. The objective is to consider these laws in relation to prosecutions of blasphemy and to identify recent trends in blasphemy/religious offence controversies. While the report will touch on certain Islamic concepts, it does not examine ‘blasphemy’ in the Islamic tradition, a vast and complex subject that is far beyond the scope of this report.⁸ Originating in the Greek word *blasphemia*, the term blasphemy comes with Western and Christian baggage, and was not used in Islamic tradition until recently. However, today this term has been globalised, partly as a result of media interest in blasphemy controversies and the ‘defamation of religions’ debate at the UN. Let me preface the discussion of blasphemy bans and religious offence controversies in these Muslim-majority countries in South and Southeast Asia with a few general remarks.

In both popular and political discourse in Europe and North America, ‘blasphemy is usually juxtaposed to free speech, and blasphemy laws are brushed off as relics from the past.’⁹ Besides the tendency to regard existing blasphemy laws in Europe as anachronistic remnants of a less enlightened era, there is an expectation that such laws are bound to soon disappear. In this context it is interesting to consider how the presence of Muslims and militant forms of Islam have revitalised the age-old debate over blasphemy bans, possibly contributing to their abolition. As Moon observes, ‘the demise, or decline, of blasphemy laws in Europe may be connected to the construction of the Muslim “other” in the ideological clash of civilizations in which Muslims are viewed as opponents of free speech, who wish to suppress any criticism of their beliefs and practices, while seeking to impose their faith on others.’¹⁰ The ideological work of creating the regressive Muslim ‘other’ has enabled the invention of the ‘native’ European as committed to freedom of expression and other liberal, democratic values.¹¹ This perspective puts an interesting twist on the issue of the decline of blasphemy bans in Europe and the broader socio-political processes contributing to legal reform. That said, much popular discourse and some academic debate on blasphemy laws tends to be enveloped in a ‘clash of civilizations’ discourse pitting ‘Islam’ against ‘the West’.

Across South Asia and in parts of Southeast Asia, scholars have noted an upsurge in blasphemy accusations and anti-blasphemy mobilisations in recent years (Rollier et al. 2019). Studies of blasphemy typically focus on specific countries and their legal systems. Yet this perspective fails to account for the globalised nature of today’s blasphemy controversies. This perspective is particularly limited in the case of Pakistan, a country that has taken a global role in defending Islam and the Prophet Muhammad from ‘insult.’ It is a dizzying experience to reconcile studies on blasphemy laws and the situation of religious minorities in Pakistan with the ways state officials portray their efforts to promote ‘interfaith harmony’ at home and abroad. The increasing politicisation of the anti-blasphemy laws in recent years has been linked to the rise of a radical Islamist party, Tehreek-e-Labbaik Pakistan (TLP), which has been embroiled in extrajudicial killings, mass demonstrations and violence towards religious minorities. While the TLP was banned in April 2021, the government recently reestablished links to the party. Indonesia, a Southeast nation-state with the largest Muslim-majority population in the world, does not conform to received stereotypes of an ‘Asian’ or ‘Muslim’ country. A former Dutch colony, Indonesia

8 See for instance Moe 2021.

9 Stensvold 2021:18.

10 Moon 2018:100.

11 Blasphemy-related issues are often highlighted by right-wing populist politicians, such as Gert Wilders, Matteo Salvini, Marine Le Pen and Nigel Farage to name but a few, as illustrating how ‘Muslim values’ are inherently opposed to ‘European values.’ See Haynes 2021 and Moon 2018.

long been celebrated for its diversity and moderate forms of Islam. The upsurge of blasphemy trials in the post-1998 democratic era is linked to the 'conservative turn' in Indonesian Islam and the rise of alliances between conservative Muslim groups that have mobilised around the Blasphemy Law as an instrument to maintain religious order. The heightened sensitivity towards religious offence and a greater willingness to prosecute blasphemy in criminal courts is putting Indonesia's reputation for pluralism and tolerance at risk.

DEBATING ‘DEFAMATION OF RELIGIONS’ IN THE UN

The initiative to galvanise broad support for new global norms and legal instruments against ‘defamation of religions’ was taken the Organisation of Islamic Cooperation (OIC). The OIC is an intergovernmental organisation comprised of 57 member states across four continents.¹² Established in 1969 and with a permanent headquarters in Jeddah, Saudi Arabia, the OIC aims to strengthen the unity and solidarity among Muslims and its member states. This is a daunting task given the heterogeneous nature of the member states, the importance placed on the principle of non-interference in member states’ domestic affairs, and the OIC’s relatively modest budget. Saudi Arabia remains the main financial backer, and the leading member states are Pakistan, Malaysia and Iran.

Since the 1980s and 1990s, religious matters have become more important for the OIC, which is ‘a key actor in contemporary struggles to define contemporary Islam.’¹³ The publication of the *Satanic Verses* (1989) and the Rushdie affair served as the catalyst for the OIC to issue a declaration condemning blasphemy against Islam. Since the 1990s, the leadership has become preoccupied with what it perceives as hostility towards Islam and its followers in the West and its effort to curb ‘defamation of religions’ speaks to this concern.¹⁴ In recent decades, the OIC has exercised considerable influence within the UN arena, a trend that accelerated under the Turkish OIC Secretary-General Ekmeleddin Ihsanoglu’s leadership (2004 -13). Within the UN system, the OIC has been successful in creating a powerful voting bloc on certain issues, notably the ‘defamation of religions’ agenda and the Palestinian cause. The OIC has permanent delegations to the UN and the European Union. Pakistan coordinates the OIC’s voting and policies before every session in the UN Human Rights Council in Geneva.

‘Defamation of religions’ made its debut in the UN Commission on Human Rights in 1999, when Pakistan, on behalf of the OIC, introduced a draft resolution on ‘Combating defamation of Islam.’ Zamir Akram, Pakistan’s ambassador in Geneva, explained that the resolution was needed in order to counter ‘new manifestations of intolerance and misunderstanding, not to say hatred, of Islam and Muslim in various parts of the world’ and to oppose ‘the tendency in some countries and in the international media to portray Islam as a religion hostile to human rights, threatening to the Western world and associated with terrorism and violence.’¹⁵ The key paragraphs in the draft resolution voiced ‘concern at the use of the print, audiovisual or electronic media or any other means to spread intolerance against Islam,’ and urged the UN Special Rapporteur on Religious Intolerance to report on ‘attacks against Islam and attempts to defame it.’¹⁶ Both the EU and representatives from Canada and Japan criticised the draft for its one-sided focus on Islam. But after Pakistan agreed to expand its scope to cover defamation of all religions the resolution was adopted by consensus. A similar resolution tabled in 2000 was also adopted by consensus. In 2001, when the OIC tabled a resolution encouraging states to ‘provide adequate protection against all human rights violations resulting from defamations of religions,’ Western states called for a vote, which resulted in 28 countries voting in favor, 15 against and 9 abstaining. From 2001 onwards, the OIC-sponsored resolutions were voted on.

By presenting similar resolutions year after year, the OIC aimed to build a global consensus on the need to insert bans on ‘defamation of religions’ into international human rights law. Although this debate is often portrayed in binary terms, pitting the ‘Islamic world’ against the ‘West’, the OIC-sponsored resolutions gained support from states far beyond the Middle East and the so-called ‘Muslim world.’ Between 1999 and 2010, the ‘defamations of religions’ resolutions were adopted with a comfortable

12 Prior to 2011, the OIC was called the Organisation of the Islamic Conference.

13 Petersen and Kayaoglu 2019:61.

14 The 1991 Dakar Declaration called on member states individually and collectively to counter any campaign of vilification and denigration of Islam.

15 The quotes are taken from Langer 2014:165. Zamir Akram served as Pakistan’s ambassador and permanent representative to the UN from 2008 to 2015. Akram has been described as ‘an apologist for the human rights records of OIC member states and a force behind the defamation of religions agenda’ (Kayaoglu 2019:72).

16 Langer 2014:169. In 2000, the title of UN Special Rapporteur on Religious Intolerance was changed to Special Rapporteur on Freedom of Religion or Belief.

majority, with support from many Latin American, African and Asian states, including Russia and China.¹⁷ The Vatican initially supported these resolutions.

Although the OIC presents itself as ‘the collective voice of the Muslim world,’ the anti-defamation campaign at the UN was not framed in religious terms. From the beginning, the OIC resolutions invoked secular human rights language to argue that speech or actions that offend or mock religion, religious beliefs and symbols ought to be restricted. The term ‘defamation’ was likely preferred over concepts like ‘blasphemy’ or ‘sacrilege’ that are tied to religious doctrines.¹⁸ The term ‘defamation’ is found in many Western legal systems and could be linked to secular human rights discourse, such as discrimination and negative stereotyping. That said, the notion of ‘defamation of religions’ was, in the words of legal scholar Heini Skorini, ‘a new cocktail’ with no equivalence in international law.¹⁹ Scholars and commentators who are critical of the OIC initiative tend to portray the use of human rights terminology as a ploy to gain support for an illiberal censorship agenda to restrict speech and legitimise domestic blasphemy laws. Yet insofar as the UN is an organisation in which Western states dominate the discourse on norms and rights, faith-based voices must ‘translate’ or ‘frame’ their concerns into human rights discourse. By anchoring the anti-defamation campaign within human rights discourse, the OIC reached a broader audience and gained impact on the global stage. While this strategy initially garnered support among a broad swath of countries, it also meant that the OIC had ventured into territory where human rights experts and international monitoring bodies have the discursive and juridical upper hand.

From 2005 onwards, the OIC’s anti-defamation of religions campaign faced growing opposition both from elite figures within the UN and from the EU and other Western states. The OIC used the 2005-6 Danish cartoon affair to amplify its campaign, calling for a binding resolution ‘banning contempt for religious beliefs and providing for sanctions to be imposed on contravening institutions or institutions.’²⁰ Western states responded by reasserting their liberal, pro-speech stance, built around freedom of expression and freedom of religion or belief. This agenda was bolstered by moral and legal ammunition from several UN Special Rapporteurs. In 2006, Asma Jahangir, the UN Special Rapporteur on Freedom of Religion or Belief (2004–2011), criticised the OIC’s campaign and described blasphemy laws as ‘counterproductive.’²¹ Subsequently, a 2008 joint declaration by several Special Rapporteurs on Freedom of Expression stated that the notion of ‘religious defamation’ 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.’²² They also urged the United Nations General Assembly and the Human Rights Council, to ‘desist from the further adoption of statements supporting the idea of ‘defamation of religions.’

Following Barack Obama’s presidential election in 2008, US diplomatic efforts to shoot down the OIC resolution intensified and were instrumental in turning the tide within the UN. The US joined the Human Rights Council in Geneva, and Secretary of State Hillary Clinton personally took a strong stance against the ‘defamation of religions’ agenda. The Vatican had initially supported the resolution, but changed its stance in 2009, as did several Latin American countries. Free speech advocates and human rights organisations also mobilised against the OIC campaign. In 2009, an international petition by two hundred civil society organisations urged the Human Rights Council to reject the

17 For details, see Henne 2013; Skorini 2019.

18 Moe (2021:94) observes that the ‘defamation of religions’ debate ‘was rendered in Arabic as defaming/disfiguring the image or likeness of religion.’

19 Skorini 2019:9.

20 Meyer 2019:102.

21 Asma Jahangir (1952-2018) was a Pakistani lawyer and human rights advocate.

22 Here is a link to the statement: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=735&clID=1>

The statement was issued by the UN special Rapporteur on Freedom of Opinion and Expression, OAS Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of Expression and the African Commission on Human and People’s Rights (ACHPR).

OIC-sponsored resolution.²³ In 2010, the OIC resolution was adopted by a margin of 3 votes, as more and more countries had switched sides. By 2010, three options were available to the OIC: to drop the defamation initiative, to present the same resolution and risk defeat, and to compromise on a new text with the US and the EU. Influential OIC members states split into two factions: Turkey and Pakistan favored a compromise, but Saudi Arabia and Egypt rejected this option. When Pakistan called for a vote the majority of the OIC member states voted in favor of accepting a new compromise text.

At the Human Rights Council session in 2010, the OIC Secretary-General had presented an eight-point plan that acknowledged the key concerns raised by the US and Western diplomats. This text in turn formed the basis for diplomatic negotiations and a resolution presented by Pakistan in 2011 on ‘Combatting intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religions or belief.’ As Resolution 16/18 was adopted by consensus, hopes were raised that the divide between the ‘OIC stream’ and the ‘Western stream’ had finally been bridged. But a more sober assessment is that ‘the different perspectives and positions of the two sides were not so much reconciled as thrown together and balanced within a ‘catch-all’ text.’²⁴ Despite its ‘catch-all’ quality, Resolution 16/18 clearly specifies that persons rather than religions deserve protection and the text is firmly situated within the mainstream human rights framework.

Resolution 16/18 and the Istanbul Process: a fragile compromise

Adopted in the UN Human Rights Council in March 2011, Resolution 16/18 was hailed as a turning point in international efforts to confront religious intolerance. Much optimism surrounded the new consensus resolution: Combatting intolerance, negative stereotyping and stigmatisation of, and discrimination against, incitement to violence and violence against, persons based on religion or belief. The establishment of the Istanbul Process, an inter-governmental implementing framework, further heightened this optimism. Speaking in Istanbul in July 2011, the OIC Secretary-General Ekmelledin Ihsanoglu called it ‘a poster child of OIC-US-EU cooperation.’ Hillary Clinton, US Secretary of State, expressed hope that it would help to ‘overcome the false divide that pits religious sensitivities against freedom of expression.’

This section briefly considers the substantial content of Resolution 16/18 and goes on to identify the main challenges that have hampered its effective implementation. Ten years on, it is starkly obvious that Resolution 16/18 was no miracle cure. This is not surprising given that the consensus around the resolution always was fragile. Moreover, 16/18 is just a resolution, not an international legal instrument or a strong soft law instrument, such as a UN declaration.

The limited progress partly boils down to diverging expectations regarding the resolution in the first place. For the Western states involved in the negotiation, 16/18 was, ‘an exercise in setting down universal parameters and common actions for tackling religious intolerance at the domestic level.’²⁵ Whereas Western states have been concerned with censorship and the restricted scope of religious freedom within Muslim-majority states, the OIC and its member states have wanted to address incitement, Islamophobia and discrimination of Muslim minorities in the West.

In principle, the Istanbul Process calls for annual meetings with political leaders and practitioner-level stakeholders to share experiences and promote domestic implementation of Resolution 16/18 and its eight-point action plan. Additionally, the Human Rights Council is set to monitor progress on implementation. To date, seven meetings have been held: one convened by the US (2011), one co-organised by the UK and Canada (2012), and one convened by the OIC secretariat in Geneva (2013). Qatar organised a meeting in Doha (2014), the OIC convened a meeting in Jeddah (2015), followed by a meeting hosted by Singapore (2016). After a hiatus of three years, the Netherlands with support

²³ <https://humanists.international/2009/03/human-rights-council-resolution-combating-defamation-religion/>

²⁴ Limon et al. 2014:18.

²⁵ Limon et al., 2014:23.

of the Universal Rights Group (URG), a Geneva based NGO, held a meeting in the Hague (2019).²⁶ At that meeting, Shafquat Mahmood, Pakistan's Federal Minister for Education and Professional Training announced that Pakistan would host a meeting in Islamabad in late 2020 or during 2021.²⁷ However, this meeting has not been held, and it is unclear if Pakistan still intends to hold a meeting. The lack of diplomatic communication is unfortunate and indicates that the Istanbul Process is on hold.

Already in its first paragraph, the resolution urges states to combat 'denigration and negative religious stereotyping of persons.' Unlike the OIC-sponsored resolutions, Resolution 16/18 puts persons rather than religions or collective systems of ideas at the centre of attention. It affirms that states are obliged to 'prohibit discrimination on the basis of religion or belief and to guarantee the equal and effective protection of the law.' Citing the International Covenant on Civil and Political Rights (ICCPR), it further affirms the positive role that the exercise of the right to freedom of opinion and expression play in 'strengthening democracy and combating intolerance.' The resolution's pro-speech orientation is notable: it is only paragraph 5(f), which encourages states to adopt 'measures to criminalize incitement to *imminent violence* based on religion or belief.' This wording is in line with American free speech ideals and the US legal concept of 'fighting words.' This paragraph was written by US diplomats who played a major role in securing support for the resolution. According to Skorini, the 'phrase was a US ultimatum and hard to swallow for the OIC.'²⁸

The debate around incitement and paragraph 5 (f) highlights widely diverging views among UN member states on the precise scope, meaning and application of Resolution 16/18. Importantly, the wording in paragraph 5(f) is significantly narrower than the free speech guarantees found in mainstream European hate speech laws. Some analysts regard 5(f) as an 'over-compromise' in favor of American free speech ideals and the US's interpretation of Article 19 of the ICCPR as coming at the expense of Article 20 of the ICCPR (Prohibition on advocacy of racial and religious hatred).²⁹ Questions surrounding where to put the threshold for criminalisation of speech and what counts as 'incitement to imminent violence based on religion or belief' have been a recurring and divisive topic in the Istanbul Process.³⁰

As Power and Juul Petersen observe in their informal report on the 5th Istanbul Process meeting in Jeddah (2015), 'questions surrounding the implementation of paragraph 5(f) have the potential to "hold hostage" all other parts of the 16/18 action plan.' The attacks on the editor and staff of the satirical magazine *Charlie Hebdo* in Paris in January 2015 loomed large at the Jeddah meeting in July 2015. In France, elsewhere in Europe and the US, the massacre inspired sympathy mobilisations under the banner '*Je suis Charlie*' and free speech initiatives. At the meeting, Pakistan's Ambassador Zamir Akram referred to the recent shooting at the 'Muhammad Art Exhibit and Cartoon Contest' in Texas, where two Muslim militants attacked the event and were shot dead by the police. The event was organised by the American Freedom Defense Initiative, a controversial anti-Muslim group headed by Pamela Keller, who also heads the 'Stop Islamization of America' organisation. Akram made clear that if the US would not criminalise such acts, no consensus was possible.

The debate on measures to criminalise incitement brings us to the vexing issue of blasphemy laws. As Limon, Ghana and Power point out, for many (especially Western) stakeholders the implementation of Resolution 16/18 requires the repeal of domestic blasphemy laws.³¹ In the course of the religious defamation debate, laws targeting insult to religion were criticised for being problematic not only from a free speech perspective, but also with a view to freedom of religion or belief. Hence, much

26 In April 2019, EU, Denmark and the Universal Rights Group held a stock-taking meeting that aimed to 're-invigorate the Istanbul Process.' See [Meeting Istanbul_Process_Geneva, 2019 \(1\).pdf](#)

27 <https://mofa.gov.pk/pakistan-to-host-8th-istanbul-process-meeting-on-counteracting-religious-intolerance-and-related-discriminatio>

28 Skorini 2021:142-43.

29 See Greenacre 2019, <https://www.universal-rights.org/blog/the-arc-of-the-covenant-the-unfinished-business-of-un-efforts-to-combat-religious-intolerance/>

30 At the 3rd meeting in the Istanbul Process, the Ambassador of Pakistan, stated that the process had so far failed to address incitement against Muslims and consensus was at a breaking point, see Limon et al. 2014.

31 Limon et al., 2017:673.

critical attention was directed at blasphemy laws, particularly those in the major OIC states, such as Pakistan and Saudi Arabia. Within the UN-system, blasphemy laws have increasingly come under fire, as illustrated in the Rabat Plan of Action. The latter resulted from a series of workshops organised by the UN Office of the High Commissioner for Human Rights between 2008 and 2011.³² Calling on states to revoke blasphemy laws, the Rabat Plan of Action identifies various non-coercive measures, such as education and intra-religious dialogue, as tools for countering discrimination and incitement to hatred. During the Jeddah meeting in 2015, Heiner Bielefeldt (UN Special Rapporteur on Freedom of Religion or Belief) and David Kaye (UN Special Rapporteur on the promotion and protection of the Right to Freedom of Opinion and Expression) stressed the complementarity between the Rabat Plan of Action and Resolution 16/18. For their part, OIC-oriented speakers criticised the West's unwillingness to tackle Islamophobia and criticised Western states for being hypocritical, as many European states still maintain blasphemy laws.

OIC diplomats have often accused European states of 'double standards' in relation to freedom of expression and blasphemy. This criticism should not be dismissed out of hand. While the European Union states have taken a firm stance against blasphemy laws in their foreign policy, a number of EU states still maintain blasphemy provisions on their books. Although these laws are rarely enforced, the OIC has criticised the mismatch between the existence of domestic laws and strident foreign policy discourse as hypocritical. OIC diplomats have also used certain rulings of the European Court of Human Rights (ECHR) in Strasbourg to critique 'double standards' and defend blasphemy laws. Especially in some of its earlier rulings, the EHRC has, in the words of Koltay & Temperman, 'gone out of its way to accommodate religious sensitivities' and permit blasphemy-style restrictions.³³ This includes the 1994 case, *Otto-Premiger Institut v. Austria*, where the Austrian government censored the screening of an allegedly blasphemous film perceived to insult the Catholic community in Austria. Another example involving the EHRC is the 2006 case, *Wingrove v. United Kingdom*, where the court upheld the refusal to grant a certificate for the distribution of a film perceived to contain offensive attacks on matters regarded as sacred by Christians. Much as these rulings have prompted criticism by free speech advocates, OIC representatives have used such decisions as evidence for the necessity to restrict certain forms of speech. Although the distinction between hate speech and blasphemy can be difficult to draw, the OIC leadership is inclined to conflate the distinction by suggesting that the notion of hate speech effectively encompasses insult to religion.³⁴ According to Skorini, the OIC seeks to 'broaden existing hate-speech provisions by redefining the scope and the meaning of concepts such as racism and hate speech.'³⁵

Although Resolution 16/18 calls on states to take actions to foster 'a domestic environment of religious tolerance', the reporting mechanism has been weak. Since 2011, the UN has adopted several resolutions requesting the Secretary-General and the High Commissioner for Human Rights to prepare reports on domestic initiatives to implement the action plan. A study by the Universal Rights Group (URG) of '22 focus countries' between 2011 and 2013 found that fewer than 15% of UN member states had submitted reports on domestic implementation. Not a single state surveyed in the study had established a dedicated mechanism in response to paragraph 5(b): 'creating an appropriate mechanism within Governments to, *inter alia*, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation.'³⁶ Overall, reports produced by individual states tend to be piecemeal and anecdotal, putting their own policies in a favorable light. Hence, it is difficult to assess to what extent countries have taken systematic efforts

32 For a brief overview, see Eltayeb 2019.

33 2017:5.

34 See Ann Meyer (2019) for an informed and critical analysis of OIC's discourse on Islamophobia.

35 Skorini 2019:134.

36 The countries included in the survey are: Argentina, Algeria, Canada, Chile, Egypt, Israel, Kenya, Mexico, Morocco, Nigeria, Denmark, India, Indonesia, Malaysia, France, Norway, Pakistan, Qatar, Saudi Arabia, Turkey, UK, and the US. They were selected based on their level of involvement with Resolution 16/18 and the Istanbul Process, a somewhat balanced regional cross-section of states, representative of different religious traditions.

to implement Resolution 16/18 policies, or whether policy steps in line with the resolution mainly emerged as result of domestic priorities.

Summing up, the Istanbul Process is a UN-sponsored diplomatic process that is supposed to monitor and report on the implementation of Resolution 16/18. Although the resolution was adopted with great fanfare, the consensus around 16/18 was always fragile. Moreover, as Resolution 16/18 was the outcome of successful American diplomacy and must be seen in the context of international politics, expectations should be calibrated accordingly. One conclusion in a 2014 policy report by the Universal Rights Group (URG) is that as Resolution 16/18 is to 'a significant extent a diplomatic game, largely played out in Geneva, knowledge and awareness of the resolution is extremely limited, particularly outside foreign ministries.' Unfortunately, the disconnect between what the URG report calls the 'Geneva game' and domestic implementation of 16/18 framework has not been bridged. If anything, the disconnect appears to have widened and the future of the Istanbul Process remains unclear.

Analysts who have followed the meeting of the Istanbul Process note a tendency for countries or blocks of countries to 'externalise' the implementation of Resolution 16/18. Whereas Western countries have wanted to address restrictions on freedom of expressions, blasphemy laws and the situation of religious minorities in the Middle East and in the Muslim world, the OIC and its member states have wanted to address discrimination, Islamophobia and hate speech targeting Muslims in the West. Prior to the 7th meeting of the Istanbul Process in the Hague, Netherlands in 2019, Hardacre summed up the situation as follows: 'The "West" still sticks to the line of overriding freedom of expression; avoiding what is seen as "political" discussions on the limits of Article 19 ICCPR. The OIC by contrast appears to want the Istanbul process to provide a forum for focused discussion of paragraph 5(f) of 16/18, the divisive topic of criminalization of incitement. On this front there remains an impasse.' Although the report of the Hague meeting gives the impression that it re-energised the Istanbul Process, the report states flat out that 'there were considerable disagreements about the implementation of paragraph 5(f) of Resolution 16/18.' The impasse remains.

As this section opened with the decade-long religious defamation debate at the UN, it is fitting to revisit the question of whether the OIC has abandoned the goal to establish a binding international instrument that prohibits defamation of religions. First, scholars note a striking continuity in the OIC's discourse before and after Resolution 16/18, which led some to conclude that the OIC's support for the resolution 'was primarily a tactical shift.'³⁷ According to Skorini, 'old fault lines are still intact, and the OIC's goal remains the same: to establish a binding legal instrument that prohibits defamation of religions.'³⁸ A notable change in OIC discourse is to argue that defamatory expressions targeting religions or religious followers constitute a form of hate speech or racism and thus should be restricted. Although this line of argument has been criticised for widening the meaning of accepted concepts, there is considerable disagreement over what constitutes religious hate speech and its appropriate regulation.³⁹ That said, this development does raise concern that hate speech law may be stretched into blasphemy bans. Second, even though Resolution 16/18 was perceived in Europe and the US as a defeat for the OIC's defamation agenda, the 16/18 framework has provided a platform for the OIC to challenge aspects of secular, individualistic human rights discourse. By using the Istanbul Process to address Islamophobia and speak out against offensive portrayals of the Prophet Muhammad in the West, the OIC has cast itself as the 'collective voice of the Muslim world.' Given that perceived offences against Islam easily mobilise Muslim publics around the world, the OIC's anti-defamation campaign serves as bid for power within a fractured Muslim world. The audience for the OIC's stance in the Istanbul Process is both global and national: the OIC has failed to change international norms, yet the organisation's persistent efforts to criminalise defamation of religion may still serve important domestic purposes within OIC member states.

37 Skorini and Juul Peterson 2017:54.

38 Skorini 2019:13.

39 See for instance Moon 2018.

PAKISTAN: GLOBAL AND DOMESTIC BLASPHEMY POLITICS

As discussed in the previous section, it was Pakistan that introduced the UN draft resolution on ‘combating defamation of Islam’ on behalf of the OIC. Just as Pakistan was the initial advocate of ‘defamation of religions’ as a new legal concept, Pakistani diplomats have worked tirelessly to popularise this controversial concept in various other UN fora as well.⁴⁰ Pakistan might have hoped to deflect criticism of its blasphemy laws by spearheading the OIC’s campaign to establish a global ban on the ‘defamation of religions.’ Instead, these laws were increasingly singled out for censure. During the 1990s, Pakistani legislation on blasphemy was repeatedly criticised by various UN human rights bodies. In fact, there is probably no other country whose ‘blasphemy regime’ has been subjected to the same level of critical scrutiny and widespread condemnation as that of Pakistan.

This section will outline key aspects of Pakistan’s ‘blasphemy regime.’ The objective is not to provide a detailed legal analysis, but rather to discern the broader social and political reasons for the upsurge of blasphemy accusations over the last two to three decades. Sources indicate that there have been over a thousand formal ‘religious offense’ cases in Pakistan since the mid-1980s, with an increase from the 2000s onwards.⁴¹ This estimate does not include the numerous religious offence cases handled outside the legal system. The upsurge in blasphemy in accusations in recent decades should, as Rollier, Frøystad and Ruud point out, ‘be understood within the global economy of religious offence in which sections of Pakistan’s state and society expect their country to spearhead a worldwide Muslim campaign against blasphemers, as it did at the UNHRC for over a decade.’⁴² This section begins by examining how Pakistani diplomats presented the intention to host the 8th Istanbul Process meeting and goes on to show how the relationship between Pakistan and the US soured when Pakistan was re-labelled a ‘Country of Particular Concern’ (CPC) by the US State Department in 2019. While there is much to be said about the politics of list-making as part of US efforts to promote religious freedom abroad, the discussion will mainly address how Pakistan’s Foreign Office responded to this designation and their efforts to advance a more favorable image of Pakistan on the global stage. The discussion will also touch on the tense EU-Pakistan relationship after the European Parliament (2021) adopted a resolution denouncing Pakistan’s blasphemy laws. The next sub-section briefly considers Pakistan’s legal framework and charts recent trends in blasphemy accusations.

Istanbul Process and geopolitical tensions

Pakistan’s Foreign Office (FO) devotes considerable efforts to project an image of Pakistan as being in the vanguard of global efforts to promote ‘interfaith harmony.’ This may seem surprising given the plethora of studies that document the discriminatory effects of Pakistan’s ‘anti-blasphemy’ laws, which have become a deadly weapon in interpersonal disputes and which disproportionately affect religious minorities, such as Christians, Ahmadis and Shia Muslims. Sunni Muslims represent about 70% of Pakistan’s population, but they account for only 15% of those accused of blasphemy.⁴³ These deeply polarised representations illustrate how the issue of blasphemy functions within geopolitical struggles in which Pakistan has assumed a global role as a defender of Islam against the West.⁴⁴

In November 2019 Pakistan announced its intention to host the 8th meeting of the Istanbul Process. The announcement was made by Shafquat Mahmood, Pakistan’s Federal Minister for Education and

40 As noted in the Freedom House report (2010), this includes the Durban Review Conference, the Ad Hoc Committee on Complementary Standards, and the 2008 Office of the High Commissioner for Human Rights Conference on Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR).

41 Rollier et al. 2019:3.

42 Rollier, et al. 2019.

43 According to the Centre for Social Justice in Pakistan (2019), which examined data of 1,549 persons alleged of committing blasphemy between 1987-2017, 720 were Muslims, 516 Ahmadis, 238 Christian and 31 Hindus, while the religious identity of 44 individuals could not be ascertained.

44 See Schaffelner 2019.

the Prime Minister's Special Representative on International Religious Freedom, announced in his keynote at the 7th Istanbul Process meeting. In his speech, the Minister noted the 'alarming levels of Islamophobia in many parts of the world' and expressed 'deep concern over the growing incidents of systematic discrimination and state sanctioned violence against Muslims in India.' He also 'underscored that freedom of expression must be exercised with responsibility and that the international community should begin to consider reasonable restrictions in this regard, both online and offline.'⁴⁵ As such, the keynote articulated issues that Pakistani officials have raised in various UN fora in the past few decades.

It is beyond the scope of this desk study to identify why the announced meeting has not materialised. But the fraught relationship between Pakistan and the US in the context of the US-led 'war on terror' is probably part of the equation. Moreover, certain aspects of how the US is promoting religious freedom in its foreign policy are confrontational and divisive. In December 2019, US Secretary of State, Mike Pompeo re-designated Pakistan as a 'country of particular concern' (CPC) based on its problematic 'religious freedom' record.⁴⁶ As mandated by the International Religious Freedom Act (IRFA) adopted in 1998, the Office of International Religious Freedom prepares annual reports on the state of religious freedom in every country in the world, except the US itself.⁴⁷ One controversial aspect of this endeavor is the ranking of countries according to relative degrees of religious freedom. 'Countries of Particular Concern' are those which commit 'systematic, ongoing, egregious' violations of religious freedom. This designation can trigger punitive actions and economic sanctions, as IRFA includes fifteen 'presidential actions' that the President may impose. Pakistan was placed in the CPC category in 2018, a downgrade from 2017, when Pakistan was named the sole country in the 'special watch list' category, which applies to countries that commit severe violations of religious freedom (though this category is understood as less serious than those in the CPC category).

Pakistan's Foreign Office responded by dismissing the CPC-designation as being 'reflective of selective targeting of countries, and thus unlikely to be helpful to the professed cause of advancing religious freedom.'⁴⁸ According to a FO press release, all branches of the state have made 'concerted efforts to ensure that all citizens of Pakistan, irrespective of faith, denomination, caste or creed, can profess and practice their religion in full freedom.' It also noted that the higher judiciary has passed landmark judgements to ensure 'the sanctity and security of places of worship of minorities.' Interestingly, it recalled that Pakistan had recently welcomed Senator Samuel Brownback, the US Ambassador at Large for International Freedom 'to advance the mutual objectives of religious freedom globally. It is regrettable that this constructive engagement has been overlooked.'⁴⁹ During Brownback's visit in February 2019, he met with Pakistan's Foreign Minister and according to the FO, 'the two sides agreed to work together to devise a strategy to get Pakistan out of the list of Countries of Particular Concern.'⁵⁰ When this failed to materialize, Pakistani officials critiqued the US for being biased. Hence the press highlighted the 'conspicuous omission of India, the biggest violator of religious freedom' and went on to list human rights violations affecting Muslim minorities in India and Kashmir.⁵¹ Stressing that 'challenges to global freedom are a global concern and only cooperative efforts can help address them,' the press release observed that Pakistan has 'raised concerns over the growing trend of Islamophobia in many Western countries, including the United States.'

45 These quotes are taken from Pakistan's Foreign Office website, November 18, 2019.

46 The other countries on the 2019 CPC-list were Burma, China, Eritrea, Iran, the Democratic People's Republic of Korea, Saudi Arabia, Tajikistan and Turkmenistan. Pakistan remained on the list in 2020.

47 See Telle (2018) for more information on the political contestation surrounding IRFA and the Frank R. Wolf International Religious Freedom Act, which is an amendment of the IRFA legislation.

48 Press release 555/2019, December 24. 'Pakistan rejects US designation on religious freedom.'

49 Brownback assumed this office in January 2018, having been nominated by President Donald Trump in July 2017. Democrats initially blocked the confirmation vote.

50 Press Release 63/2019, February 22, 2019.

51 The US Commission on International Religious Freedom (USCIRF) has recommended that India be added as a CPC country. The disagreements between USCIRF and the Office of International Religious Freedom have been picked up by the press in both Pakistan and India. See for instance: [Pakistan Rejects U.S. 'Particular Concern' Designation on Religious Freedom \(newsweekpakistan.com\)](https://www.newsweekpakistan.com).

The press release just quoted is one of many similar statements in which Pakistani officials ‘speak back’ against the US and the EU regarding the status of ‘religious freedom’ and ‘blasphemy’ in the country, insisting that Pakistan is taking both domestic as well as global efforts to protect ‘religious freedom’ and promote ‘interfaith harmony.’ A recent example is the 2020 United Nations General Assembly (UNGA) resolution on ‘the promotion of interreligious and intercultural dialogue’ co-sponsored by Pakistan and the Philippines. According to the FO, this resolution is part of Pakistan’s global efforts to promote interfaith harmony and ‘raising awareness about Islamophobia and countering the defamation of sacred religious personalities and symbols.’ Prime Minister Imran Khan continues to press for restrictions on defamatory speech. In his virtual UNGA address in September 2020, Khan called for a ‘day to combat Islamophobia’ and said ‘we stress that willful provocations and incitement to hate and violence must be universally outlawed.’

Lately, the language used to denounce the West’s approach to freedom of expression has, if anything, grown stronger. Pakistan’s condemnation of how French authorities responded to the October 2020 murder of a French high school teacher who had shown caricatures of the Prophet Muhammad in class by a Muslim teenager is a recent example. Protests escalated across the Muslim world after President Emmanuel Macron promised France ‘would not cease drawing caricatures.’⁵² Pakistan condemned

‘in the strongest manner the systematic resurgence of blasphemous acts of republication of caricatures of the Holy Prophet (P.B.U.H) and desecration of the Holy Quran by certain irresponsible elements in some developed countries. We are further alarmed at highly disturbing statements by certain politicians justifying such heinous acts under the garb of freedom of expression and equating Islam with terrorism, for narrow electoral and political gains.’⁵³

The FO press release observed that

‘whilst having anti-blasphemy and criminal laws for sensitive issues such as denial of Holocaust, the justification by a few politicians in some Western countries for insulting sentiments of Muslims, is a blatant reflection of double standards. Such justifications seriously erode their human rights credentials.’

This statement is a telling example of a pattern in which Pakistani officials invoke a binary narrative pitting ‘freedom of expression’ as practiced in ‘the West’ against an equally stereotypical notion of ‘Islam’ and Muslim piety.

Given that Pakistan has long been at the center of global debates on blasphemy, we may ask if aspects of how opponents of blasphemy bans present their case are counterproductive. The European Parliament’s 2021 resolution ‘on the blasphemy laws in Pakistan’ illustrates at least two issues: the ‘limits of zero-tolerance’ and a lingering ‘clash of civilizations’ discourse. The nine-page resolution has a particular focus on a Pakistani couple that was sentenced to death on dubious blasphemy charges in 2014, whose cases have repeatedly been postponed.⁵⁴ It is indisputable that the couple has suffered a gross miscarriage of justice. The resolution mounts a multi-pronged assault on Pakistan’s blasphemy laws and urges the Government of Pakistan to abolish these laws, on the grounds that they are incompatible with international human rights laws. Importantly, the blasphemy laws are portrayed as the source of a range of Pakistan’s problems. This resolution comes across as a wholesale denunciation

52 <https://www.theguardian.com/world/2020/oct/26/france-islamic-end-boycott-french-goods-macron-muhammad-cartoons>

53 Press Release 452/2020 (October 25). ‘Pakistan condemns systematic Islamophobic campaign under the Garb of Freedom of Expression.’

54 EU Parliament ‘resolution on the blasphemy laws in Pakistan, in particular the case of Shagufta Kausar and Shafqat Emmanuel. 2021/2647 (RSP).

of Pakistan's political and judicial system, prison conditions, and problems with political violence and Islamist extremism.⁵⁵

As such this resolution exemplifies the limitations of what Robert Kahn (2017) calls 'a zero tolerance' approach to blasphemy bans. For instance, the resolution fails to distinguish among different kinds of blasphemy bans or entertain the possibility that certain forms of speech and behavior could be restricted. By refusing to explore the different forms that blasphemy can take, it also fails to acknowledge efforts by Pakistani scholars and legal practitioners to reform existing laws. Oddly, it fails to mention that Pakistan's Supreme Court in October 2018 acquitted Asia Bibi, a Christian woman who spent eight years on death row for blasphemy, or that the government in 2020 sentenced 86 members of Tehreek-i-Labbaik Pakistan (TLP) for taking parts in the violent protests following Asia Bibi's acquittal.⁵⁶ Rather, it notes that the use of the blasphemy laws in Pakistan 'is taking place amid a global rise in restrictions on freedom of religion and freedom of expression related to religion and belief', and adds that the UN Special Rapporteur on freedom of religion or belief in March 2019 'cited the case of Asia Bibi as one of the examples of a revival of anti-blasphemy and anti-apostacy laws and the use of public order laws to limit expression deemed offensive to religious communities.' By failing to recognise even some positive domestic developments, this resolution arguably falls into a 'clash of civilizations' trap, in which blasphemy bans become a flash point between a 'modern', 'rational' 'West' and a 'backward', 'irrational' Muslim 'other'.⁵⁷ In short, if the international community seriously wants a country like Pakistan to modify or abandon its anti-blasphemy laws, it is surely important to distinguish among different kinds of blasphemy bans and to consider why individuals, groups and societies are motivated to treat certain speech acts as blasphemous.

Anti-blasphemy laws and the politics of accusation

Pakistan's legal system and the great dramas played out around blasphemy cannot be divorced from the history of British imperialism and the passing of the Indian Penal Code (IPC) in 1860. The legacy of colonial law is crucial for understanding blasphemy controversies in Pakistan. With the introduction of the Indian Penal Code, which punished various 'Offences relating to Religion', new discourses on blasphemy and religious sentiments emerged across South Asia. Unlike the situation in England, the Indian Penal Code protected all religious traditions in the subcontinent and was, as it were, more progressive. Colonial officers assumed the role of 'rational' and 'dispassionate' arbiters of religious conflicts in courts, while 'native' plaintiffs had to prove that their religious feelings had been wounded. Being premised on a structure of incitement and regulation, these laws incentivised the display of wounded religious feelings.

The *Rangila Rasul* (The Colorful Prophet) pamphlet controversy in Lahore, which prompted the addition of Section 295-A in 1927, is a pivotal event in the history of religious offence in South Asia. The original wording of Section 295-A reads as follows:

'Whoever, with deliberate or malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'

55 The resolution notes the strained bilateral relationship between France and Pakistan, observing, 'the repeated and deceptive attacks against the French authorities by radical Pakistani groups and recent statements by the Government of Pakistan on the grounds of blasphemy have escalated since the response of the French authorities to the terrorist attack against a French teacher for defending freedom of expression...'

56 Although some political commentators have hailed this ruling as a landmark event, others are less sanguine. See Imran Ahmed (2021) for a critical analysis of the ruling, including how the ruling tacitly affirms the discourses on the Islamic identity of the state that justify the marginalisation of religious minorities.

57 See for instance Kahn (2017) and Ahmed (2010) on this tendency.

This section was introduced after the trials of proto-Hindu nationalist Araya Samaj polemicists, who had published satirical texts about the Prophet Muhammad's sexual life, which provoked tensions among Muslims and Hindus. The acquittal of the Hindu publisher by the Lahore High Court in 1924 prompted Muslim protests and calls for new laws. Seeking to prevent similar controversies in the future, the British added Section 295:A, thereby turning the Indian Penal Code into one of the strictest regulations of religious offence that the world has ever seen. Scholars have argued that the *Rangila Rasul* affair gave rise to a new affective politics of displaying wounded religious feelings.⁵⁸ In Pakistan, it became linked to traditions of martyrdom and the celebration of figures who kill alleged blasphemers. In 1929, a young, illiterate Muslim man killed the Hindu publisher and was sentenced to death and hanged. Ilmuddin has been commemorated as an Islamic hero who stood up against the Hindu majority and foreign rulers.

After 1947, the Indian Penal Code formed the basis of Pakistan's Penal Code (PPC). During the 1940s and 1950s Pakistani courts interpreted the blasphemy provisions quite liberally. This changed in the 1970s, when Zulfikar Ali Bhutto initiated a state-led process of Islamisation and Pakistan was declared an Islamic Republic in 1973. General Zia-ul Haq (1977-1988), who came to power after overthrowing Bhutto's government, made blasphemy a capital offence and added five additional clauses to the Penal Code, all pertaining to offences against Islam. These five clauses are collectively referred to as the 'anti-blasphemy' laws. They include the physical desecration of the Quran (Section 295-B, life imprisonment), insulting the relatives or companions of the Prophet (Section 289-A, three years) and insulting the Prophet himself (Section 295-C, death sentence). Two of the five sections specifically target the Ahmadi community, who were declared 'non-Muslims' after the Constitutional Amendment in 1974.⁵⁹ General Zia was committed to the 'finality of prophethood' movement and the anti-Ahmadi movement. Pakistan's blasphemy laws are intimately connected to the anti-Ahmadi movement, which united the country's major Sunni sub-sects, such as the Barelvis, Deobandis and the Salafi-oriented Ahl-e-Hadith.⁶⁰ Some historians argue that the judicially authorised persecution of the Ahmadis opened the door to increasingly murderous attacks on other so-called 'deviant' groups, such as the Shia minority, but also Hindus or Christians.⁶¹

Of the 'anti-blasphemy' provisions, Section 295-C is particularly notorious, not simply because it makes blasphemy into a capital offence, but also due to its expansive scope:

'Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.'

Terms like 'imputation', 'innuendo' or 'insinuation' are hard to define, and makes Section 295:C very easy to misuse on the parts of complainants, who need not see or hear the offence for it to be recognised as such. The lack of reference to the offender's intention or psychological state means that speakers may inadvertently commit blasphemy. Dispensing with intention implies that it is possible to commit blasphemy by mistake or out of ignorance, as some cases that made global headlines vividly illustrate.⁶² It is also becomes difficult for those who are accused to deny the accusation. Moreover, it is challenging to investigate such cases, as judges and lawyers may be exposed to new accusations in the course of examining the evidence.⁶³

58 See for instance Schaflecher 2019 and Rollier 2019.

59 See Khan (2015) for an overview of the two 'anti-blasphemy' laws that criminalise the activities of the Ahmadi community.

60 The Ahmadiyah is a late 19th century Muslim reform movement founded by Mirza Ghulam Ahmad, whom Ahmadis consider to be a prophet.

61 See Faisal Devji 2013:155. On the anti-Ahmadi movement, see Ahmad 2010.

62 For incisive legal critiques of Pakistan's anti-blasphemy provisions, see Siddique and Hayat 2008; Kahn 2017.

63 See Rollier 2019 for a discussion of how blasphemy accusations have a contagious quality, which imply that court scribes and judges use various linguistic strategies to protect themselves when examining the evidence.

The idea of a divinely sanctioned death penalty for blasphemy is supported by broad sections of Pakistan's overwhelmingly Muslim population. According to Rollier, 'all religious schools in the country are unanimous in their support of the blasphemy laws and capital punishment for offenders'; he further observes that this is also 'one of the few points of consensus.'⁶⁴ This remarkable consensus in support of the death penalty can partly be traced to General Zia's state-led policy of Islamisation, which included the establishment of the Federal Shariat Court and penal reforms which aimed to consolidate state sovereignty by drawing on Islamic values. In 1991 the Federal Shariat Court ordered the government to remove the option of life prison for violating Section 295:C, a section that is widely perceived as 'a divine decree and the cornerstone towards the instauration of a more Islamic society.'⁶⁵ The sacralisation of the 'anti-blasphemy' laws has made it extremely challenging to revise or curtail these laws. Much as these laws have 'created powerful affective attachments', they 'continue to be a source of much embarrassment to Pakistani governments that have proclaimed themselves liberal, such as Bhenazir Bhutto's and General Musharraf's.'⁶⁶ Both leaders tried to circumscribe these laws by making it more difficult to bring charges, but faced opposition and street protests by the religious right. Despite domestic secular-liberal opposition and international criticism, efforts to reform the 'anti-blasphemy' laws have floundered. Pakistani legal scholars and civil society groups have long called for legal reforms, yet a serious discussion of the benefits and drawbacks of the blasphemy provisions in the Penal Code has so far been thwarted by extrajudicial killings and protests by the religious right.

This brings us to the seeming paradox between the provision of capital punishment for and the fact that no one has yet been executed. Insofar as Section 295:C is taken as 'a divine decree', the lack of enforcement can be viewed as an indication of state corruption and failure. Such disappointment combined with affective attachment to the blasphemy laws partly helps to explain why extrajudicial killings in connection with blasphemy trials have become ubiquitous.⁶⁷ A significant number of alleged blasphemers have been killed during or after their trials. Sources estimate that 'over 60 suspected blasphemers have been killed extra-judicially,' which also means that holding blasphemy trials have become increasingly perilous.⁶⁸ A recent case is the assassination of Tahir Naseem, an Ahmadi US citizen during his blasphemy trial in Peshawar in July 2020. Images from the courtroom were circulated on social media platforms, which allegedly described the 16-year-old murder suspect as a 'savior' and the 'pride' of Pakistan, terms which resonate with traditions of venerating those who kill alleged blasphemers.⁶⁹

Of these killings, none have grabbed more international headlines than the assassination of Salman Taseer, the Governor of Punjab, by his own bodyguard in 2011. This high-profile case vividly demonstrates the sensitivity surrounding criticism of the blasphemy laws. It also served as the catalyst for the rise of increasingly virulent 'anti-blasphemy' mobilisations over the past decade, and marked 'a new turn' in Pakistan's tryst with issues of blasphemy. Although the Taseer case has often been framed as a struggle between 'liberal' secularists and hardline 'Islamists', this framing is somewhat limiting. For one, it overlooks the prominent role that Bareilvi groups, a Sufi-oriented movement known for its veneration of the Prophet, played in villainising the Governor. Governor Taseer was at the forefront of liberal efforts in support of Asia Bibi, a low caste Punjabi Christian woman, who was sentenced to death for blasphemy in 2010. An outspoken critic of the blasphemy laws, Taseer called it 'a black law' and ridiculed the clerics who had issued Islamic legal rulings (*fatwa*) against him as 'ignorant.' Scholars from several denominations (*maslak*) responded by calling Taseer a blasphemer and apostate. Famous Bareilvi clerics declared the governor '*vājib -al qatl*', literally meaning 'ought to be killed',

64 Rollier 2019: 54.

65 Rollier et al. 2019:17.

66 Ahmed 2009:174.

67 These ideas are based on Ahmed (2010).

68 This estimate is from Rollier 2019, whereas a Pakistani NGO estimated the figure to be 75 (2019).

69 The killing of Tahir Naseem was accompanied by killings and the harassment of Ahmadis in Peshawar. See the US Department of State. 2020 Report on International Religious Freedom: Pakistan.

thereby licensing the killing. The anti-Taseer campaign also involved attacks on the Governor's secular Western lifestyle in ways that linked his criticism of Pakistan's blasphemy laws to 'the discourse on the global threat to Islam and its vast archive.'⁷⁰ Inflammatory sermons by Barelvi clerics probably inspired Mumtaz Qadri, himself Barelvi, to kill his boss. Qadri's trial and execution in 2016 were accompanied by street protests in his support. Barelvi groups spearheaded a veneration campaign and built a mosque in his name.

The heightened salience of anti-blasphemy discourses in the past few years has been linked to the emergence of new mass movements and radical Islamist parties. Tehreek-e Labbaik Pakistan (TLP) was formed in Karachi in 2015 the aftermath of Mumtaz Qadri's arrest. Formed by Khadim Hussain Rizvi, a firebrand Barelvi cleric, TLP has mobilised around demands to safeguard the honor of the Prophet by strictly implementing the blasphemy laws. In 2017, TLP organised massive protests and sit-ins, demanding that the government sack the Minister of Law, who had proposed to change the obligatory oath that Muslim parliamentarians swear upon taking office, in which each declares that Muhammad is the final prophet, making this optional. TLP saw this as a step towards official recognition of the Ahmadi minority, and threatened the minister with death unless he resigned. An agreement was signed with the interior minister, the proposal was scrapped and TLP's leader allegedly thanked the chief of army staff 'for saving the nation from a catastrophe.'⁷¹

In the 2018 general elections TLP became the fifth largest party in Pakistan, mainly supported by the country's Barelvi Sunni majority. After the Supreme Court's acquittal of Asia Bibi in 2018, the TLP organised massive protests and clerics associated with the party called for the death of the Supreme Court judges. The government began to crack down on the party, and Rizvi and many members were jailed and charged under the 1997 Anti-Terrorism Act. In 2020, TLP staged massive anti-France protests after President Macron defended the republication of the Charlie Hebdo Muhammad caricatures, demanding the expulsion of the French ambassador. Following Rizvi's death in November 2020, his son Saad Rizvi took over the leadership but was arrested on terrorism charges shortly afterwards. The TLP was banned in April 2021. The government reversed its position in October, a decision that followed a two-week long protest by TLP supporters and in which military figures likely played a key role.⁷²

Concluding thoughts

International news coverage on Pakistan has tended to focus on the iconic victims of the anti-blasphemy accusations, such as Asia Bibi, and the spectacular violence surrounding high-profile cases, such as the murder of Salam Taseer, the Governor of Punjab in 2011. 'This angle', Rollier notes, 'comforts liberal indignation and gives rise to the perception that Pakistan's issue with blasphemy ultimately reflects irreducible antagonisms between Islamists and liberal seculars, or between the Muslim majority and marginalities minorities.'⁷³ Anthropologists who have explored the micro-politics of accusation and conflict-resolution have shown how concerns over 'desecration', matters of 'purity' and 'honour' transcend this partitioning and unite people across religious and/or ethnic boundaries.⁷⁴ In a context of deep inequalities and competition over scarce resources – from land, money, asylum status to political influence – blasphemy controversies cannot be accounted for within the prism of limited freedom of expression or religious freedom. With respect to the prospect of reforming the harsh anti-blasphemy laws, to signal a 'zero-tolerance' approach is likely counterproductive. The challenge is to find constructive ways to aid progressive figures in government and legal professionals

⁷⁰ See Schaffecher 2019:208.

⁷¹ Tarik Ali, 2018 LRB blog. <https://www.lrb.co.uk/blog/2017/november/the-crisis-in-pakistan-continues>

⁷² Military Chief General Qamar Javed Bajwa played a role in securing an agreement with TLP. <https://thediplomat.com/2021/11/pakistans-tlp-emerges-stronger-from-protests/>

⁷³ Rollier 2019:49.

⁷⁴ See for instance Rollier 2019, Ashraf 2018, Ahmed 2010.

who are inclined to pursue reform.⁷⁵ While repealing Section 295-C is probably unrealistic, it might be possible to limit its scope, for instance by making it more difficult to lodge complaints with the courts. Some scholars have suggested that Pakistan's accession to the ICCPR in 2010 and its subsequent withdrawal of reservations to Articles 18 and 19 in 2011 provides an opportunity to scrutinise Pakistan's anti-blasphemy laws.⁷⁶

That said, Pakistan's current political culture and the virulent expression of militant Sunnism is deeply troubling, tempting some observers to characterise Pakistan as a failed state. Though Pakistan was founded in 1947 'in the name of Islam', Devji observes that 'though Pakistani forms of Islam, and Sunni sectarianism in particular, have had a much greater and sometimes violent success abroad, the country is also the grave of Islam as an ecumenical religion with its own politics.'⁷⁷ Much of the problem, Rumi points out, rests with the political leadership: 'As long as the state narrative creates the binary of an Islamic fortress pitted against the outsider-infidel, instruments such as blasphemy will be viewed as legitimate.'⁷⁸ This report has given examples of such narratives, including the performative displays of outrage they inspire. The recent deal between the government and the TLP may signal a deepening entrenchment of militant majoritarian Sunnism. This will likely deepen existing divides in Pakistani society, which, as Rumi notes, 'has become polarized between the avowedly secularist civil society and the religiously inclined majority, who speak an altogether different language, resulting in a breakdown, or worse, use of violence, in public conversation.'⁷⁹ Hence a challenge for international actors is to avoid further polarisation and to avoid pushing Pakistan's leaders towards political and military allies who do not bang the drum of free speech and protection of freedom of religion or belief.

75 Legal scholars, such as Rumi (2018) and Kahn (2017), among others, are concerned with how Pakistan's blasphemy legislation has let go of an 'intent requirement'.

76 Khan 2015.

77 Faisal Devji 2013:248.

78 Rumi 2018: 334.

79 Rumi 2018:334.

INDONESIA: UNITY IN DIVERSITY?

Few nations in the world can match Indonesia's cultural, linguistic and religious diversity. After all, the national motto is 'unity in diversity' (*Bhinneka Tunggal Ika*). With a total of 270 million inhabitants, Indonesia is the largest nation-state in Southeast Asia; it is an archipelagic nation made up of some 4000 islands stretched along the equator. Although the size of its Muslim population makes Indonesia the largest Muslim-majority country in the world, Indonesia is a pluralist state. At the time of its declaration of independence in August 1945, Indonesia was proclaimed a multi-religious republic. This was expressed in the national ideology Pancasila – the 'five principles' – initially formulated by Sukarno, Indonesia's first president, during the independence struggle.

This section begins with an introduction to Indonesia's national ideology and the protection of religious freedom ensured in the 1945 Constitution and outlines the key phases in state regulation of 'religion' (*agama*). The discussion of the 1965 Blasphemy Law under the authoritarian New Order regime shows how this law has been an instrument in the process of religious nation-building and the regulation of 'proper' religious conduct. Since the transition to democracy in 1998, there has been a marked upsurge in convictions for blasphemy. In this period the state has become increasingly involved in the demarcation of religious 'orthodoxy', attenuating the pluralism of the country. The report identifies seven trends in the post-1998 politics of blasphemy. It concludes with a discussion of the politicised blasphemy accusation and trial of the former Governor of Jakarta in a context where the Constitutional Court in recent rulings has reaffirmed the constitutionality of the Blasphemy Law.

The Pancasila ideology merits some comment here given its foundational importance both in relation to conceptions of citizenship and the challenges of nation-building. The first principle in the preamble to the 1945 Constitution 'Belief in One Almighty God' (*Ketuhanan yang Maha Esa*) has been interpreted in diverse ways, but most commentators agree that this implies that the state should avoid any proposals to establish an Islamic state that would enshrine some version of Islamic *sharia* as its legislative foundation. Strikingly, the word *Islam* does not even appear in the Constitution. Importantly, freedom of religion is also guaranteed in the Indonesian Constitution of 1945. Article 29(2) paraphrases the first principle of Pancasila and states: 'The State guarantees all persons the freedom of religion each according to their own religion (*agama*) and beliefs (*kepercayaan*).'⁸⁰ Although these phrases may seem straightforward, their policy implications have been and still remain contentious.

Although the 1945 Constitution guarantees freedom of religion, the Ministry of Religion (MORA) soon began to introduce a narrower definition of what qualifies as 'religion' (*agama*). According to the Ministry, 'a religion would have to be revealed by God, possess a prophet and a holy book, have a codified system of law for its followers, and further, it should enjoy international recognition and not be limited to a single ethnic group.'⁸¹ This narrow understanding of what constitutes 'religion' posed great problems for many groups, spurring processes of 'religionisation' in order to gain state recognition.⁸² In 1954, the Ministry of Religion established an Inter-Departmental Committee for the Supervision of Faith Movements in Society tasked with monitoring heterodox and 'mystical beliefs' (*aliran kepercayaan*). 'Blasphemy' (*penodaan agama*) was first made a criminal offence in Indonesia on January 27, 1965, when President Sukarno signed Presidential Decree No. 1, on the Prevention of the Abuse/Sullying of Religion. It specified that six religions (Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism) were recognised by the Constitution and prohibited 'deviations' from their 'core' tenets. This Decree was introduced at a time when tensions were mounting between Muslim mass organisations and the Indonesian Communist Party (PKI), one of the largest in Asia. At the end of September 1966, general Suharto and the army seized power in the aftermath of a failed leftist officers' coup. The military-dominated New Order regime (1966-1998) emerged following massacres of an estimated 500,000 alleged communists; and millions were imprisoned or detained.

80 Lindsey 2018.

81 See Telle 2018. The original quotes appear in Picard 2012.

82 See for instance Picard 2012.

In 1969, this presidential decree was upgraded to the status of law (Law No. 1(PNPS/1965), and now is generally known as the Blasphemy Law.⁸³ With just four articles, the Blasphemy Law is brief, yet wide in its scope. Article 1 states:

Every person is prohibited from intentionally, in public, telling, advocating or contriving public support for carrying out interpretations of a religion adhered to in Indonesia or conducting religious activities that resemble the activities of that religion, interpretations and activities that deviate from the fundamental teachings of that religion.

Article 2(1) specifies that the Minister of Religion, the Attorney General and the Minister of the Interior can issue a written warning to persons who contravene Article 1. Article 2(2) permits the President after consultation with the Minister of Religion, the Minister of the Interior, and the Attorney-General to dissolve or prohibit the organisation or sect in question. Article 3 states that if a person or prohibited group continues to act in breach of Art. 1, then they can be imprisoned for a maximum of five years.⁸⁴ Importantly, a new provision was inserted into the Criminal Code. Article 156a declares:

Punishable by up to five year's imprisonment whoever, intentionally, in public, expresses a feeling or conducts themselves in a way that: a) Is principally of a nature of enmity toward, abusive, or sully of a religion followed in Indonesia; intends to discourage persons from embracing a religion based on the belief in Almighty God; b) Intended to stop a person from adhering to any religion based on Almighty God.

Significantly, the Blasphemy Law does not articulate concepts of blasphemy or offence from within any specific religion. Rather, the terminology is neutral, and the law intends to prevent 'the misuse and/or insulting of a religion.' Pivoting around the distinction between a normative standard and deviation, this law articulates a high-modernist notion of religion in which 'deviance' is considered to be a departure from an 'orthodox' standard. Consequently, six national 'religious councils' have been authorised to determine what counts as official doctrine and to resolve disputes. In short, one function of the law is 'religion-making.'⁸⁵

Given this broad definition, a very wide spectrum of acts may be deemed blasphemous. For this reason, Fenwick suggests that rather than merely having a blasphemy law, Indonesia maintains a *de facto* 'blasphemy regime.'⁸⁶ By this he means a regime under which religious offence or blasphemy is redirected toward the protection of institutions and the state rather than the protection of religious communities or individuals *per se*. As Lindsey points out, 'religious deviancy' has increasingly come to be seen as inherently dishonouring the official version of Islam, regardless of whether or not there was any intent to dishonour, as is required by the world intentionality in article 156a.⁸⁷ This is highly problematic. While Indonesia maintains neutral blasphemy provisions, meaning that all 'religions' in theory enjoy equal protection under the law, such provisions may still be enforced in a one-sided fashion.

A core feature of religious governance in Indonesia is the idea of 'harmony' (*kerukunan*). As Bagir points out, this notion is commonly understood as the avoidance of conflict between religious groups through the imposition of, if needed, legal restrictions. Importantly, this idea also connotes protection, in which the state takes on a role of protecting and guiding religious conduct. Taking into consideration the differential power relations between different groups, Bagir also observes that "harmony" unavoidably privileges the majority as the "mainstream" in contrast to minority "deviants" within one religion.⁸⁸ In the past decade, 'harmony' has increasingly been contrasted with 'religious freedom,' a notion favoured

83 Some scholars, notably Zainal Bagir, prefer to call it the Defamation of Religion Law, as this is closer to Indonesian terminology.

84 This information is taken from Peterson (2019) and Crouch (2014).

85 Telle 2018.

86 Fenwick 2017:73.

87 Lindsey 2012.

88 Bagir 2018:288.

by human-rights oriented groups. A key rationale of the Blasphemy Law is to ensure ‘inter-religious harmony.’ However, the status of the law itself has become increasingly contested. Rather than bringing ‘harmony’, the law has been criticised for inciting conflict and generating split publics. Others disagree.

During 32-years of New Order rule there were less than ten court cases involving blasphemy. A key feature of many of these trials, all of which involved disputes within Islam, is the porous line between political and religious subversion. A famous case toward the end of the New Order era is the trial of a Javanese lawyer and mystic, who in 1995 was found guilty of slandering Islam after calling the Prophet Muhammad a ‘benign dictator’ during a seminar. A vocal regime critic, Permadi had also predicted that the regime would collapse under bloody circumstances in 1997-98 and be replaced by Megawati Sukarnoputri, the daughter of Indonesia’s first President. The case was brought by a Golkar politician and former head of Muhammadiyah’s youth wing, a modernist Muslim organisation. Though Permadi was sentenced to eight months in prison, this highly politicised trial was arguably more of a failure than a success for the government. During the trial, Permadi delivered a spirited defence plea that took over nine hours to read and mocked the judges by suggesting that New Order justice relied on ‘supernatural powers.’ Far from instilling faith in the legal system, Permadi’s disclosure of the corrupt practices related to the trial earned him sympathy. The light sentence was taken as evidence that officials close to the President influenced the judges as Suharto was upset by the crudely politicised campaign. Unlike New Order trials that were orchestrated ‘from above’, today’s situation involves more complex dynamics. Blasphemy accusations are increasingly generated ‘from below’ and involve complex alliances between religious groups and semi-official institutions, notably the Indonesian Council of Ulama (MUI) and the state apparatus. As the following section will show, the Blasphemy Law and the Law on Electronic Information and Transactions (ITE) can also serve as political instruments to censor critics.⁸⁹

Post-1998: Democratic openings and discourses of ‘deviance’

With the transition to democracy after the fall of the New Order regime, the boundaries of Indonesia’s limited religious pluralism widened and many of the restrictions on public expressions of religious identity – political and legal – were lifted. The transition involved major legislative and judicial reforms, including amendments to the Constitution, the passing of Law No. 39 of 1999 on Basic Human Rights, the establishment of the Constitutional Court and specialised courts. With democratisation has come a mounting judicialisation as various groups have turned to legal means to advance their rights, press claims and resolve religious conflicts. Hence judges and lawyers in the civil courts have become busy adjudicating cases of alleged blasphemy/religious defamation, handing out decisions involving theological matters. Overall, the state’s capacity to intervene in the religious lives of Muslim Indonesians, as well as other religious and non-religious groups, has probably expanded over the past two decades.⁹⁰

In the early Reform era, particularly during Abdurrahman Wahid’s presidency (1999-2001), the scope for expressing different forms of religiosity widened. Wahid favoured a ‘mild secularism’, stressing the compatibility of Indonesia’s pluralist Islamic traditions with democracy. This was evident in the rise of movements of non-denominational forms of spirituality, the rise of self-proclaimed prophets and renewed interest in devotional forms of Sufism. However, it did not take long before conservative Muslim leaders began to express concern about the harmful effects unregulated pluralism was having on the nation’s religious well-being. A critical turning point in the ‘conservative turn’ (Bruinessen 2013) in Indonesian Islam is 2005, when the Indonesian Council of Ulama (MUI), a semi-governmental

89 The ITE law was introduced in 2008 and revised in 2016. It bans the dissemination of blasphemous material online, and is designed to prosecute alleged blasphemy cases and silence critics. Under Article 27 of the Law, anyone who distributes electronic information that contains defamatory or threatening content or information that contains violent content, threats, incitement, or would result in consumer loss can be imprisoned for up to four years or fined. Individuals accused of defamation can be detained for 50 days without trial.

90 Lindsey 2018 makes this argument in relation to debates on the Islamic revival since 1998, underlining how contemporary strategies for control of Islamic legal traditions build on longstanding patterns.

body, issued 11 opinions aimed at suppressing ‘deviationists’ currents. Besides opposing inter-faith prayers, the MUI issued a *fatwa* declaring the Ahmadiyah movement to be ‘outside Islam’ and called on the government to ban this movement.⁹¹ Another *fatwa* declared ‘secularism, religious pluralism and liberalism’ as contrary to Islam, and coined the acronym ‘sipilis’ (*syphilis*) to describe these ‘foreign’ ideologies. Conservative Islamist groups vowed to support the MUI in its ‘war on deviant thoughts’, but other Muslim leaders criticised the MUI for issuing these polarising opinions. Since 1998, the MUI has, as Hefner aptly puts it, ‘rebranded itself as the national guardian of morality, a morality that it defined in conservative and exclusive rather than pluralist terms.’⁹²

Since the early 2000s, hard-line groups and Islamist militias have taken MUI’s opinions as a license to crack down on groups and organisations deemed to be ‘deviant’ (*sesat*).⁹³ The harassment and persecution of Muslim minorities, such as the Ahmadiyah and the Shi’a, has been particularly severe, including deadly vigilante attacks, forced displacement, destruction of property, legal discrimination and truncated civil rights.⁹⁴ The 2005 MUI fatwa against ‘secularism, religious pluralism and liberalism’ also targeted liberal Islamic groups, notably the Liberal Islamic Network. This inspired the formation of the National Alliance for Freedom of Religion of Belief (AKKBB), a coalition of Muslim and non-Muslim and interfaith civil society groups. As this alliance invoked human rights language and many of the NGO’s received foreign support, they were accused of being Western agents. In May 2008, the network published an advertisement calling for respect for Ahmadiyah. Shortly afterwards, a Freedom of Religion rally in Jakarta was brutally disrupted by some 400 vigilantes from the Islamic Defenders Front (FPI), a mass-based Islamist organisation, and other hard-line groups.

Although government officials do not condone attacks on allegedly ‘deviant’ groups, government agencies have indirectly enabled these processes. An example from Lombok, West Nusa Tenggara province, can illustrate this. In 2005, the Minister of Religion visited Lombok on his tour around the country to warn civil servants about the rising danger of ‘deviant sects’ (*aliran sesat*). Shortly afterwards, the provincial branch of the Ministry of Religion banned and placed 13 ‘mystical groups’ (*aliran kepercayaan*) under surveillance and stepped up efforts to ensure that citizens do not stray from the straight path. Apart from the Christian Yehova Witnesses and the Hindu Satya Say Baba movement, the other groups were all deemed to deviate from ‘proper’ Sunni Islam.⁹⁵ As Menchik argues more generally for Indonesia, the state is a conduit for religious belief, guiding its citizens toward proper faith and behaviour. Indonesia is premised on ‘godly nationalism’, ‘an imagined community bound by a common, orthodox theism and mobilized through the state in cooperation with religious organizations in society.’⁹⁶ This perspective can help to account for the function blasphemy trials now play in Indonesia, where trials have become tools for realising the ‘godly nation.’ However, as will also become clear, blasphemy trials are also highly contentious and divisive.

Revitalising the Blasphemy Law: cases and trends

Since 1998, there has been a marked increase in blasphemy accusations that have been taken to the courts, and several trends can be discerned in these cases. Since this time the Blasphemy Law, which has long been an important source for the definition of the category of ‘religion’, has, as Bagir points out, taken on an increasingly important ‘justifying state strategies to maintain order or harmony through the use of Article 156 a of the Penal Code, which is directly derived from it. Thus,

91 Despite facing persecution in certain provinces, Ahmadis have not been tried in blasphemy cases. One possible explanation is that it is an international movement, with strong lobby groups across Europe and the North America.

92 Hefner 2020:9.

93 Since 1998, MUI began to recruit members from Islamist groups, such as Hizbut Tahrir (currently banned) and Majelis Mujahidin Indonesia.

94 On legal discrimination and violence against the Ahmadiyah, see Crouch 2014; Menchik 2016.

95 Cooperation between state actors and militant Muslim organisations regarding ‘security’ designed to restrict religious practices of the Hindu Balinese minority on Lombok is another example; see Telle 2013.

96 Menchik 2016:67.

paradoxically, despite the legal strengthening of religious freedom since 1998, the law has also been put to use in new and more dangerous ways.⁹⁷ At least six trends are evident:

First, the number of court cases citing Article 156 has increased significantly since 1998. In the period between 1965 to 1998, the Blasphemy Law was only used in ten court cases. Crouch estimates that between 1998 to 2012, some 130 persons were convicted of blasphemy. Of these, more than 50 of these individuals self-identify as Muslim, while more than 60 Christians were convicted under Article 156a of the Criminal Code for insulting Islam or Christianity.⁹⁸ According to the Setara Institute, the 89 blasphemy cases that were brought to the courts between 1999 and 2017 resulted in the conviction of a total of 130 individuals. Under President Joko Widodo's presidency (2014 - present), the upward trend has continued, with at least two dozen cases during his presidency. This may not seem like a very large number of cases, yet each conviction has implications far beyond those who are tried and sentenced.

Second, the individuals or groups targeted for blaspheming Islam are often small, localised groups with no international networks of supports, many of whom are self-proclaimed prophets. Groups that display 'deviant' conceptions of prophethood are often targeted.⁹⁹ A well-known example is the Jakarta-based Sufi-oriented Lia Eden community, also known as God's Kingdom of Eden, whose female leader claimed to be a medium for the Angel Gabriel. In 2006 Lia Eden was convicted under article 156a of the Criminal Code, while another leader was convicted for claiming to be the Prophet Muhammad. In 2009, Lia Eden was convicted for the second time after sending thousands of letters to government officials with copies of the Angel's revelations, arguing that all religions should unite.¹⁰⁰ Another example is the 2010 trial of Amaq Bakri, an elderly Muslim farmer from East Lombok, who claimed to have received revelations from the Angel Gabriel and to have visited heaven, not untypical in Sufi-oriented milieus.¹⁰¹ Salafi-oriented preachers affiliated with *Dewan Dekwah Islamiyah* (DIII) investigated the case and reported him to MUI, which issued a *fatwa* declaring his teachings to be 'deviant'. The East Lombok district court sentenced him to two years in prison.¹⁰²

Third, allegedly 'deviant' individuals and groups, with 'syncretic' and 'heterodox' features, are often targeted after religious leaders affiliated with the Indonesian Council of Ulama (MUI) have issued a *fatwa* (Islamic legal opinion) and then report the case to the police. Through its response to allegations of blasphemy and 'deviant' Muslim activities, MUI increasingly defines 'orthodox' Muslim conduct, though it is not the only *fatwa*-giving body in Indonesia. Despite the fact that Islamic legal opinions (*fatwa*) are not a source of positive law in Indonesia, courts implicitly or explicitly recognise *fatwa* as persuasive evidence. Law enforcement authorities often rely on MUI-issued opinions, a pattern that can be described as 'religious deference'.¹⁰³

Fourth, another trend is that Blasphemy Law has increasingly been used to target larger Muslim groups, such as the Ahmadiyah and Shi'a.¹⁰⁴ These minority Muslim groups have long been controversial, but it is only since 2000 that such disputes have been judicialised using the Blasphemy Law. This ties in with the process of issuing lower-level national and local regulations or bylaws that are based on the provisions in the Blasphemy Law.¹⁰⁵

97 Bagir 2018:288.

98 Crouch (2014) provides substantial information on many of these cases.

99 See Endresen and Kersten 2021. This trend shows marked continuities with the targeting of '*aliran kebatinan*'/'*aliran kepercayaan*' who are, as it were, united by what they (still) lack: 'religion'.

100 See Crouch 2014 for an account of the Lia Eden cases.

101 In cases involving self-proclaimed prophets, these individuals are often made to undergo psychiatric testing. Yet, the criteria used in such cases are uncertain. There are cases in which people with serious mental illness have been charged with blasphemy, see Freckelton 2020.

102 This case is examined closely in Telle 2018.

103 Crouch 2016.

104 There are also examples of intra-group cases among Christians, in which groups accuse other denominations of insulting Christianity and spreading 'deviant' teachings, which have led to convictions; see Crouch 2014.

105 Two joint decrees issued by the Minister of Religion, the Attorney General and the Minister of Internal Affairs are significant and serve to restrict groups regarded as deviant: 2008 on the Ahmadiyah (JAI); the 2016 decree banning Fajar Nusantara /Millah Abraham.

Fifth, a number of trials involve Christians who have been prosecuted for insulting Islam. Several of these cases involve proselytisation and conversion to Christianity, an issue of deep concern to conservative Muslim groups. One example is the Malang Case in 2007 in which 41 Evangelical Christians were convicted for insulting Islam, after allegedly stepping on the Quran and spreading hateful messages. Blasphemy trials have sometimes been accompanied by rioting and destruction of churches, as in the Tasikmalaya apostasy case.¹⁰⁶

Sixth, the Blasphemy Law has lately been mobilised for overtly political purposes, serving as a dangerous tool of ‘hate spin’ campaigns with deeply undemocratic implications. This was vividly demonstrated in the process against former Jakarta Governor Basuki ‘Ahok’ Tjahaja Purnama, who in May 2017 was convicted of blaspheming Islam and the Quran and given a two-year prison sentence. The Chinese-Christian governor lost the re-election. The ‘Ahok’ case marked a new turning point in the use of blasphemy allegations for political ends.

Blasphemy law on trial, the Ahok case and its aftermath

The case against the Chinese-Christian Governor of Jakarta shocked many Indonesians and caused global headlines that tarnished Indonesia’s reputation for religious pluralism. Ahok’s conviction is a blatant example of how the Blasphemy Law can serve political ends. The scale of the anti-Ahok mobilisation to get him convicted for blasphemy was unprecedented. The case got rolling in September 2016 when Ahok held a campaign speech in which he remarked that the Quranic verse al-Maidah 51, which warns Muslims against taking Muslims or Christians as leaders, was being misused by some clerics to argue that Muslims should not vote for Christians.¹⁰⁷ A few days later a deceptively edited video was uploaded to Facebook and went viral. After the MUI issued a ‘religious opinion and stance’ declaring that the remarks insulted the Quran and Islam, hard-line organisations mobilised, demanding Ahok’s conviction. The rallies in Jakarta were the largest protests since 1998, when democracy activists called for the resignation of Suharto and the New Order regime. The day after Ahok was given a two-year sentence, three of the judges were promoted.¹⁰⁸

The verdict against the Chinese-Christian Governor split Indonesia in ways that had not been seen in decades, leaving religious and ethnic minorities uncertain about their place in a nation that appeared to be moving towards becoming an Islamic state, rather than the pluralist state envisioned by Indonesia’s founders. The 2016-2017 ‘blasphemy’ case against Ahok was the culmination of a series of developments, including alliances between bodies such as the MUI and hardline Islamist militias. In the aftermath of the Ahok affair, the Jokowi government has taken some measures to curb the political influence of some Islamist organisations, but the outcome of these policy initiatives is uncertain. Besides banning Hizbut Tahir Indonesia (HTA) in July 2017, the government in late 2020 banned the Islamic Defender’s Front (FPB) and arrested its leader. The Jokowi government has recently passed a law that allows the government to ban organisations that are opposed to Pancasila. Analysts are inclined to see these and related developments as signs that Indonesian politics is taking an ‘illiberal turn’.

Indonesia’s Constitutional Court was established in 2003 and is authorised to review the constitutionality of national statutes and laws at the request of citizens and legal entities. Due to the increasing number of cases being brought under it, the Blasphemy Law has been brought to the Constitutional Court thrice (2009, 2013, 2017). The court has ruled that the law is constitutional despite the amendments from 2000 that strengthened religious freedom and other human rights. In its landmark 2010 ruling, the court, by a majority of eight to one, affirmed that ‘the Indonesian nation is “Godly” (*bertuhan*)’, not atheist, and that it ‘achieved independence not only through national

106 See Crouch 2014 for a discussion of these cases in relation to Christian Muslim relations in West Java.

107 For a brief account, see Telle <https://tif.ssrc.org/2018/12/14/blasphemy-and-hate-spin-campaigns-in-indonesia/>

108 See Peterson 2019 for a devastating legal analysis of the trial.

struggle, but through the grace of God.¹⁰⁹ The ruling affirmed that religious sensibilities and religious orthodoxy are defined by religious scholars (*ulama*) and protected from public criticism and doctrinal disagreement by the established ‘religious councils’ (*organisasi induk keagamaan*). According to Menchik, the review process ‘helped create a broad, institutionalized, and durable consensus on the values of the state as rooted in “godly nationalism”.’¹¹⁰ The ‘godly nation’ is premised on theological, rather than ethnic or geographical, criteria and constituted through exclusions: ‘heterodox’ groups and non-believers are denied the full benefits of citizenship.¹¹¹ No Ahmadis were present during the review, and Ahmadiyah’s exclusion allowed the participants and the state to proclaim their commitment to a limited form of pluralism, without extending religious freedom to ‘heterodox’ groups or atheists. In recent rulings, the Constitutional Court has decided that the state can limit religious freedom in matters involving moral considerations, religious values, security and public order (*ketertiban umum*) in democratic society. Most states restrict religious freedom, yet broad-sweep terms like ‘religious values’ and ‘public order’ are, Lindsey notes, ‘capable of almost infinite expansion.’¹¹²

These recent rulings highlight the fact that, despite what many proponents of human rights assume, distinct religious traditions and political traditions have very different understandings of what constitutes a ‘religion.’ The Indonesian case shows that even where a religious community affirms some ideal of religious freedom, it may not extend full rights and protections to groups seen as not fulfilling the cultural criteria to qualify as a proper religion. Unless these complexities are acknowledged, efforts to broaden the scope of freedom to include religious minorities and groups who have been victims of the Blasphemy Law may backfire. After three unsuccessful efforts at repealing the Blasphemy Law, it is likely that Indonesians will live under its shadow in the coming years. Hence the issue at this juncture is to find ways to reduce its discriminatory effects, limit its broad application and encourage non-legal forms of resolving disputes to keep them from escalating into divisive blasphemy controversies.

A recent example of a ‘failed’ attempt to secure a blasphemy conviction indicates that the playing field is uneven. In 2019, several Christian groups pressed charges against Muslim preacher Abdul Somad after a video clip from a sermon went viral in which he said that the crucifix is a dwelling place of an ‘infidel jinn’ (*evil spirit*), referring to Jesus on the Cross. The MUI called out the preacher, who maintained that he was teaching ‘Islamic values’ and refused to apologise. The MUI advised that Somad should not be brought to court, partly to avoid public unrest. The police did some investigations, but with pressure from conservative Islamic groups, they did not pursue the case further.¹¹³ This outcome stands in contrast to the ‘successful’, yet deeply tragic, case against Ahok, the former Governor of Jakarta.

109 These quotes from the decision are taken from Petersen 2019:19.

110 Menchik 2016:90.

111 See also Simandjuntak 2021.

112 Lindsey 2018: 229. The quotes appear in Article 28J(2) of the constitution, which was added during the post-New Order amendment process.

113 Simandjuntak 2021.

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