

The Cairo Institute for Human Rights Studies

Written Intervention to the 20<sup>th</sup> session of the UN Human Rights Council

Item 3 - General Debate

## **“Defamation of Religions” in the Arab world**

The Cairo Institute for Human Rights Studies (CIHRS) expresses its growing concern over the state of the right to freedom of expression in the Arab region. Despite recent and on-going revolutions in the region, renewed patterns of human rights violations have arisen as a result of the maintenance of prohibitions on “defamation of religions.” Whether in states apparently on the road to democratic transition or in those where systems of monarchy and dictatorship cling obstinately to power, “defamation of religions,” which in practice is implemented only against so-called “defamation” of one particular religion: Sunni Islam, is being used as a tool to bolster autocratic governments, try and imprison critics, and intimidate those who express opinions that fall outside the “red lines” of what is deemed acceptable by the state.

In Tunisia, which has been hailed by many as the success story of the “Arab Spring,” thus far, individuals have been tried on charges related to “defamation of religions” or breaking with “public morality” in at least three cases since the formation of the National Constituent Assembly last year. The first of the cases involved Nabil Karoui, director of Nessma TV, who was charged in October 2011 after airing “Persepolis,” a film which contains an animated depiction of God. His prosecution continues to this day. In February 2012, the director of the daily newspaper Ettouniseya, Nasreddine ben Saida, was detained for one week pending trial after he published a photo of a famous soccer player and his semi-nude girlfriend; a fine of 1,000 dinar was imposed on him in March. On March 28, 2012, Ghazi ben Mohamed Beji and Jaber ben Abdullah Majri were both sentenced to seven years imprisonment and fined 1,200 dinars by the First Degree Court in Mahdia for having published articles and content online perceived as offensive to Islam.

In most of these cases, the charges have been based on Article 121(3) of 2001 of the Tunisian Penal Code, which allows the criminal prosecution of anyone who publishes content “harmful to the public order or public morality.” This reveals that although Tunisia did adopt favorable legislation to govern the press and publications in the wake of the revolution, reform is still urgently needed to prevent the use of existing provisions in the penal code to punish peaceful expression that challenges religion and morals held by those in power, especially at this time when there is an apparent political tendency to resort to such laws to punish those who question ideas of Islam held by the majority.

In Libya, also considered to be on the road to democratic transformation after peaceful protests turned into a bloody revolution, new legislation raises many concerns about the future of fundamental rights and freedoms in the country. Despite the fact that Article 14 of the constitutional covenant passed in August of 2011 upholds freedom of speech and expression, Law 37 of May 2012 provides that charges may be brought against anyone who denigrates Islam, along with a host of other restrictions on freedom of expression. The constitutionality of this law is currently being challenged in the Supreme Court of Libya, which has a defining opportunity to uphold the right to freedom of expression as defined in international treaties and to thereby take an important step forward in Libya’s transition to democracy and rule of law.

Although some limited reforms and a new constitution were adopted in Morocco in 2011, many laws remain in place that violate both the new constitution as well as Morocco’s obligations under international law. Among these is Article 41 of the Press Code, adopted in 1958 and subsequently amended, which allows charges punishable by up to five years in prison to be brought against individuals who express opinions liable to “undermine the Islamic religion, the monarchy, or the territorial integrity” of Morocco.

In a telling example of these laws being wielded to silence critics and protect the status quo of the power relationship between religion and the monarchy in the country, student Walid Bahomane was sentenced in early 2012 to 18 months imprisonment for “attacking Morocco’s sacred values” through content published on his Facebook page. In addition, several publications considered to be “harmful to Islam” have been banned since the beginning of 2012 by the Minister of Communications, who is granted power to take such actions by Article 29 of the same Press Code. Among the publications banned were issues of “Le Nouvel Observateur” and “Le Pelerin,” which both printed depictions of either God or the Prophet Mohammed, which is considered unacceptable according to Islam.

In Egypt, a draft law was proposed to the newly-elected parliament in late May which would stiffen penalties for “defamation of religions” and disrespect of the prophets, including harsher prison sentences and fines. In fact, the idea of “defamation of religions” has been used to target several Egyptian artists and prominent figures, including actor Adel Imam, whose sentence of three months in prison was upheld in April by a Cairo misdemeanours court based on charges that his artistic works – including films and a play – were insulting to Islam. Similar charges have also been brought against five other filmmakers. These charges are based on Article 98 of the Egyptian Penal Code, which criminalizes exploiting or stirring up contempt for religion through speech, writings, or any other methods. These trials come as the latest in a string of “defamation of religions” cases in Egypt, which also included charges brought against Coptic Christian Naguib Sawiris in June of 2011, who was charged with “contempt of religion” after posting cartoons satirizing Islamic dress on Twitter. The charges against Sawiris were ultimately dismissed.

Finally, in Kuwait, a draft law has also been passed by the parliament which would impose extremely harsh penalties for expression deemed “harmful to the divine, the Prophet Mohammed, or his wives,” if approved by the Amir of Kuwait. Currently, Article 111 of Kuwait’s Penal Code bans defamation of religions and imposes up to one year in prison and a fine for such acts; the current bill aims to make such “crimes” punishable by life in prison or the death penalty. This legislative development comes in a context of regional sectarian divisions, and repercussions of the proposed law have great potential to aggravate these tensions even further. Recent cases demonstrate that Kuwaitis from both Shi’a and Sunni backgrounds have been targeted because of their comments deemed offensive to either of the two religious groups. In one recent case, Sunni Muslim Mohammed al-Malifi was arrested for having posted comments on Twitter deemed offensive to Shi’a believers. He was later sentenced by an appeals court to seven months in prison. Shi’a Muslim Hamid al-Naqi was also arrested for publishing comments on Twitter considered insulting to Sunni Islam and was sentenced to ten years in prison on June 4, 2012.

In light of such developments, CIHRS recalls that resolution 16/18 of 24 March 2011 of the Human Rights Council embodied a de facto rejection of the concept of “defamation of religions.” This approach has since been consolidated through General Assembly resolution 66/167 of 19 December 2011 and Human Rights Council resolution 19/25 of 23 March 2012. Moreover, the Human Rights Committee’s authoritative interpretation on the right to freedom of opinion and expression, General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”), which was finalized in July 2011, emphasizes that laws on “defamation of religions” violate states’ international obligations under the ICCPR. General Comment No. 34 clearly states: “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant” (para. 48).

CIHRS therefore calls upon member states of the Human Rights Council to:

- Condemn state authorities in the Arab region for prosecuting and penalizing individuals for “defamation of religions” and related forms of expression such as denigration, disrespect or insult of religions or blasphemy;

- Call upon state authorities – including the government, legislature, judiciary as well as state prosecutors – in the Arab region to implement their international human rights obligations, particularly on freedom of expression and the right to equality, by immediately:
  - repealing any laws prohibiting “defamation of religions” and related forms of expression such as denigration, disrespect, or insult of religions or blasphemy.
  - dropping any charges against individuals for such “crimes”.
  - releasing any individuals already convicted for such “crimes”.
  - promoting intercultural and interreligious dialogue and understanding through their domestic laws, policies and practices.