

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues

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(Please use this reference in your reply)

8 December 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 52/9, 50/17 and 52/5.

In this connection, we are writing to your Excellency regarding a new **Act amending the Penal Code (Prohibition of undue treatment of writings with significant religious significance for a recognized religious community)** in order to share our observations and comments on the amendment with a view to engaging constructively with your Excellency's Government to ensure that the legislation is in line with international human rights standards.

On 30 July 2023, the Danish Foreign Minister, Lars Løkke Rasmussen, announced in a post on the social media X, formerly Twitter, that the Government would put an end to the Qur'an burnings in front of foreign embassies. On 25 August 2023, the Government indicated at a press conference that it would table a bill banning "the undue treatment of objects with significant religious significance" in public places. The bill, which had been prepared by the civil service in the Ministry of Justice, was presented at the press conference by the Minister of Justice, Peter Hummelgaard, the Foreign Minister, Lars Løkke Rasmussen, and the Minister for Economic Affairs, Jakob Ellemann-Jensen. The bill would introduce a subsection to article 110 (e) of the Danish Penal Code. A first version of the law was introduced on 3 October 2023. A second version was introduced on 27 October 2023. On 7 November 2023, the law was adopted by the Parliament (94 votes in favour and 77 against). It is reported that the law will become effective once signed by the Queen and promulgated in the Official Gazette.

The amendment to article 110(e) of the Danish Penal Code appears to amount to criminalization of blasphemy. We would like to share some comments about the amendment with a view to ensuring its compliance with Denmark's obligations under international human rights law, particularly the right to freedom of expression.

In 2017, Denmark repealed its previous 334-year-old blasphemy law that forbade public insults of a religion, such as the burning of holy books. This repeal was positively acknowledged by the former Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, in his 2019 thematic report to the Human Rights Council: "As such, the international normative standard is clear: States may not impose punishment for insults, criticism or giving offence to religious ideas, icons or places, nor can laws be used to protect the feelings of religious communities. In that spirit, several countries, including [...] most recently, Denmark [...] have repealed anti-

blasphemy laws.”¹

The existing provision in article 110(e), which was adopted in 1952, states that anyone who publicly insults a foreign nation, a foreign state, its flag or other recognised national mark or the flag of the United Nations or the European Union is punishable by a fine or imprisonment of up to 2 years. In this respect, in its general comment no. 34, the Human Rights Committee observed that the value placed by the ICCPR upon uninhibited expression is particularly high in circumstances of public debate concerning public institutions, and the Committee in this context expressed concern regarding laws on such matters as “disrespect for flags and symbols”.²

The amendment introduces a second subsection to article 110(e) which reads (English translation):

“(2) In the same way, anyone who publicly or with intent to disseminate in a wider circle is guilty of undue treatment of a writing with significant religious importance for a recognized religious community or an object that appears as such”.

Before addressing specific aspects of the aforementioned amendment, we wish to remind your Excellency’s Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by Denmark on 6 January 1972.

Article 19(1) of the ICCPR protects the right to “hold opinions without interference”. This right is absolute and non-derogable under any circumstance.

Article 19(2), which protects the right to freedom of expression, states that this right shall include the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his (or her) choice”.

Under article 19(3), any restrictions on freedom of expression must be “provided by law”, proportionate and necessary for the respect of the “rights and reputations of others”, for the “protection of national security or of public order”, or of “public health and morals”. The General Assembly, the Human Rights Council and the Human Rights Committee have concluded that permissible restrictions on the Internet are the same as those offline.

Article 19(3) establishes a three-part test for permissible restrictions on freedom of expression:

- (a) *Restrictions must be provided by law.* Any restriction “must be made accessible to the public” and “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.³ Moreover, it “must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.⁴

¹ A/HRC/40/58, para. 23.

² Human Rights Committee, General Comment no. 34, CCPR/C/GC/34, para. 38.

³ CCPR/C/GC/34, para. 25.

⁴ Ibid.

- (b) *Restrictions must only be imposed to protect legitimate aims, which are limited to those specified under article 19(3).* The term “rights ...of others” under article 19(3)(a) includes “human rights as recognized in the Covenant and more generally in international human rights law”.⁵
- (c) *Restrictions must be necessary and proportionate for the protection of legitimate aims.* The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions “target a specific objective and [do] not unduly intrude upon other rights of targeted persons”.⁶ The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be “the least intrusive instrument among those which might achieve the desired result”.⁷

Article 20(2) of the ICCPR requires States Parties to prohibit any “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. As stressed by the Human Rights Committee in its general comment no. 34, “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.”⁸ The Human Rights Committee also commented that “[t]he acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3.”⁹ Furthermore, “[p]articipation in assemblies whose dominant message falls within the scope of article 20 must be addressed in conformity with the requirements for restrictions set out in articles 19 and 21.”¹⁰

Article 21 of ICCPR protects the right of peaceful assembly. In General Comment no. 37, the Human Rights Committee reiterates that everyone has the right of peaceful assembly without discrimination, and that ‘peaceful assemblies can sometimes be used to pursue contentious ideas or goals’, but that this does not call into question the protection such assemblies enjoy.¹¹ The Human Rights Committee also commented that States are required: “to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 [of the ICCPR] provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed”.¹²

In light of these standards, we would like to bring to your Excellency’s Government the following observations:

The formulations “undue treatment” and “writing of significant religious importance for a recognized religious community” are vague and broad so they would

⁵ CCPR/C/GC/34, para. 28.

⁶ A/HRC/29/32, para. 35; see also Human Rights Committee, General Comment no. 34, CCPR/C/GC/34.

⁷ Ibid.

⁸ CCPR/C/GC/34, para. 48.

⁹ CCPR/C/GC/34, para. 50.

¹⁰ CCPR/C/GC/37, para. 50 (which also refers to the Rabat Plan of Action, A/HRC/22/17/Add.4, appendix, para. 29, and the Beirut Declaration on “Faith for Rights”, A/HRC/40/58, annexes I and II).

¹¹ (CCPR/C/GC/37), para. 7.

¹² (CCPR/C/GC/37), para. 8.

fail to meet the requirement of “provided by law” under article 19(3) as they seem to lack the necessary clarity required for legal provisions. There is no definition in the Penal Code of what constitutes “undue treatment” or what objects would be of “significant religious importance”. We note that the revised version of the amendment seeks to address writings or objects of a recognized religious community. We understand that approximately 180 religious communities may be concerned by the new provision.

Limiting speech merely because of “undue treatment” of a religious symbol or for criticizing religious doctrine are not valid grounds for restrictions to the right to freedom of expression under article 19(3) of the ICCPR, let alone to criminalize and sanction such speech with imprisonment. It is long established that the right to freedom of expression applies to all kinds of information and ideas, including those that may shock, offend or disturb part of the population (Human Rights Committee, general comment No. 34 (2011), para. 11. See also European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, judgment, 7 December 1976, para. 49).

The protection of religion, its objects, its writings or religious sentiments, as such cannot serve as a basis to limit the right to freedom of expression consistent with article 19 ICCPR. In other words, these are not as such legitimate aims for the purpose of restricting freedom of expression. The amendment may provide privileged protection to sentiments deemed “religious”, regardless of whether any individual right is affected. Similarly, it may privilege a vague category of objects to the detriment of the exercise of individual rights. Despite the revisions made to the initial version of the law to protect acts performed for artistic purposes, the amendment may well disproportionately restrict political and artistic expressions and may have a serious chilling effect on public debate and artistic performance.

While we note the national security and public order concerns as expressed by the authorities in view of incidents of for example the burning of the Qur’an, we would like to stress that restrictions to the right to freedom of expression for the purpose of protecting national security and public order must meet the high threshold established under article 19(3) and cannot justify restrictions that are inconsistent with international human rights law. As highlighted by the Human Rights Committee, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.¹³ It further follows, as stressed by the Committee that when a State invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁴ As such, imposing criminal sanctions on any such acts, without an individual assessment of the threats posed to national security and public order, fails to meet the requirements of international human rights law.

Moreover, while advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited under article 20(2) of the ICCPR, we believe that the language in the amendment appears to fall significantly short of the standard for incitement, which has to be assessed on a case-by-case basis, taking into account the social and political context, status of the speaker, intent to incite the

¹³ CCPR/C/GC/34, para. 21.

¹⁴ *Ibid.*, para. 35.

audience against a target group, content and form of the speech, extent of its dissemination, and likelihood of harm, including imminence (See the Rabat Plan of Action’s six-point ‘threshold test’).¹⁵ However, the wording of the proposed amendment is not phrased in a way that protects individuals, but rather it is designed to protect certain, vaguely defined, religious writings or objects.

For the above reasons, we have reservations that the amendment appears to amount in fact to a blasphemy provision. Anti-blasphemy laws are inconsistent with international human rights law, as they represent unlawful restrictions to the right to freedom of expression. They have repeatedly been shown to violate not only the right to freedom of expression but also freedom of religion or belief, as well as having a stifling effect on open dialogue between religious beliefs and public discourse.¹⁶ We would like to reiterate observations made by Special Procedures mandate holders, who have stated that blasphemy laws are “counterproductive and may have adverse consequences for members of religious minorities, dissenting believers, atheists, artists and academics”.¹⁷ Anti-blasphemy laws do not contribute to a climate of religious openness, tolerance, non-discrimination and respect. To the contrary, they often fuel stereotyping, stigmatization, discrimination and incitement to violence.¹⁸ The Human Rights Committee commented that it would be impermissible to use anti-blasphemy laws “to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith”.¹⁹ Repeal of anti-blasphemy laws have been continuously called for by the Human Rights Committee, by Special Procedures and is also recommended by the Rabat Plan of Action²⁰ and the 18 Commitments on “Faith for Rights”²¹. As such, the new legislation may be used against activists or peaceful protestors demonstrating against a theocratic regime or against artists whose work involves the use of religious scriptures. We caution against the adoption of any such broad legislation that may lead to self-censorship to avoid criminal sanctions.

Moreover, such laws may encourage vigilante violence in response to actions that are deemed to constitute undue treatment of writings or objects of religious significance. This is not solely a theoretical concern given the many instances worldwide of violence in response to acts deemed blasphemous. Blasphemy accusations are often used to legitimize attacks through social mobilization, and often target minority groups and dissenters. As Special Procedures, we have in previous communications and reports documented and raised concerns about such violence. In this context, a principled protection of the right to freedom of expression in line with international human rights standards, and not its weakening, is crucial. Rather than restricting expressions on new grounds, we urge the Government to prohibit incitement to violence, discrimination, and hostility, in line with international law, and to promote positive measures to promote tolerance and dialogue.

The protection of the rights of all individuals, including from discrimination and incitement, are obligations of States. However, this cannot be achieved through anti-blasphemy laws but rather through strengthening the respect for and protection of human rights of individuals and groups. Without denying the need for restrictive measures in extreme cases which meet its threshold test, the Rabat Plan of Action

¹⁵ A/HRC/22/17/Add.4, appendix, para. 29.

¹⁶ A/HRC/25/58, paras. 59 and 70.

¹⁷ A/62/280, paras. 70-71 and 76-77.

¹⁸ A/HRC/31/18, para. 60.

¹⁹ CCPR/C/GC/34, para. 48.

²⁰ A/HRC/22/17/Add.4, appendix, paras. 19 and 25.

²¹ A/HRC/40/58, annex II, commitment XI.

emphasizes the primacy of non-restrictive measures to counter incitement to acts of hatred, for instance, through cross-boundary communication, educational efforts, community outreach, fair representation of minorities in public media and solidarity actions in support of targeted individuals or communities. We refer in this regard to the observations and recommendations made by the former Special Rapporteur on freedom of religion or belief following his official country visit to Denmark in 2016.²²

We note the introduction of a sunset clause of three years in the law. While we welcome the cautious approach of the Government on this matter, we have reservations, in view of the above, that the amendment appears to blur the essence of international human rights law, which protects individuals and not objects, both religious or non-religious. In this context, we urge your Excellency's Government to reconsider its intention to pass the amendment that will have the effect of unduly restricting freedom of expression. Rather, we encourage the Government to take affirmative measures that can protect freedom of expression and promote tolerance and broadmindedness.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations.
2. Please explain how the amendment is compatible with Your Excellency's Government's obligations under articles 18-21 of the ICCPR.
3. Please share official statistics on the number of attacks on religious symbols, how many of those attacks reached the threshold of article 20 of the ICCPR and what measures have been taken to address them under the existing laws. Please also provide information about measures taken to promote religious tolerance, non-discrimination and mutual understanding in society.
4. Please provide information about the legislative process, its expected timeline, along with efforts to ensure substantive civil society consultation and outreach.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

²² A/HRC/34/50/Add.1.

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Special Rapporteur on the rights to freedom of peaceful assembly and of association

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