



**Organization for Security and Cooperation in Europe (OSCE)  
Office for Democratic Institutions and Human Rights (ODIHR)**

## **Consultation report: State practices and the role of civil society in relation to incidents of desecration of religious texts, including Quran-burning**

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*Outcome report from a consultation held by the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), which included the participation of ODIHR's Panel of Experts on Freedom of Religion or Belief alongside members of Muslim communities and institutional representatives and experts on combatting intolerance against Muslims*

The opinions and information contained in this publication do not necessarily reflect the policy or position of ODIHR.

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## 1. Introduction

On 18 December 2023, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) hosted a consultative meeting examining State practices and the role of civil society in relation to incidents of desecration of religious texts, including Quran-burning. The consultation was held during the annual meeting of ODIHR's Panel of Experts on Freedom of Religion or Belief, and efforts were made to bring other actors with relevant experience and perspectives to the table. Thus, the meeting brought together actors ranging from academics working on issues related to freedom of thought, conscience, religion or belief (FoRB) and on intolerance against Muslims, representatives of Muslim communities and wider civil society, representatives of intergovernmental organizations, to representatives from OSCE participating States. It also achieved both a gender and intergenerational balance. This report will discuss why the consultation was held, provide background information as to the relevant legal and policy framework, and then present the discussions that were held and recommendations arising from the discussions.

### Background to the consultation

The consultation was held in response to requests from ODIHR stakeholders and direction from ODIHR's director, spurred by the adoption of UN Human Rights Council Resolution 53/1 and successive Quran burnings in Denmark and Sweden.

The concept note circulated in advance of the event highlighted that:

- In recent years, there have been increasing reports of the public desecration of religious texts concentrated in certain parts of the OSCE area. Some of these incidents have become public events, announced in advance, with the location chosen symbolically or politically to ensure that the relevant religious community and the general public are aware of the planned act. Some protests gather significant crowds of spectators or supporters.
- States have an obligation to facilitate peaceful assembly, including offering police protection, whether the organisers have officially notified a state or not.
- Of the various texts to be desecrated, the one which has made headlines within the OSCE the most recently and repeatedly is the Quran. Public burnings of the Quran are often coupled with anti-Muslim, racist, and anti-migrant rhetoric.
- Neither freedom of expression nor freedom of religion or belief protect Muslims against criticism or desecration of the Quran; indeed, no religious or belief community enjoys such protection.
- The act of Quran-burning is perceived as deeply offensive by many Muslims. Such acts are regarded by many, not only within the Muslim communities, as acts that can promote and perpetuate a culture of intolerance or even hatred towards Muslims, and instil a sense of fear and insecurity within communities, further deepening social fissures and raising a challenge for modern, pluralistic societies.
- In recent years, state responses to the desecration of religious texts have been varied. Whereas Sweden has made public statements condemning desecrations of the Quran,

in 2023, neighbouring Denmark passed a law making it illegal to burn, soil, trample or cut “objects of significant religious significance to a religious community”.<sup>1</sup>

- At the international level, UN Human Rights Council (HRC) Resolution 53/1 appears to call for a greater emphasis on prosecution of desecration acts, placing less emphasis on the threshold for incitement under international human rights law, as established by the Rabat Plan of Action.

#### 1.1.1. ODIHR’s Mandate and the OSCE Commitments

##### *ODIHR’s mandate*

The Office for Democratic Institutions and Human Rights (ODIHR) is the principal OSCE institution tasked with assisting OSCE participating States in their efforts to implement their human dimension commitments, including to ensure full respect for human rights and fundamental freedoms; to abide by the rule of law; to promote principles of democracy; to build, strengthen and protect democratic institutions; and to promote tolerance and non-discrimination throughout their societies. The Office also plays an important role in enhancing dialogue among States, governments and civil society as one way of increasing understanding and cooperation between these actors.

ODIHR is, therefore, committed to the promotion and protection of the human right to freedom of thought, conscience, religion or belief (FoRB) as a means of strengthening security within the OSCE area. The office has also been mandated to assist participating States in their efforts to counter all forms of intolerance and to combat hate crime, including anti-Muslim hatred. This consultation was organised by ODIHR’s Freedom of Religion or Belief Programme in cooperation with the Tolerance and Non-discrimination Department.

##### *OSCE commitments*

A number of OSCE participating State commitments relate to the topics that were under discussion in this consultation. For example, in the 1994 Budapest Document, participating States reaffirmed “their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers”. The 1999 Vienna Document asserts that participating States will “take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers”. Similarly, the 2013 Kyiv Ministerial Council Decision emphasizes “the link between security and full respect for freedom of thought, conscience, religion or belief.”

In the 1990 Copenhagen Document, participating States also agreed that: “Everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”<sup>2</sup> Participating States also reaffirmed that “everyone will have the right to freedom of expression including the right to communication [and] freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. As

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<sup>1</sup> <https://apnews.com/article/denmark-desecration-law-holy-texts-quran-931120e5463a3e15c372a13c862aa775>

<sup>2</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), para. 92

the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly note in relation to the content being expressed, “any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate”<sup>3</sup>, which is true “even if it is hostile or insulting to other individuals, groups or particular sections of society”. The law should, however, protect against the advocacy of racial or religious hatred, which constitutes incitement to discrimination, hostility or violence and the Guidelines emphasize that “incitement to imminent violence should be prohibited”.<sup>4</sup>

OSCE participating States recognize independent media's indispensable role in upholding transparency, fostering governmental accountability, and, crucially, safeguarding human rights and fundamental freedoms. OSCE commitments emphasize that safeguarding the freedom and independence of media represents a foundational aspect of the right to freedom of expression (FoE). The 1991 Moscow Document explicitly reaffirms “...the right of the media to collect, report and disseminate information, news and opinions.” Though restrictions may be permissible, they must remain strictly in line with international standards.

OSCE participating States have also committed themselves to address racism, xenophobia, and other forms of intolerance and discrimination, including intolerance and discrimination against Muslims. In a series of Ministerial Council Decisions, participating States have underlined the need for a comprehensive and cross-cutting approach to these issues, at the same time acknowledging the specificities, uniqueness and historical backgrounds of different forms of intolerance, and recognizing the threat they pose to the security of individuals and communities, as well as wider social stability and security (Porto 6/02, Maastricht 3/03 & 4/03, Sofia 12/04, Ljubljana 10/05, Brussels 13/06, Madrid 10/07, and Athens 9/09).

Notably, the 2012 OSCE High Commissioner on National Minorities' Ljubljana Guidelines on the Integration of Diverse Societies serve as a comprehensive framework that can assist participating States in developing and implementing policies and practices that foster social cohesion and integration in diverse societies, while acknowledging and respecting the diversity of various communities, including religious groups.<sup>5</sup>

States have also committed themselves to address intolerant discourse while respecting human rights and fundamental freedoms (Maastricht 04/03; Ljubljana 10/05). The Madrid Decision underscored the fact that the primary responsibility for addressing acts of intolerance and discrimination rests with participating States, including their political representatives.

Relatedly, states must create a domestic environment that promotes “tolerance and non-discrimination [and counters] prejudices and misrepresentation”.<sup>6</sup> However, it is imperative that this commitment does not manifest as censorship or overbearing regulation.<sup>7</sup> Creating such an environment may include encouraging “the adoption of voluntary professional standards by journalists, media self-regulation and other appropriate mechanisms for ensuring increased

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<sup>3</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, 3<sup>rd</sup> edition. (2020), para. 149 [Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)]

<sup>4</sup> Ibid para. 150

<sup>6</sup> OSCE Ministerial Council Decision No. 6 Tolerance and non-discrimination.

<sup>7</sup> See Decision No. 10/05, particularly “concrete measures which do not endanger freedom of information and expression, in order to counter xenophobic stereotypes, intolerance and discrimination in the media”

professionalism, accuracy and adherence to ethical standards among journalists”.<sup>8</sup> In this area, the invaluable work of the OSCE Representative on Freedom of the Media (RFoM) champions a collaborative approach. By working directly with journalists and media organizations, the RFoM works to promote the creation of rights-based, self-regulatory frameworks across the OSCE area.<sup>9</sup>

### 1.1.2. International Legal & Policy Framework

OSCE participating States are party to various international and regional human rights standards, which are largely reflected in OSCE human dimension commitments. Whilst not every standard is binding for each participating State, this section draws out key aspects from these standards to provide a framework and reference points with which to understand the discussions that took place in the consultation.

The **International Covenant on Civil and Political Rights ICCPR** is a key international human rights treaty that provides protections for civil and political rights and is part of the International Bill of Human Rights.

Article 18 of the ICCPR relates to freedom of thought, conscience, religion or belief. It provides that:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

The nature, status and scope of the right to freedom of thought, conscience, religion or belief (FoRB), as well as States’ obligations under it, is set out in ODIHR’s Freedom of Religion or Belief and Security Policy Guidance,<sup>10</sup> particularly chapter 2 on “OSCE Commitments and international standards on freedom of religion or belief”.

Notably, however, the right is often divided into two parts:

- a forum internum (internal part), including the right to think, have, adopt, change, or leave a religion or belief; and,

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<sup>8</sup> OSCE Ministerial Council Decision No. 13/06, 2006, para. 9

<sup>9</sup>[https://www.osce.org/fom/statements?filters=+im\\_taxonomy\\_vid\\_3:\(981\)&solrsort=ds\\_date%20desc&rows=10](https://www.osce.org/fom/statements?filters=+im_taxonomy_vid_3:(981)&solrsort=ds_date%20desc&rows=10)

<sup>10</sup> <https://www.osce.org/odihhr/429389>

- a forum externum (external part), which includes the ability to practice or manifest a religion or belief.

The right enables individuals to form and have opinions that are based on conscience, even if they incorporate beliefs that others may find objectionable, or even offensive. The ability to critique, criticise or offer commentary on religious or belief doctrines, convictions or practices is an important part of the right as, amongst others, it protects against discrimination against those who hold different views from/within a particular religious or belief community. Therefore, this right does not protect against the desecration of a religious text, nor does it insulate religions from criticism. Moreover, this right does not offer a hierarchy of religions or beliefs, whether new or old, traditional or non-traditional. In protecting the right to adopt, reject or criticise a religion or belief, FoRB and freedom of expression (FoE) intersect and mutually reinforce each other.

Article 19 of the ICCPR relates to freedom of expression. It provides that:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include 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 choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

The desecration of religious texts will, based on a contextual and case-by-case assessment, fall into one of three categories:

- Protected expression
- Limitable or prohibited expression
- In extreme circumstances, criminal expression

The baseline for whether expression is protected, prohibited, or criminal is elaborated in states obligations under public international law, and primarily international human rights law. Under international human rights law, all forms of expression are, as a rule, protected except when a state lawfully limits speech under Article 19(3) of the ICCPR (above), or when expression must be prohibited under Article 20 of the ICCPR.

Article 20(2) of the ICCPR provides that speech must be “prohibited by law” where it amounts to “advocacy of national, racial or religious hatred that constitutes incitement to discrimination or violence”. Restrictions on expression falling within the scope of Article 20(2) must also comply with the strict requirements of Article 19(3)<sup>11</sup>, be provided by law to protect national security, public order, health or morals, or the rights or reputation of others, conform to the strict tests of necessity and proportionality, and be non-discriminatory. Restrictions on

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<sup>11</sup> UN Human Rights Committee, General Comment No. 34 on Article 19 ICCPR (2011), para. 50.



criticisms of religions, prohibitions of displays of “lack of respect” towards religion, or blasphemy laws, as such, are incompatible with human rights law, except in cases where the statements in question, judged on a case-by-case basis, rise to the level of incitement.<sup>12</sup>

The **Rabat Plan of Action**<sup>13</sup> (Rabat) is a non-binding text that has, nevertheless, met with the broad approval of the international community. It provides for case-by-case assessments of acts of expression, to determine when an act may rise to the level of incitement. To this end, Rabat elaborates six criteria for the assessment of a statement: the ‘socio-political context’, ‘position or status of the speaker’, ‘intent’, ‘content’, ‘extent of dissemination’ and the ‘likelihood and imminence of harm’.<sup>14</sup> Each of these criteria are illustrated with grounds for consideration that may allow a judicial, administrative, or law enforcement body to determine whether an act may fall under the scope of ICCPR Article 20(2), and if so, whether it is severe enough to merit criminal, or some other sanction.

On this point, it is important to note that ICCPR Article 20(2) does not require the *criminalisation* of expression within its scope – simply that such expression is “prohibited by law”. Rabat further specifies that “criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations”. In essence, this means that States can choose whether to address most incidents of incitement by means of civil, administrative or criminal law, but that the presumption should be *against* criminalisation.

The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD), in Article 4(a), additionally requires the prohibition of violence or incitement based on race as well as the dissemination of “ideas based on racial superiority or hatred”. The committee has noted that provisions of CERD, including Article 4 may be engaged by “expressions of Islamophobia, antisemitism and other similar manifestations of hatred against ethno-religious groups”.<sup>15</sup> In their General Recommendation 34, the CERD’s treaty body has interpreted this to mean a regime very similar, but distinct to that provided by ICCPR Article 20(2). Notably, the Committee appears to hold that ‘dissemination’ of ideas based on racial or ethnic superiority or hatred is a separate class of infraction to those of incitement.<sup>16</sup> In assessing whether an act of ‘dissemination’ *or* ‘incitement’ may amount to an offense punishable by law the Committee provides four “contextual factors” to be taken into account, which use, almost verbatim, language from the Rabat’s six-part threshold test.<sup>17</sup> The criteria differ, however, on being unclear as to the element of intent required, and not discussing at all whether there is a likelihood of imminent harm required.<sup>18</sup> By contrast when discussing *only* incitement in the

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<sup>12</sup>*Ibid*, Para. 48

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<sup>14</sup> UNDOC A/HRC/22/17/Add.4 para. 29

<sup>15</sup> See CERD General Recommendation No. 35 ‘Combating Racist Hate Speech, Committee on the Elimination of Racial Discrimination (CERD/C/GC/35) (2013), para. 6

<sup>16</sup> Article 4(a) CERD, CERD General Recommendation No. 35, para. 13

<sup>17</sup> *Ibid*, para. 15

<sup>18</sup> *Ibid*, note, that there are elements of intent introduced into the Committees thresholds under “the reach of the speech”, which includes the assessment of whether a speech act is part of a deliberate strategy aimed at an ethnic or racial group, and “objectives of the speech”, which provide that speech protecting or defending rights should not be subject to criminal or other sanction. Neither of these are clear as to whether these are aggravating factors, or required elements of an offence. By contrast the Rabat Plan of Action states that intent is required and that “Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the Covenant”.

following paragraph, the Committee holds that intent and imminence of harm must be considered.<sup>19</sup> This may mean that the dissemination offense envisioned by the CERD is one of strict liability, with no associated mental state or link to wider harm required.

However, all restrictions on speech under article 4 CERD must be with “due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5” of the CERD, including freedom of expression, and freedom of religion or belief.<sup>20</sup> Moreover, the Committee has declared freedom of expression to be the “most pertinent principle” when calibrating the legitimacy of speech restrictions.<sup>21</sup> Some commentators have interpreted this, in conjunction with an interpretation of the CERD’s ‘object and purpose’ to mean that both the CERD’s incitement and dissemination prohibition regimes should be interpreted in light of Article 20 ICCPR and the Rabat Plan of Action.<sup>22</sup> In any case, the CERD Committee holds that criminalisation should only be used for the most serious cases, and governed by the principles of legality, proportionality and necessity.<sup>23</sup>

States have further obligations under international law to criminalise the most extreme forms of incitement. For example, **Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide** proscribes “direct and public incitement to commit genocide”, which, read in concert with Articles I and IV – VIII, create a binding obligation for States to criminally prosecute such actions.<sup>24</sup> This is not to say that speech may not be criminalised before it reaches this bar – simply that this is the absolute limit for OSCE participating States for the non-criminalisation of expression under international law.

Some OSCE States have additional obligations in this regard, including, notably EU Member States (EU MS) under **EU Framework Decision 2008/913/JHA**. This EU decision requires MS to criminalise incitement to hatred or violence on the grounds of race, colour, religion, descent or national or ethnic origin when it is carried out in a manner which may disturb public order, or is threatening, abusive or insulting.<sup>25</sup>

Under this tripartite distinction, most forms of desecration of religious texts or symbols will be legitimate forms of expression. In very specific circumstances, some desecration incidents may be limitable on the strict grounds enumerated in ICCPR article 19(3), including the necessity to protect public order or the rights of others. More rarely still, some must be prohibited because the desecration amounts to incitement as understood under Article 20(2) of the ICCPR and Rabat, or may be a form of discrimination prohibited by article 4 CERD. For such incidents, the restriction may take the form of an administrative penalty, or in grave circumstances, such as incitement to violence, criminal prosecution. In the most extreme of circumstances, for example, where the desecration of religious symbols form part of incitement to genocide, such expression must be considered criminal.

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<sup>19</sup> *Ibid* para 15

<sup>20</sup> CERD Article 4, Chapeau

<sup>21</sup> CERD Communication No. 30/2003, Jewish Community of Oslo et al v. Norway, 2005, para 10.5; CERD General Recommendation No.35 para 12

<sup>22</sup> Prohibiting Incitement to Discrimination, Hostility, or Violence, Policy Brief, Article 19 (2012) Recommendation 5, p.25

<sup>23</sup> CERD General Recommendation No.35, para. 10

<sup>24</sup> Convention on the Prevention and Punishment of the Crime of Genocide, as approved by the General Assembly in UNGA Resolution 260 A (III), 9 December 1949

<sup>25</sup> See Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, art. 1

Further complicating the issue, many instances of desecration occur during protests and other public assemblies which States are under the obligation to facilitate. Article 21 of the ICCPR protects the right of peaceful assembly, which encompasses a broad range of communal forms of expression, including those that pursue contentious goals or ideas.<sup>26</sup> “Peaceful” in the context of freedom of peaceful assembly, should be interpreted to “include conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote”.<sup>27</sup> The spectrum of conduct that either constitutes “violence”, or is regarded as capable of causing “violence”, should be “narrowly construed, limited in principle to using, or overtly inciting others to use, physical force that inflicts or is intended to inflict injury or serious property damage where such injury or damage is likely to occur”; the fact that certain content or messages may provoke strong reactions by non-participants does not make an assembly “non-peaceful”.<sup>28</sup> By this definition, a public gathering involving the desecration of a religious symbol would, as such, be a protected form of assembly unless a specific and contextual assessment concludes that it reaches the high threshold of incitement.

Permissible limitations on this right must align with the strict human rights tests of legality, legitimacy, necessity, proportionality and non-discrimination. Notification systems requiring that those who intend to organize a peaceful assembly must inform the authorities in advance and provide certain salient details are permissible “to the extent necessary to assist authorities in facilitating the smooth conduct of peaceful assemblies and protection of the rights of others”<sup>29</sup>. A failure to notify cannot render an assembly unlawful and must not by itself lead to restrictions on participants or dissolution of a peaceful assembly, and the state must continue to facilitate and protect any peaceful assembly, regardless of notification.<sup>30</sup>

In addition to the UN international human rights treaties, many OSCE participating States, are party to at least one regional human rights treaty. Most commonly, this is the **European Convention on Human Rights (ECHR)**. Under Article 9, the ECHR guarantees a similar, but textually and practically distinct conception of the right to FoRB. In recent years, jurisprudence from the European Court on Human Rights (ECtHR) has compounded this difference, increasingly distinguishing the scope of the ECHR right to FoRB, from that under the ICCPR.

Under the ICCPR, FoRB, like freedom from torture or the right to life, is a non-derogable right. This means that a State cannot seek to derogate from Article 18 of the ICCPR and, as such, that no element of the right to FoRB can be suspended due to a public emergency that threatens the life of a nation. While certain aspects of the right to FoRB are absolute (unable to be infringed upon for *any* reason), namely the ‘internal dimension’ related to belief, the freedom *to manifest* one’s religion or beliefs, can be limited if such restrictions are prescribed by law and necessary to pursue one of the strictly limitative grounds provided for by Article 18(3), namely public

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<sup>26</sup> Human Rights Committee General Comment 37 (2020), paras. 6-7

<sup>27</sup> OSCE and Venice Commission Guidelines on Freedom of Peaceful Assembly (3<sup>rd</sup> ed., 2020), para. 47, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e).

<sup>28</sup> *Ibid.* para. 51. [Accessed February 2024]; see also Human Rights Committee’s General Comment 37, para 19, noting footnote 19’s explicit reference to the Rabat Plan of Action.

<sup>29</sup> Human Rights Committee General Comment 37 (2020), para. 70

<sup>30</sup> See, for example, *Kivenmaa v. Finland* (HRCtee, 1990); see also OSCE and Venice Commission Guidelines on Freedom of Peaceful Assembly (3<sup>rd</sup> ed., 2020), para. 112, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e) [ehttps://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e).

safety, order, health, morals, or the rights of others. Differently from similar provisions on other rights, national security is not a permissible ground for restrictions on FoRB. The ECHR provides for these same grounds of limitation, but they are rendered less protective by the Convention's absence of FoRB among its non-derogable rights, and the court's long history of affording States a wide margin of appreciation in determining when a derogation is required, and what amounts to a valid derogation.<sup>31</sup>

This difference may be more academic than substantive. In reality, a public emergency threatening the life of the nation will fall under the ICCPR's concepts of 'public safety, health, order, morals or the rights of others', and as one participant at the consultation noted, states are increasingly interpreting national security measures as part of 'public safety' or 'public order'. This reportedly causes a 'blurring' of state motivations for limitation of human rights, that several participants felt to be undermining the ability to clearly assess restrictions based on legality, necessity, or proportionality. Indeed, following 9/11 and other terrorist attacks within the OSCE area, Muslim communities have found that restrictions to their religious practice have been justified in this way. This is true even though all states party to the ECHR are also parties to the ICCPR so that their obligations regarding the non-derogability of freedom of religion or belief remain the same.

One significant departure between the two regimes concerns derogation in times of "war" (considered in this instance as a synonym for armed conflict). States continue to be bound by their human rights obligations during times of armed conflict, and may only selectively and temporarily cease the application of parts of a human rights treaty through lawful derogation.<sup>32</sup> Derogations from human rights obligations can be invoked in case of exceptional circumstances described as a "public emergency which threatens the life of the nation" (Article 4(1) of the ICCPR and Article 15(1) of the ECHR). Under the ICCPR, war/armed conflict is a type of public emergency that must meet the high threshold of "threatening the life of the nation", and in any case FoRB is non-derogable, whereas Article 15(1) of the ECHR explicitly provides for war as a separate ground for derogation, including for FoRB.<sup>33</sup> The current practice of ECHR party states to consider armed conflict to provide grounds for derogation without any declaration,<sup>34</sup> combined with the "primarily territorial" nature of the ECHR,<sup>35</sup> raises challenges regarding the extra-territorial application of ECHR obligations in conflict. This may mean that the ECHR provides for a lower level of obligations for human rights in

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<sup>31</sup>See for examples *Lawless v. Ireland* (ECtHR, 1961); *Ireland v. United Kingdom* (ECtHR, 1978); *A & Others v. United Kingdom* on temporal scope (ECtHR, 2009);

<sup>32</sup> See, for example, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ GL No 131, [2004] esp. para. 106; *Armed Activities on the Territory of the Congo, Congo, the Democratic Republic of the v Uganda*, Judgment, Merits, ICJ GL No 116, [2005] ICJ; Human Rights Committee General Comment No. 36, esp. para 64; *Al-Skeini and Others v the United Kingdom*, (ECtHR, 2011)

<sup>33</sup> Whether the conflict amounts to a public emergency that threatens the life of the nation is, under the ICCPR, to be assessed on a case-by-case basis. See Human Rights Committee, General Comment 29 (2001), para. 3. The ECtHR leaves a wide margin of appreciation to the national authorities to determine whether a public emergency threatens the life of the nation, although States do not enjoy an unlimited discretion in this respect (see e.g., *Brannigan and McBride v. the United Kingdom*, 1993, para 43; *Mehmet Hasan Altan v. Turkey*, 2018, para 91; *Şahin Alpay v. Turkey*, 2018, para 75).

<sup>34</sup> See *Hassan v. United Kingdom* (ECtHR, 2014)

<sup>35</sup> See *Bankovic et al v. Belgium*, (ECtHR, 2001) para. 80

armed conflict, for example where OSCE participating States' troops respond to incidents of desecration in peacekeeping roles, or during occupation.

Another significant difference is the disparity in scope of the two conceptions of freedom of religion or belief, due to developing judicial interpretations. In particular, the European Court of Human Rights (ECtHR) has taken an inconsistent approach to sanctions for blasphemy, or expression which is offensive or inimical to religious identity. The Court has regularly dismissed communities' claims against forms of expression considered offensive, and which allege a violation on the basis of a state's failure to act.<sup>36</sup> On the other hand, where the state has acted to curtail expression offensive to religious communities in line with its own legal and policy framework, including due to blasphemy laws, the ECtHR has still found no violation.<sup>37</sup> By contrast, and as outlined earlier, any blasphemy, criticism of religion, or offensive speech that does not meet the very high threshold of incitement, is protected speech under the ICCPR.<sup>38</sup> The two mechanisms have also been departing significantly on restrictions relating to religious symbols, and clothing, with the ECHR regularly finding no violation of the right to FoRB, and allowing the State a wide margin of appreciation in this sphere.<sup>39</sup>

Expert meeting participants noted that some ECHR State parties were complying with the lower standard of protection afforded under the ECHR, but failing to meet their higher burden of protection under the ICCPR. This, they contended, had ramifications for the wider social context in which desecration events occur, for example by increasing the scale and scope of discriminatory restrictions upon religious or belief communities. States are bound to implement their treaty obligations in good faith, and participants reaffirmed that States must meet their treaty obligations under both regimes.

### 1.1.3. Speech Acts, Hate Speech, Incitement, and Hate Crime

The desecration of religious symbols could be considered a **speech act**, but whether or not it can be viewed as hate speech is debatable. **Hate speech** is undefined in international law and, as a result, has many, contested legal and non-legal definitions that vary between jurisdictions. The UN Strategy and Plan of Action on Hate Speech categorises it as expression that “attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of [...] their religion, ethnicity, nationality, race, colour, descent, gender

or other identity factor”.<sup>40</sup> The more legally precise term ‘**incitement**’ is important as speech may or may not amount to incitement to hostility, discrimination or violence as defined under international human rights law, and if it does not, it may instead be offensive, but protected

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<sup>36</sup> See, for example, *Church of Scientology and Others v. Sweden*, (ECtHR, 1980); *Choudhury v. United Kingdom*, (ECtHR, 1991)

<sup>37</sup> See, for example, *Otto-Preminger-Institut v. Austria* (ECtHR, 1995), *I.A v. Turkey* (ECtHR, 2005), *E.S v. Austria*, (ECtHR, 2018)

<sup>38</sup> Human Rights Committee General Comment 34 (2011) Para. 48

<sup>39</sup> Contrast, for example, *S.A.S v. France* (ECtHR, 2014) with *Yaker v. France* (HRCtee, 2022), cases in which the bodies came to contradictory conclusions on whether a ban on Islamic clothing is an unlawful interference with the right to FoRB.

<sup>40</sup> [https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action\\_plan\\_on\\_hate\\_speech\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf) p.2

speech.<sup>41</sup> In the words of one consultation participant, the desecration of holy books can be an expression of hate; however, it can also be a political, artistic or rights affirming statement.

Even if expression is perceived by some as “deeply offensive”, this does not *per se* strip it of its protections under the right to freedom of expression.<sup>42</sup> However, it is important to note that deeply offensive expression, even where it does not amount to prohibited speech, may have significant psycho-social impacts upon an individual or community.<sup>43</sup> This is especially the case where that speech appears in a context of structural intolerance, discrimination or violence. As such, while restrictions on freedom of expression (including through a judicial response) may not be appropriate, there are other steps states could take to acknowledge, address and minimise any harms experienced by religious or belief communities, in line with their positive human rights and non-discrimination obligations, which are addressed below.

The OSCE defines a ‘**hate crime**’ as “any criminal offense committed with a bias motive”, where the victim is targeted on the basis of real or perceived protected characteristics, including race, religion or belief, national or ethnic origin.<sup>44</sup> In many jurisdictions, the desecration of a religious symbol or text will not be a crime in and of itself. In the absence of an underlying criminal act, there can be no hate crime under the OSCE definition. In some circumstances, however, there will be contextual elements of a desecration act that can lead to it becoming a criminal act, such as where it may form an element of a threat of violence, incitement or a ‘disturbance of the peace’. In some states, an act of desecration itself may be criminalised, irrespective of contextual elements. In this latter instance, the act would meet the definition of a ‘hate crime’; however, the criminalisation itself may be incompatible with human rights law, as it may amount to an unlawful restriction on freedom of expression.

Whilst the desecration of religious texts is not considered as a hate crime within the OSCE’s definition, ODIHR’s work on hate crimes provides context to the situation of various targeted groups and communities within the OSCE area.<sup>45</sup> Moreover, its work on victim support may additionally be of use in how to effectively address trauma and other related harms among communities arising from hate incidents. Irrespective then of the legal classification of an act of desecration, effective state responses to the impacts on individuals and communities can be

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<sup>41</sup> For further information on the relevant bar for the restriction of incitement, please see the Rabat Plan of Action’s 6 part test.

<sup>42</sup> Human Rights Committee General Comment 34 (CCPR/C/GC/34), para. 11. See also e.g., ECtHR, *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, para. 49, where the ECtHR held that Article 10 of the ECHR protects “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.

<sup>43</sup> See “Exploring the community impacts of hate crimes” Perry, B. (in *The Routledge International Handbook on Hate Crime* eds, Hall N; Corb A; Giannasi P; Grive J (2014); See also [http://irep.ntu.ac.uk/id/eprint/27739/1/5298\\_Zempi.pdf](http://irep.ntu.ac.uk/id/eprint/27739/1/5298_Zempi.pdf)

<sup>44</sup> See OSCE Ministerial Decision No.09/09; See also <https://www.osce.org/files/f/documents/1/4/523940.pdf> p. 15

<sup>45</sup> Since 2009 and further to the mandate given to it by OSCE participating States, ODIHR has collected hate crime data and information from OSCE countries, civil society, and intergovernmental organizations and has published an annual report on hate incidents across the OSCE region. The data encompasses incidents across various bias motivations, as reported, including race, religion or belief, ethnicity, disability, sexual orientation, gender, and gender identity. This reporting is not only instrumental for advocacy and raising awareness but also serves as a tool for governments and civil society to enhance their efforts to combat hate crimes. The 2023 hate crime report is available at: <https://hatecrime.osce.org/infocus/2022-hate-crime-data-now-available>).

guided by the same principles, especially where an event has a harmful and traumatic impact. ODIHR's work in supporting hate crime victims is based on the understanding that hate crimes have a profound and long-lasting emotional and psychological impact on individuals, necessitating adequate protection and support to ensure their complex and individual psychosocial needs are met.<sup>46</sup>

#### 1.1.4 Defamation of Religions vs. Incitement to Hostility, Discrimination and Violence

The language ‘**Defamation of Religions**’ entered human rights law discourse when the Organisation of Islamic Cooperation (OIC) introduced a resolution to the UN Human Rights Commission entitled “Defamation of Islam”.<sup>47</sup> For over 10 years, successive resolutions were passed at the UNHRC and UNGA that urged states to “to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion”, and make the enjoyment of freedom of expression contingent upon a duty not to treat religions “with contempt”.<sup>48</sup>

The ‘Defamation of Religions’ resolutions were heavily criticised by human rights experts and civil society as incompatible with States’ obligations under IHRL.<sup>49</sup> Notably, they alleged that this paradigm insulated religions from criticism, created rights for religions, rather than individuals, and called for broad, vague and unlawful restrictions on freedom of expression. Support for the resolution waned over time, and in 2010, the OIC itself moved past the defamation of religions paradigm. At the Human Rights Council’s 18<sup>th</sup> Session, the OIC Secretary General presented an 8-point plan at on “the criminalisation of incitement to imminent violence based on religion”, adopting the language of restriction from Article 20(2).<sup>50</sup>

The OIC’s 8-point plan became the catalyst of a major paradigm shift that occurred the next year at HRC18. In September 2011, Ireland introduced the UN Human Rights Council Resolution 16/18, on combating discrimination, intolerance and incitement to violence on religious grounds.<sup>51</sup> The resolution created a five point action plan for States to combat discrimination on the basis of religion or belief, including “Adopting measures to criminalize

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One such initiative is ODIHR’s ESTAR (Enhancing Stakeholder Awareness and Resources for Hate Crime Victim Support) project implemented between 2020 and 2022. This project focuses on supporting participating States and civil society in creating effective structures, collaboration mechanisms, and tools to ensure that hate crime victims are protected, have full access to justice, and receive specialist support. To this end ESTAR provides a number of resources<sup>46</sup> aimed at: i) Enhancing understanding and responding to victim’s needs; ii) Improving the status of hate crime victims in the criminal justice system; iii) Strengthening the ability of national criminal justice system agencies to ensure sensitive and respectful treatment of hate crimes victims; iv) Assisting States to identify strengths and gaps in their national systems for hate crime victim support in order to enhance protection and support; v) Promoting effective collaboration between victim support organisation and the criminal justice system; vi) Providing guidance to support support/protection providers to develop and strengthen services for victims of hate crimes (See: <https://hatecrime.osce.org/infocus/odihrs-impact-2021-tools-to-support-hate-crime-victims>).

<sup>47</sup> UNDOC E/CN.4/1999/SR.61, paras 1-9

<sup>48</sup> See: UNDOC A/HRC/RES/7/19 paras 9-10

<sup>49</sup> <https://www.osce.org/files/f/documents/4/e/34182.pdf>

<sup>50</sup> <https://www.universal-rights.org/the-arc-of-the-covenant-the-unfinished-business-of-un-efforts-to-combat-religious-intolerance/>

<sup>51</sup> UNDOC A/HRC/RES/16/18

incitement to imminent violence based on religion or belief’.<sup>52</sup> With its twinned follow up and implementation mechanism, the ‘Istanbul Process’, resolution 16/18 became the primary policy framework for discussion on religious intolerance and freedom of expression within the UN System.

In July 2023, for the first time since the 16/18 consensus, the annual resolution on “combating discrimination, intolerance and incitement to violence on religious grounds” (Resolution 53/1) was adopted not by consensus, but by a vote. This was due to language inserted into the resolution, which closely linked the burning of the Quran and other holy books with incitement, and, therefore, as de facto prohibitable speech. Resolution 53/1’s language also places heavy emphasis on criminal prosecution as the key response to desecrations of religious symbols, texts, and places of worship, in contrast to the legal framework outlined above. The resolution established an interactive panel discussion for HRC55 in February/March 2024. Substantive comments and concerns raised by the participants on this topic are addressed under the ‘Challenges and Best Practices’ section of this report.

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<sup>52</sup> *Ibid*, para 5 (f)



## 2. The Consultation

The consultation was structured around the following themes:

- (a) trends in the desecration of religious texts and the impact upon communities;
- (b) the roles of the state and civil society in addressing acts of desecration; and,
- (c) challenges for and best practices of these actors.

The sub-sections below reflect this same structure.

The discussion was held under Chatham House rules, namely that none of the statements made below are attributable, and contributions have been anonymised. The themes, issues, conclusions and recommendations elaborated within these pages solely reflect the views of the participants in the meeting as perceived by the report's author and do not represent ODIHR's position on any of these matters.

Expression and speech are more than words, but also cover actions performed by people. Experts recognised that where speech acts amount to incitement, for example, restriction of speech is, or might be, necessary. More broadly, however, the participants in the consultation argued for a shift in the discourse surrounding the desecration of religious texts and symbols away from a narrow focus on whether acts of desecration are *per se* a human rights violation. Such an approach arguably drives polarisation, and may lead to undue restrictions to both freedoms of religion or belief and freedom of expression.

Participants in the consultation rather emphasised the importance for states to meet positive human rights obligations, including through the redirection of resources towards education initiatives, psychosocial support for communities where they experience wider harms, and participants repeatedly encouraged grassroots initiatives, including dialogue between communities.

Such recommendations echo international standards and OSCE commitments. For example, the UN Human Rights Committee recognises that the International Covenant on Civil and Political Rights (ICCPR) can only be guaranteed “by a combination of negative and positive State obligations”<sup>53</sup>. The Convention of the Elimination of Racial Discrimination (CERD) in Article 7 notes that states must pursue measures “in the fields of teaching, education, culture and information” in order to effectively combat discrimination. Both reaffirm the tripartite nature of human rights obligations (i.e., to respect, protect, and fulfil), which require states to not only prevent violations, but to also create an enabling environment for the enjoyment of rights generally.<sup>54</sup>

### 1. Trends in the Desecration of Religious Texts

The consultation began by discussing current trends across the OSCE area related to the desecration of religious texts. Discussions were structured around three main themes/sub-themes: (a) the wider context and underlying themes that give rise to an event, (b) the

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<sup>53</sup> “Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (2nd edn, Engel 2005) xxi.

<sup>54</sup> <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>

similarities and differences in the modalities of the events themselves; and, (c) the effects of an event on individuals, communities, and societies at large.

### 2.1.1. Wider Context and Underlying Themes

Participants noted that the desecration of religious texts and symbols does not occur in a vacuum. The events themselves are often catalysed by wider societal trends and contexts, which also change how events are experienced by affected communities. How the events are experienced by affected communities in turn have implications in terms of how the State might pursue an effective response.

Participants highlighted several overriding issues that may impact when, why and how desecration of religious symbols occur, and how such acts are perceived by the target community.

- *Securitisation*

Merely “being religious is suspicious” in some parts of the OSCE region, according to one participant. Simple public manifestations of religious identity such as going to a place of worship, wearing religious clothing or symbols, or public prayer are viewed with mistrust by the government, and society at large, irrespective of religion or denomination. Many participants, however, noted that it is predominately Muslim communities who bear the brunt of targeted security measures across the OSCE area. Over-securitization of a group can facilitate an othering of ‘suspect communities’, who are perceived as responsible for social instability<sup>55</sup> including through a group’s perceived affiliation with ‘illiberal’ or ‘anti-rights’ beliefs.<sup>56</sup> In such circumstances, holy texts, which may be perceived as the origin of such beliefs, may become a lightning rod for critical expression, or acts of desecration.

The securitisation discourse may also have a subversive effect on rights discourse generally. One participant asked whether we are “guaranteeing rights *because they are* human rights or because of a perceived relationship with security?”. Several participants noted that comprehensive security cannot be guaranteed without the enjoyment of rights, but that they are not a subcategory of security.

#### *Racialisation and intersectional discrimination*

‘Hate speech’ and acts are both targeted and experienced as an intersectional form of discrimination. Attackers regularly conflate perceived religion or belief, ‘race’, ethnicity, nationality, and immigration status.<sup>57</sup> Where this is the case, an act may additionally invoke states various non-discrimination obligations under IHRL, for example through the Convention on the Elimination of Racial Discrimination.<sup>58</sup> Further, intersectional discrimination changes the context in which expression is made and received, and can influence the classification of speech. For example, participants

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<sup>55</sup> <https://openaccess.city.ac.uk/id/eprint/14097/1/>

<sup>56</sup> <https://www.mdpi.com/2304-6775/8/4/52>

<sup>57</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf> p.ix

<sup>58</sup> See, for example, CERD/C/DEU/CO/19-22, Concluding Observations on Germany, particularly paras 14, 15 and conclusions relating to racial discrimination that intersects with religion.

highlighted that where Muslims are highly racialised, the line between criticising a religion, and incitement to hatred against a perceived racial/religious group can be very thin.

Meta-analyses of the manifestos published following attacks on religious communities demonstrate that the anti-Semitic and anti-Muslim ideologies often are founded upon or incorporate ethno-religious conspiracy theories such as the ‘Great Replacement Theory’, Nazi ideology and/or anti-Bosnian Muslim genocidal rhetoric.<sup>59</sup> Groups in Western Europe that organise regular Quran burnings often build upon these same ideological foundations.<sup>60</sup> The desecration of religious symbols reportedly therefore occur in a context of wider hostility, discrimination or violence targeted on the basis of multiple aspects of a community or individual’s identity including real or perceived religion, race or ethnicity, or nationality. Participants emphasised, this can be particularly traumatic for members of a given community, and may require further analysis of contextual factors to establish whether an act amounts to racial discrimination, or an incitement offense.

Additionally, participants noted that where religious discrimination is racialised, it can have a ‘spill-over’ effect, where other racialised communities are affected. Moreover, participants cited incidents of anti-Muslim hatred directed at Sikhs and other religious communities, due to the misperceptions of the instigator. Such events directly raise non-discrimination issues, including under the Convention on the Elimination of Racial Discrimination.

#### *State paternalism*

The State may patronise or ‘infantilise’ its religious or belief communities where it takes actions that undermine their agency or self-governance, often purporting to be in a community’s ‘best interests’. Such actions may include unduly limiting a community’s decision-making capabilities, paternalistic intervention in the internal affairs of a religious community, or overregulation of religious manifestation. Importantly, however, the right to FoRB protects the autonomy of religious/belief organizations in their internal affairs, ensuring that they can function peacefully and free from arbitrary state intervention.

Additionally, oversimplified narratives that fail to engage with the complexities of religious experience or perpetuate over-simplified or monolithic stereotypes can serve as a further means of infantilisation, eroding communities’ ability to express their intricate and overlapping identities. Participants explained that infantilisation is often common in States’ security responses. Religious or belief communities may require certain protections against discrimination hostility and violence. However, safeguards must be designed through meaningful collaboration with the communities themselves. Without meaningful participation, the State may reinforce exclusion and hinder

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<sup>59</sup> <https://journals.sagepub.com/doi/full/10.1177/20503032211044426> ; Specifically mentioned in consultation were celebrations by far-right actors of the Srebrenica Genocide, which has been recognized by various international tribunals and judicial mechanisms as meeting the legal definition of genocide. See, for example, Bosnia Herzegovina v. Serbia and Montenegro (ICJ, 2007); Prosecutor v. Radislav Krstić (ICTY, 2001)

<sup>60</sup> <https://www.tandfonline.com/doi/full/10.1080/01419870.2022.2143716>

constructive engagement with affected communities. Infantilisation often uses the language of care or protection. However, in reality it fuels harmful "othering" dynamics, creating communities perpetually reliant on the dominant framework to address their genuine security requirements, while simultaneously unable to voice their own needs and aspirations authentically.

### *International Events*

Instances of desecration of holy texts and symbols are increasingly entangled within a complex web of geopolitical issues. Events of international significance, and States' responses to them may function as trigger events or change how people perceive and experience incidents of desecration.

Participants emphasized that public statements, or policy responses to sensitive international events, must not inflame tensions or compound harms. These negative impacts may occur in many ways, for example by securitising entire religious or belief communities, failing to acknowledge or address grave harms caused to certain communities in humanitarian or diplomatic response, or conflating criticism or support for a political actor, with discriminatory speech against or support for a religious or belief group.

Additionally, it was noted that domestic events may have an impact on international processes, or be exploited by other political actors. Several participants commented that the incidents of Quran burning in Stockholm, for example, may have been exploited for political purposes. Others contended that malicious actors spread disinformation to antagonise local and international communities against certain OSCE States, or to further their own national interest. Still others pointed to far-right parties 'weaponising' the public desecration of Qurans as a manner of drumming up ethno-nationalist support ahead of elections. In this respect, discussions suggested that a worrying feedback loop is present: desecration incidents fuel wider geopolitical tensions, which in turn can provoke further domestic instances of such acts.<sup>61</sup>

Participants additionally cited the impact of world events on opinions within the OSCE region that have led to incidents of desecration, for example, the conflict in the Middle East following the attacks by Hamas across Israel on 7 October 2023 and the ensuing military operation by Israel in Gaza. This was viewed by some participants as a trigger not just of incidents of desecration elsewhere, but also as a factor influencing how religious or belief communities in different countries within the OSCE area view these incidents. Several civil society participants reported both anti-Semitic and anti-Muslim hate incidents have surged since 7 October 2023 attacks by Hamas on Israel, and the subsequent Israel-Hamas conflict. Moreover, it was noted that some interfaith and interreligious dialogue initiatives in the OSCE area have reportedly broken down or stalled since 7 October. Participants noted this was the case even where the dialogues in question were not between Jewish and Muslim communities, due to a perceived pressure to "pick a side". This effect may have been exacerbated by States' international

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61 See: Astana Commemorative Declaration Towards A Security Community, 2010, para 3.

statements, support, or domestic restrictions on assembly and association that were perceived as one-sided, or privileging a certain group.

### 2.1.2. Desecration Events

When analysing trends in desecration events, the specific manner in which they are carried out is of deep significance. The use of fire, with its connotations of purification and annihilation, creates a particularly powerful symbolic statement. Fire can also constitute a danger as per public order. Fire as a destructive force has held symbolic weight throughout history, and its incorporation into desecration acts holds heightened resonance for certain faiths, due to historical traumas and persecution. Such acts frequently echo specific past instances of intolerance and discrimination, such as book burnings in the Third Reich. Participants noted that these references often serve as ‘coded threats’ or ‘dog whistles’ – implicit but intentional linkages to contemporary extremist and white supremacist ideologies, such as the aforementioned "Great Replacement" conspiracy theory.

Several experts argued that in some societies, the concept of desecration can extend beyond attacks on religious texts and symbols. Secular texts or images deemed foundational to national identity may acquire a quasi-sacred status. Participants highlighted this phenomenon with reference to the French response to Charlie Hebdo, where any criticism of the publication, or attempt to address the wider currents of anti-Islamic sentiment reportedly became entangled with accusations of condoning terrorism.

### 2.1.3. Effects

Protests around sites of worship can have a significant impact on religious or belief community’s ability to publicly manifest their belief. One participant reported that protests that involve the desecration of religious texts can be more confrontational and even violent. They noted they were “having to reconsider whether we can bring our children to the mosque”, due to the use of ‘defence sprays’ and aerosols by protestors, such as pepper spray. The anxiety and fear generated by such hostile environments can deter individuals and families from publicly displaying elements of their religious identity, or participating in religious activities, leading to a chilling effect on religious manifestation.<sup>62</sup>

Discrimination is often targeted and experienced on intersectional aspects of identity, which can be further compounded by religious identity.<sup>63</sup> Further, as referenced above, participants strongly underlined that the wider context matters. Where desecration forms part of a wider context of exclusion, demonisation and discrimination, the impacts on religious or belief communities are particularly profound. Such acts not only serve to marginalize these communities further but also exacerbate feelings of vulnerability, fear, and alienation. The

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<sup>62</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf> pg. vii

<sup>63</sup> [http://mlkrook.org/pdf/Kuperberg\\_21.pdf](http://mlkrook.org/pdf/Kuperberg_21.pdf) See also A/74/358 para 68; A/HRC/46/30 paras 18-20; A/HRC/43/48

intersectional experience of discrimination means that members of religious or belief communities who also identify with other marginalized groups can experience a compounded form of harm. This layered victimization deepens social divides and can lead to long-lasting psychological and communal trauma.<sup>64</sup>

Participants highlighted that the trauma and anger triggered by the desecration of religious symbols or texts can manifest in unique ways across diverse religious communities. Psychological impacts transcend the initial distress of witnessing the desecration itself and may linger and rankle long after. Psychological impacts may particularly affect children and the elderly who may struggle to comprehend such acts. Participants also noted that social constructions of masculinity may lead to young men disproportionately feeling pressure to confront or respond to protestors, potentially leading to an escalation.

It is important to note that religious symbols or texts are not always viewed as such by religious adherents. For example, in Sikhism, the ‘Guru Granth Sahib’ is treated as a living guru, holding divine authority, and seated as the focal point in a *gurdwara*. For those who consider a religious symbol or text to be a physical embodiment of their belief, the line between belief and its outward manifestations may blur. This blurring reportedly exacerbates trauma when an object or symbol with particular significance is desecrated. In terms of the international human rights law implications, some participants noted that judges cannot be asked to make decisions on religious grounds based upon how they think someone may perceive a religious text and, thus, the impact of a desecration on their mental wellbeing. Rather it was suggested that judges should consider whether the desecration in question limits someone else’s right to exercise their religion or belief in considering whether or not to limit acts of desecration under the law.

Regarding any trauma caused, participants emphasized processing trauma as not only being an individual concern; it necessitates a communal approach, recognizing the interconnectedness of pain felt by those sharing religious identity. This is especially true as in digitally connected societies, as religious or belief communities share links that transcend national borders. Participants further noted the potential for secondary trauma when States’ public statements on the original desecration event do not take proper account of the harms experienced, or are misaligned with the community's understanding of their religion or belief.

Participants noted that academics vocal about discrimination against religious or belief communities may find themselves subjected to accusations from the state ranging from promoting separatism and undermining social cohesion to endangering national security. Such a discursive environment reportedly creates a permissive environment for personal attacks and threats of violence against academics by private individuals online. Scholars reported a resulting reluctance to engage in certain topics within their home country or abandoning lines of inquiry entirely, leading to a pervasive climate of self-censorship. As ODIHR’s *Understanding Anti-Muslim Hate Crimes and Addressing the Security Needs of Muslim Communities – A Practical Guide* makes clear, this ultimately only serves to reinforce

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<sup>64</sup> ODIHR’s EStAR project provides State and non-State actors with substantive guidance in carrying out individualised, intersectional needs assessment, and addressing such impacts. For more information, please see the EStAR Factsheet: [453843.pdf \(osce.org\)](#) and other EStAR resources: [ODIHR project enhancing hate crime victim support | OSCE](#).

insecurity and societal division, as an issue rendered invisible is one a State cannot craft an effective policy response to.<sup>65</sup>

## 2.2. The Role of the State in Addressing Acts of Desecration of the Quran

The state's role in addressing acts of desecration targeting the Quran poses a complex challenge, navigating rights to freedom of expression, freedom of religion or belief, freedom of peaceful assembly and non-discrimination while balancing public order imperatives. Responses from states to date have ranged from a *laissez-faire* approach to non-intervention at one end of the scale, to criminalisation at the other. While acknowledging the potential role of legal restrictions, participants in the meeting emphasized the need for alternatives focused on prevention, acknowledgement, and sensitively addressing the impacts of desecration on communities.

### 2.2.1. Criminalisation

While noting that criminalisation is sometimes necessary, participants generally did not feel that there was a need for additional frameworks outside of the established framework of incitement. Participants were generally very critical of approaches that rely on criminalisation as the primary State response to the desecration of religious symbols and texts.

One participant argued that criminalisation might appear as a convenient and straightforward solution, akin to a "band-aid", but that it is not regularly necessary. They highlighted that there are steps a State should consider before invoking incitement under Article 20(2) of the ICCPR (for further elaboration see 'Immediate responses' and 'Long term responses'). Even then, they cautioned, (and as outlined in the legal and policy framework section of this report) Article 20(2) does not *require* criminalisation.

Several other participants questioned the actual success of criminalisation in practice. They cited several jurisdictions across the OSCE that had enacted strict restrictions on public manifestation, including those where blasphemy or desecration could be deemed 'extremism' punishable by punitive fines and imprisonment. In these contexts, experts and practitioners felt criminal laws were more often experienced discriminatorily by religious minorities or exploited to target political adversaries, rather than serving their intended purpose of maintaining public order. This is a view shared by several UN treaty bodies.<sup>66</sup>

Additional key criticisms of a criminalisation approach met with considerable agreement:

*Ineffectiveness in Addressing Cause or Effects:* Criminalisation does not tackle the underlying drivers that lead to the desecration of religious symbols and texts. Instead, it is often counterproductive, potentially amplifying the very speech it aims to suppress. Further, because criminalisation may be seen as an easy solution, it may inhibit more

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<sup>65</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf> esp. pp. 48 - 58

<sup>66</sup> See, for example, CERD/C/PAK/CO/21-23 paras 21-22 on the "disproportionate use of [blasphemy laws] against individuals belonging to ethnic and religious minorities"; CCPR/C/IRL/CO/4, reiterating the general incompatibility of blasphemy laws with the ICCPR in the context of Ireland; CCPR/C/RUS/CO/7 on the use of blasphemy law to stifle political dissent through criminal prosecution.



difficult processes aimed at encouraging systemic change. Criminalisation further strains dialogue and engagement across divides, and may de-prioritise addressing genuine hurt and trauma, especially where speech does not rise to the level of incitement.

*Endorsement and Export of Rights-Hostile Frameworks:* Participants repeatedly noted that religious symbol desecration – and legal or even criminal responses are not simply a Western issue. There already exist a number of frameworks in other countries that criminalise religious offense or desecration of religious symbols that have reportedly been strongly criticised by international human rights mechanisms.<sup>67</sup> Voices from societies where extensive criminal legislation has been deployed worried that broader adoption might be seen as tacitly approving legal frameworks that pose serious risks to the protection and promotion of rights. Other participants noted that whatever happens in parts of the OSCE with stronger democratic institutions and protection of human rights is not staying there, and worried what such frameworks would look like when exported to other jurisdictions that have yet to adopt such measures.

*Potential to Incite Violence:* Inappropriate criminalisation has the potential not only to amplify speech, but also to trigger the violence it seeks to prevent. An example cited was the now-repealed UK ‘Flags and Emblems Act’, which criminalised the display of symbols in Northern Ireland “likely to cause a breach of the public order”. This subsequently led to riots in Belfast following the public display and subsequent removal of an Irish tricolour.

Overall, participants were highly sceptical of criminalisation as a response to most forms of desecration of religious symbols or texts. Instead, the discussion highlighted the urgent need to reframe the conversation. Rather than recurring debates over a lowered incitement threshold under Article 20(2) of the ICCPR, participants stressed that states should prioritize better immediate responses to acknowledge discrimination and support affected communities, and in the long term, clarify and fulfil their positive obligations in upholding States’ obligations and commitments related to tolerance and non-discrimination.

## 2.2.2. Other Immediate Responses

### 2.2.2.1. Statements

A criminal, or legal, response may be inappropriate in many incidents of desecration. However, in all cases, a states’ communication strategy can have a significant impact on the effects on impacted communities. As outlined in ODIHR’s *Understanding Anti-Muslim Hate Crimes and Addressing the Security Needs of Muslim Communities – A Practical Guide*, and reiterated by participants – the first step must always be acknowledging an issue exists.<sup>68</sup>

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<sup>67</sup> See, for example, <https://www.ohchr.org/en/press-releases/2021/03/historic-consensus-freedom-religion-and-expression-risk-say-un-experts>

<sup>68</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf> p.48



Some participants noted the importance of states crafting public responses that demonstrate an understanding of the gravity of the issue where speech acts constitute incitement and their profound impact on affected communities. Acknowledging the specific pain and offense felt by the targeted religious or belief community avoids minimizing the event or appearing dismissive of its impact. States should avoid selectivity, or being perceived to pursue double standards, in e.g. only speaking out on incitement on against one religious community, but not others, and the risks of further deepening societal divisions.

In addition to acknowledging harm and expressing solidarity, the content of a statement should proactively champion pluralism and inclusion. While participants acknowledged that approaches to human rights frameworks naturally emphasize protecting rights against violation, they emphasized that it is equally critical to also articulate a positive vision for the societies we wish to live in. In public statements, participants emphasized that states should avoid reactive condemnation, challenge narratives that normalize societal division and polarization, and rather inspire political will towards building inclusive, cohesive and diverse societies. Several participants recognized a positive and effective communications strategy as the most effective way to combat foreign interference and exploitation of domestic desecration events, and to undermine the spread of disinformation.

#### 2.2.2.2. Legal Responses

Notwithstanding the scepticism towards criminalisation outlined above, when considering any legal (criminal or non-criminal) response to an incident of desecration, states must still operate within the boundaries of their obligations under international human rights law.

For example, States must ensure where they intend to limit expression, religious manifestation, or peaceful assembly, that this limitation is compliant with international *and* regional human rights obligations. This means, for example, ensuring that limitations are prescribed by law, legitimate, necessary, proportionate and non-discriminatory. It also means they must pursue one of the legitimate aims provided in international instruments. In this regard, states' conflation of national security with public order and safety is reportedly blurring the lines of legitimate restrictions under Article 18 ICCPR, which excludes national security as a ground for limitation. Participants noted that operating within a human rights framework additionally means ensuring that, when applicable, states fulfil *all* conditions for making a valid derogation from human rights obligations in accordance with international instruments,<sup>69</sup> and that states do not make either religious or other reservations that undermine a treaty's object and purpose.

The European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) create overlapping, and often complementary regimes of protection. States are bound to implement both in good faith. Yet even if the ECHR is

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<sup>69</sup> i.e., existence of an extraordinary situation posing a fundamental, real and current or imminent threat to a country; temporary nature of the emergency and of the derogation; compliance with procedural requirements that need to be followed by the state in terms of declaration and public proclamation in accordance with provisions in law; formal notification of the UN (and the Council of Europe if applicable) and information of ODIHR; strict necessity and proportionality of derogating measures in terms of their temporal, geographical and material scope; non-discriminatory character of the derogating measures in law and in practice; existence of safeguards and oversight mechanisms (Article 4(1) ICCPR; Article 15 ECHR; Copenhagen Document (1990), para. 25; and Moscow Document (1991), para. 28).

permissive in certain aspects, it does not absolve states from their obligations under the ICCPR. States must ensure that their actions are consistent with both regional and international human rights instruments. As neither system creates a conflict of norms regarding FoRB (the ECHR does not restrict certain acts but also does not *authorise* acts that the ICCPR *restricts*) this could be described as a case of the “the most protective rule applies”.<sup>70</sup> Acts that are within the margin of appreciation under the European Convention, may nonetheless be prohibited or required under the ICCPR.

Nonetheless, States regularly enact a number of restrictions to expression and assembly and association for legitimate purposes. In the context of the desecration of religious texts or symbols, this may include, for example, a requirement on changing a planned venue or place of demonstration due to public safety or order concerns, or, where the act may form part of a pattern that is effectively inhibiting the freedom of religion or belief of religious communities. In some cases of incitement this may include administrative penalties, such as fines. One participant noted that in their national context, financial penalties for prohibited speech against LGBT+ persons was far more effective than criminalisation in stoking broader change in discourse. However, it is important to distinguish between a ‘limitation’ (such as denying permission to burn a Quran in front of a mosque due to public order concerns), from a ‘prohibition’, which may lead to an administrative sanction or criminal prosecution. In the former, there is a significant body of law outlining when limitations are compliant with international human rights standards.<sup>71</sup> In the latter case, Article 20 ICCPR and Rabat are the guiding framework for assessing whether a speech amounts to incitement to discrimination, hostility or violence, and therefore whether it must be prohibited by law.

#### 2.2.2.3. Long term measures

In determining the appropriate state response to the desecration of religious symbols and texts, many participants emphasized the importance of long-term, structural reform. A key theme was the need for states to go beyond mere criminalization and prosecutions, and increasingly provide a constitutional, legal and policy framework that facilitates the positive enjoyment of everyone’s human rights. This involves a broader, more holistic approach, addressing not only the immediate impacts but also the underlying inter-communal tensions and structural inequalities.

Participants noted that it is much more challenging for states to introduce positive measures such as education programmes, awareness-raising campaigns, and measures that promote grassroots dialogue. However, these approaches, though more resource-intensive and time-consuming than simply adopting new provisions into criminal law, were considered by many participants as more effective in addressing the root causes of the problem. ODIHR’s ‘Toledo Guiding Principles’ on teaching about religion and beliefs provides substantive guidance for pedagogical approaches to promoting understanding of religious and belief pluralism and FoRB in schools.<sup>72</sup> This approach promotes an educational ethos focused on human rights,

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<sup>70</sup> See, for example, Human Rights Committee General Comment 31, esp. paras 3-4, 14, see also application of *pro homine* rule by the IACtHR; Article 27 and 30 of the Vienna Convention on the Law of Treaties,

<sup>71</sup> See, for example, OSCE and Venice Commission Guidelines on Freedom of Peaceful Assembly, and The Human Rights Committee’s General Comments 22, 31, 34, 37

<sup>72</sup> <https://www.osce.org/files/f/documents/c/e/29154.pdf>

democratic principles, intercultural respect, and critical thinking to tackle discrimination, hostility and violence at the root.

Participants offered several areas in which the State may undertake projects to promote a positive and enabling environment for rights:

#### *Engagement with Traditional Media*

The influence of the media may play in responsibly and ethically reporting on sensitive issues, was a significant point of discussion. This is a particularly complex issue. Free, and independent media are a significant component of the right to freedom of expression. Media actors have a right to collect, report and disseminate information, news and opinions without State interference, as recognized by States in their OSCE commitments.<sup>73</sup>

Nonetheless, States must create a domestic environment that promotes “tolerance and non-discrimination [and counters] prejudices and misrepresentation”<sup>74</sup>, and participants underlined that responsible and ethical media should avoid utilising negative and harmful stereotypes, inflammatory language, or biased or mis-representative reporting. Participants highlighted the use of vague or mis-representative terms such as “political Islam”, or the media promotion of the film "Innocence of Muslims" as potentially problematic. The *OSCE Understanding Anti-Muslim Hate Crimes – Addressing the Security Needs of Muslim Communities: A Practical Guide* suggests “Engaging with the media to counter bias narratives” including through “encouraging debate within the media [...] on images used to convey Islam and Muslim communities, and on [the media’s] responsibility to avoid perpetuating prejudice and biased information.”<sup>75</sup>

Participants noted one way in which this balance may be achieved, is by encouraging the adoption of voluntary professional standards by journalists, media self-regulation, independent media watchdogs and other mechanisms to ensure professionalism, accuracy, and adherence to ethical standards.<sup>76</sup> In the context of on-going dialogues in this area with media actors, States may consider mainstreaming religious literacy and FoRB, and freedom of expression considerations.

#### *Regulation of Digital Platforms*

The human rights-based regulation of digital platforms and internet intermediaries is an ongoing discussion across the OSCE area. Participants highlighted how the spread of hate speech, mis- or disinformation may all play a role in either the catalysing of an incident of desecration, or modifying communities’ responses to it. The OSCE’s Representative on Freedom of Media, as well as the Council of Europe have developed frameworks and guidance for human rights-based content moderation online.<sup>77</sup>

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<sup>73</sup> <https://www.osce.org/files/f/documents/2/3/14310.pdf>

<sup>74</sup> See OSCE Decision no. 6 tolerance and non-discrimination

<sup>75</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf> p.50

<sup>76</sup> See OSCE Decision No. 13/06

<sup>77</sup> See, for example, OSCE RFOM SAIFE Policy Manual [<https://www.osce.org/representative-on-freedom-of-media/510332>]; <https://rm.coe.int/content-moderation-en/1680a2cc18> ; s

### *Funding for faith-based actors and civil society*

Participants raised the issue of defunding, or limiting access to funds of civil society organizations, particularly those with links to religious activities, as a notable concern<sup>78</sup>. Funding provides an opportunity for States to meet both their negative and positive obligations under IHRL, and address some of the key drivers and impacts of desecration. Freedom of religion or belief guarantees religious organisations the ability to, if they so wish, establish charitable institutions and solicit funding (please see: ODIHR's Guidelines for Review of Legislation Pertaining to Religion or Belief and *Understanding Anti-Muslim Hate Crimes - Addressing the Security Needs of Muslim Communities – A Practical Guide*). As underlined in the ODIHR-Venice Commission Guidelines on Freedom of Association, associations should have the freedom to seek, secure and utilize resources, from international or domestic sources as this is essential to the existence and operation of any association; any restrictions on access to resources from abroad (or from foreign or international sources) must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant international standards, as well as be necessary in a democratic society and proportionate to the aim pursued.<sup>79</sup>

States do have some obligation to regulate domestic and international financial flows to guarantee security and combat corruption. For example, States have Security Council imposed obligations to combat global funding flows linked to terrorism. However, State legislative frameworks and policy responses routinely far exceed the black letter requirements of these obligations. Participants cited multiple European States' counterterrorism and security policies as leading to religious organisations regularly having their access to funding cut with little due process or substantiated link to proscribed actors. Some OSCE participating States reportedly introduce additional undue restrictions on associations' access to foreign funding through so-called 'foreign agent' laws.

States may also be poorly equipped to directly deal with some of the effects of desecration on religious or belief communities. The State may, for example, lack legitimacy or trust with a community, rendering engagement difficult. Alternatively, civil society may be best placed to understand inter-subjective group references that become, in certain contexts 'coded threats'. Civil society organisations (CSOs) should not shoulder the burden of providing basic services required of the State, however, CSOs are sometimes preferred by communities to interacting with State authorities. In particular, the recording and analysing of bias-motivated incidents, or the provision of psychosocial support were cited as two key examples where civil society actors play an essential role. States should continue to develop their provision of services to meet communities' needs. However, States may also better realise their positive obligations

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<sup>78</sup> The OSCE Guide to Addressing the Security Needs of Muslim Communities additionally highlights how the impact of limited funding may be compounded where religion or belief communities perceive threats that force a diversion of funds from core activities to security or support measures (such as hiring private security or installing physical barriers. See: <https://www.osce.org/files/f/documents/9/0/448696.pdf> p. vii, p.21

<sup>79</sup> ODIHR-Venice Commission Guidelines on Freedom of Association, paras. 200 and 220. See also UNDOC HRC/23/39 pp. 18 – 42; see also <https://www.ohchr.org/en/press-releases/2016/06/un-rights-experts-urge-india-repeal-law-restricting-ngos-access-crucial?LangID=E&NewsID=20112>

by increasing funding to CSOs who are able to supplement their work and reach communities and individuals otherwise reluctant to engage.

### *Facilitating dialogue and joint action partnerships across religious or belief boundaries*

Participants recognized that dialogue and partnerships across religious or belief boundaries, which can and regularly do include secular actors, to be one way in which hateful desecration may be limited, harms better understood, traumas processed, and reasonable accommodations reached. One State participant noted that religious or belief dialogues had been particularly helpful in their context to de-escalate tensions, build cultural awareness among various stakeholders, and, where representatives of the State were invited to participate, led to closer relationships between faith communities and the State. States should be careful not to impose religious or belief dialogue in a top-down manner, or facilitate them in a way that jeopardises the enjoyment of human rights. ODIHR will be publishing guidelines for States on how they may facilitate dialogue and joint action across religious or belief boundaries. ODIHR's Freedom of Religion or Belief Programme and its Tolerance and Non-Discrimination Department are also actively engaged in programmes and activities aiming to concretely assist actors from different religious or belief communities in forging joint action partnerships [Link to Belief in Security guide if available in time]

Recognising that the State is not monolithic, structural change requires targeted recommendations to and action by various, disparate organs of the State. To this end, several participants encouraged States that have not already done so to develop detailed and targeted action plans on securing freedom of religion or belief. Other participants, however, noted that many States already have action plans, and the issue at hand is ensuring they are well implemented.

In developing long-term solutions, inclusive and non-discriminatory participation was considered fundamental. This may involve considering wider structural inequalities within society, for example, it was pointed out that a member of the majority community may feel more at liberty to engage publicly in discussions on discrimination, for example, compared to a member of an ethnic or racial minority. Developing long term solutions may equally involve taking into account intra-communal dynamics that may privilege or exclude certain voices within a given community.

### 2.3. Challenges & Good Practices in Advancing FoRB, Building and Sustaining Respect, and Ensuring Security

### 2.3.1. The Rabat Plan of Action

Participants noted that while the Rabat Plan of Action provides valuable guidance on addressing incitement, it is not preventative, but only comes into play when events have escalated. Relatedly, it is not the starting point for discussions relating to the desecration of religious texts and symbols. As previously outlined, participants felt that rather than changing the criteria set out in the Rabat Plan of Action, or considering more types of behaviour under Article 20(2) ICCPR, States should be more focused on building a coherent and convincing framework for fulfilling their positive obligations under human rights law.

Participants broadly agreed that when an act does require an assessment as to whether it reaches the level of incitement, the Rabat Plan of Action is *the* leading source to make this determination under international law. However, several participants noted issues related to its implementation at the domestic level. Primarily, these concerned whether Rabat was clear enough to be reasonably applied in national criminal justice settings.

One participant highlighted the limitations faced by police in their country, where public gatherings can only be restricted based on three criteria: public health concerns (such as COVID-19), traffic disruptions, and local disorder. They pointed out that law enforcement cannot consider the content of a demonstration due to protections afforded by freedom of expression and are also unable to take the wider context into account. This led to a suggestion for a possible revision of laws in line with the Rabat Plan of Action. However, it was emphasized that any such revision would also require a process of rationalization to ensure that the guidelines are sufficiently clear and practical for law enforcement officials to apply effectively in real-world situations. The need for clarity and applicability in the implementation of international standards at the domestic level was underscored as essential to meet the principle of legality and ensure the consistent and fair application of laws pertaining to freedom of expression and prevention of incitement.

All participants agreed that ‘context’ was an extremely important criteria for determining incitement under Rabat/Article 20(2) ICCPR. As previously alluded to, burning a religious text does not have one inherent meaning, such meaning is very much context-dependant.

The Rabat Plan of action simply states that:

*“Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;”*<sup>80</sup>

However, participants emphasized a broad understanding of context. Namely, that analysis must go beyond the immediate incident including considerations such as whether the State is actively endorsing such acts or failing to adequately address such incidents, and whether the act is committed by a lone individual or a larger group. Moreover, context encompasses the broader experiences of religious communities on local, national, regional, and international levels. This includes factors like securitization policies, experiences of discrimination,

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<sup>80</sup> A/HRC/22/17/Add.4, para. 29 (a)



involvement in or links to armed conflict, or exposure to atrocity crimes. Such a comprehensive understanding of context is vital for accurately both for assessing the legal status of an incident of desecration, and its impacts on the wider community.

Another important Rabat criteria is that of intent. One participant suggested that intent was less important in establishing incitement than the actual results of an act of expression. Other participants pointed out that this is not in line with international law regarding incitement. Paragraph 29(c) of the Rabat Plan of Action holds that Article 20 ICCPR requires intent, and that negligence or recklessness are not sufficient for an act to be an offence under article 20 of the ICCPR. This reflects international criminal law precedents dating back to Nuremberg.<sup>81</sup> Expression without the requisite intent may certainly cause serious harms that need to be acknowledged and addressed.

Finally, participants reiterated that while criminalisation may be appropriate for the most severe forms of incitement, such as incitement to immediate violence, the Rabat Plan of Action does not *require* criminalisation of incitement. Rather, Article 20(2) ICCPR together with Rabat require prohibition, which can take many forms, including either administrative fines, or simply lawful limitations on public manifestations.

### 2.3.2. Human Rights Council Resolutions 16/18 v. 53/1

Human Rights Council Resolution 53/1 was viewed with significant concern by most participants, who saw it as diverging from the human-rights based consensus of resolution 16/18. Of particular concern was the resolution's emphasis on criminal prosecution for acts of desecration, which it strongly suggests, though does not explicitly state, constitute incitement.

Conversations split down two thematic topics of conversation. 'How did we get here?' and 'Where do we go from here?'

- How did we get here?

Participants noted that the themes of 53/1 are not entirely new. Rather, they hark back to UN discussions on the 'defamation of religions' that captured UN attention between 1999-2011. However, these themes are re-emerging, participants suggested, due to perceived inaction, and even failure of the 16/18 compromise and the Istanbul Process, and widespread hostility, discrimination and violence on the basis of religion or belief.

It was noted that this failure is perhaps due to an underlying tension and conceptual misunderstanding about the nature and purpose of human rights, particularly FoRB. Human rights protect individuals and not religions *per se*. But in some circumstances, an individual's ability to freely pursue a religion or belief is threatened by coercive environments. This might be due to overwhelming hostility against a certain religion. Or it may be because of the destruction of their sacred objects. To illustrate, one participant raised the Canadian case of *The Ktunaxa Nation v. British Columbia*<sup>82</sup>,

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<sup>81</sup> See, for example *Prosecutor v. Blaskic* (ICTY, 2000) TC Judgement para 280; *Prosecutor v. Muvunyi* (ICTR, 2000) TC's Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98 para. 61; *Case of Hanz Fritzsche* in Trial of German Major War Criminals (1946), pp. 500- 526. See also [https://www.icrc.org/en/doc/assets/files/other/irrc\\_864\\_timmermann.pdf](https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf)

<sup>82</sup> *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)* [2017] 2 SCR 386

relating to the desecration of a valley held sacred by indigenous peoples. The case raises a pertinent question: if physical destruction equates to the destruction of deities central to a faith, how can the religion itself persist?

It is important to note participants, did not advocate for ascribing ‘rights’ to religions per se. Instead, they viewed these concerns as part of the State's obligations to foster a non-coercive, open and empowering environment conducive to the enjoyment of FoRB. The bottom line, as articulated by the participants, is that FoRB cannot meaningfully exist if "the beliefs no longer exist for people to belong to them."

- Where do we go from here?

Participants emphasized that we must recognize that 53/1, despite its concerning language, remains sufficiently vague to still operate within the parameters established by the Rabat Plan of Action. Resultingly, it was suggested that States, civil society and scholars need to contest the space, for example at the Interactive Dialogue established by the resolution to take place at HRC55 (Feb-April '24), to ensure that desecration incidents are not used as a rationale for abandoning the well-established, and fit for purpose incitement framework.

Participants recognized that Resolution 53/1 emerged as a result of inaction on the commitments and goals outlined in Resolution 16/18. They suggested that this is an opportunity for a reinvigoration of the 16/18 process, and particularly its attendant follow-up and implementation mechanism, the Istanbul Process. In particular, States may consider hosting regular meetings of the Istanbul Process and committing to ensure the strong participation of civil society, including religious or belief actors.

### 2.3.3. Grassroots and Civil Society Responses

#### 2.3.3.1. Challenges

While civil society groups present many effective practices, they also encounter significant challenges. A notable issue is the increasing fragmentation within societies, which complicates outreach efforts. Participants reported that Individuals and groups working to bridge divides may often find themselves perceived as traitors by their own communities. This is a substantial barrier, fuelled by the essentialization of identity, where individuals are forced to adopt a singular identity – for example in the words of one participant either “being Muslim” or “being a human rights defender”. Such divisions have reportedly become more pronounced in the wake of events like the 7 October 2023 attacks by Hamas on Israel, and the subsequent Israel-Hamas conflict. As highlighted in the section on state responses, it is crucial for states to act in ways that do not exacerbate these divisions. States have a responsibility to create an environment where diverse identities can coexist, dialogue is encouraged, and efforts towards reconciliation and understanding are supported.

Participants reiterated that the previously discussed funding challenges significantly impact grassroots and civil society organizations' capacity to respond to incidents of desecration. As



mentioned earlier, these groups often find themselves unable to operate independently or effectively, especially when their funding is cut due to alleged links with terrorist organizations, or under the pretext of preventing foreign influence, or under so-called anti-terrorism laws. This issue is not just a matter of resource allocation; it reflects a broader trend where states, through their funding policies, can indirectly shape the landscape of civil society engagement. When organizations crucial to bridging community divides and promoting interfaith dialogue face financial constraints, their ability to effectively respond to and manage the fallout from incidents of desecration is hamstrung.

#### 2.3.3.2. Good Practices

Participants detailed many good practices by civil society, faith-based actors, and even individuals responding to incidents of desecration.

One notable practice involves community leaders, who may be leaders or religious or belief communities or other respected or prominent figures within the community, including women. In Denmark, for instance, many Muslims turned to Facebook groups to encourage their community to ignore the Quran burnings. Additionally, many Muslim mothers reportedly actively worked to keep people, especially the youth, away from these burnings to prevent escalations and potential violence. Mosques additionally played a positive role by distributing food, organizing social events like 'FIFA' videogame football matches, and even handing food and refreshments. These efforts aim to create a positive atmosphere in the face of negative events, fostering community cohesion and goodwill. This approach highlights the unique and authoritative voice that religious and secular community leaders, both men and women, can have in guiding responses to sensitive incidents.

Other effective initiatives mentioned included emergency counselling lines and support provided by CSOs to those experiencing trauma due to perceived discrimination. It was emphasized that these organisations often work with significantly greater legitimacy in the community than government actors, and provide much-needed psychosocial support that is responsive to the needs of these communities.

All participants noted that dialogue and joint action partnerships across religious or belief boundaries have an essential role to play in prevention, acknowledgement, and processing of harms related to the desecration of religious texts or symbols. However, it's important to ensure that such dialogues and partnerships are inclusive. One participant indicated that in their context, often such dialogues, especially those initiated by national churches, tend to focus only on monotheistic religions, and largely male participants. However, all communities affected by a discussion should be represented as far as is practically possible. Various participants agreed that the most effective examples of dialogue and partnerships go beyond a mere exchange of pleasantries, addressing common issues of concern – sometimes uncomfortably – and are geared towards achieving an outcome, even if that outcome is better understanding and acceptance.

It was also highlighted that cross-communal expressions of solidarity play a vital role. Joint statements, support statements, and vigils are all powerful demonstrations of unity and empathy. These practices not only help heal the immediate wounds caused by acts of

desecration but also contribute to building stronger, more interconnected, and more resilient communities.

Regarding the role of the media, experts highlighted the work of NGOs as key in combating harmful stereotyping of religious or belief communities and mis/dis-information. Such organisations work directly with journalists, develop their own guidelines and monitoring projects<sup>83</sup> and even make submissions to international human rights mechanisms<sup>84</sup> to promote ethical and inclusive journalism.

#### 2.3.4. State and International Organisation Best Practice

Several initiatives by international organisations and states were also mentioned:

- On December 6, 2023, the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy issued a joint communication titled "No place for hate: a Europe united against hatred". This communication, referencing previous recent statement on 'antisemitism'<sup>85</sup> and 'anti-Muslim hatred'<sup>86</sup>, committed to increasing funding for religious communities, and further developing law and policy frameworks to combat hostility, discrimination and violence within the Union.
- The European Commission against Racism and Intolerance (ECRI) issues general policy recommendations to Council of Europe member States (CoE MS), to guide them in fighting various forms of intolerance and discrimination. General Policy Recommendation No. 5 deals with preventing and combating anti-Muslim hatred.<sup>87</sup> Revised in 2021, this recommendation focuses its guidance in four specific areas: policies and institutional coordination, prevention, protection, prosecution, and law enforcement.
- In general, participants noted that giving direct effect to international human rights treaties in domestic legal frameworks as a best practice. Though the domestic applicability of human rights treaties may take many forms,<sup>88</sup> one participant cited the ability of petitioners to invoke the ECHR in French domestic courts as a useful model.

### 3. Conclusions and Recommendations

#### 3.1. Conclusions

The meeting concluded that the international human rights law (IHRL) framework is adequately equipped to address instances of desecration of religious symbols or texts. The legal

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<sup>83</sup> <https://getthetrollsout.org/>

<sup>84</sup> <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/MDI.pdf>

<sup>85</sup> <https://ec.europa.eu/newsroom/just/items/806139/en>

<sup>86</sup> [https://commission.europa.eu/document/a3b2c21e-fed0-430b-9c93-aa8420feefe9\\_en](https://commission.europa.eu/document/a3b2c21e-fed0-430b-9c93-aa8420feefe9_en)

<sup>87</sup> <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.5>

<sup>88</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD\(2005\)012rep-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)012rep-e)

provisions, particularly those outlined in Article 20(2) of the ICCPR and the Rabat Plan of Action, are effective in guiding the prohibition of certain forms of expression when necessary. However, participants noted several key insights:

Firstly, an excessive focus on the 'respect and protect' aspects of human rights, within the negative frameworks regulating prohibitions on expression risks overshadowing the need to fulfil broader human rights obligations. Participants emphasized that criminalization, for various reasons, is not necessarily the most effective response to incidents of desecration. Rather, a more comprehensive approach is required, one that focuses on creating a positive and enabling environment for the enjoyment of the right to freedom of religion or belief, undermines the drivers and addresses the impacts (specifically the significant trauma and anger engendered), of the desecration of sacred texts and symbols.

At the national level, it was recognized that human rights law is only as effective as its domestic integration into legal frameworks, and State actors' contextual understanding of harms caused. Participants recommended the enactment of human rights action plans, where absent, that include indicators and benchmarks for FoRB. These plans should mandate the participation of religious or belief communities and align with frameworks like ODIHR's 10-step approach for helping state authorities and Muslim communities build trustful, collaborative relations to ensure the security of Muslim communities,<sup>89</sup> which emphasizes acknowledging the problem as a starting point.

However, there was a consensus that the primary need is not for more documentation but for actual implementation of existing frameworks. Despite a proliferation of guidance from international mechanisms, and State National Action plans, the key issue remains the 'implementation gap'. Participants proposed auditing and evaluating the implementation of these frameworks, suggesting the inclusion of FoRB indicators in evaluation matrices.

### 3.2. Recommendations

Notably, several of the below recommendations overlap with existing policy guidance and research by ODIHR.

1. **Gradated Legal and Non/Legal Measures:** States should differentiate between legal and non-legal measures in their responses to desecration incidents. While the most extreme forms of incitement, such as incitement to genocide, must be criminalized, less severe forms may warrant administrative sanctions in lieu of criminalisation. It is important for States to assess the impact of such incidents on public order in order to determine whether limitations are necessary, and they are, which limitations to the rights of freedom of peaceful assembly, expression, and/or religion or belief are most proportionate and what their scope should be. Most incidents of the desecration of religious symbols, while deeply hurtful, will require non-legal responses, which include, but are not limited to public statements, psychosocial support to affected communities, and more investment in programmes that 'fulfil' positive human rights obligations. States should also actively consider whether or not to take measures in

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<sup>89</sup> <https://www.osce.org/files/f/documents/9/0/448696.pdf>

advance of such incidents to limit the harm they may cause, and which measures would be most appropriate.

2. **Account for Overlapping, Intersectional Identities in State Responses:** All States responses should take into account the different aspects of identity (real and perceived) that are engaged by desecration events, and appreciate how they can modify an individual's experience, and the appropriate state response. This may include, for example, responding to the racialisation of certain religious or belief communities, as well as accounting for different impacts on the basis of gender, age, nationality, language, immigration status, and socio-economic status among other criteria.
3. **Public Statements and Communication Strategy:** States should acknowledge the harm caused by desecration incidents, condemn intolerance, and promote pluralism and inclusion in their statements in response. Public statements should demonstrate sensitivity towards the affected communities, and understanding of their religion or belief, and the importance of certain symbols. States should especially avoid being perceived as biased or discriminatory in their diplomatic or humanitarian response to international incidents, particularly when an incident invokes aspects of religious identity.
4. **Positive Measures Beyond Legal Restrictions:** To address the structural issues that catalyse desecration events, and exacerbate their impacts, States should pursue positive measures that facilitate the enjoyment of rights. Many of these will require long-term investment and engagement, and may include funding or developing education programs, awareness campaigns, or facilitating grass-roots initiatives promoting dialogue and understanding across religious and belief boundaries. States should consider working with traditional media to ensure voluntary press ethical standards that include religious literacy and FoRB issues, as well as pursuing human rights-based regulation of social media. States should examine their own wider practices regarding religious communities, to ensure they are not compounding harms, for example through securitisation or infantilisation.
5. **Ensure Sustainable Funding for Civil Society Organizations:** States should avoid unduly interfering or obstructing with foreign and domestic sources of funding for civil society and faith-based actors. For example, access to funding should not be stymied through overbroad or opaque security, counterterrorism, or 'foreign agent' laws. States may also commit to providing sustainable and adequate funding to civil society organizations that work on freedom of religion or belief issues, and particularly those that meet specific needs within the community, such as psychosocial support following traumatic incidents.
6. **Implementation of International Human Rights Law:** States need to effectively integrate international human rights law into domestic legal frameworks, ensuring that actions are consistent with both their regional and international human rights

obligations. This may involve a process of interpretation and implementation to give practical effect to international documents such as the Rabat Plan of Action, so they are better able to be utilised by judicial and law enforcement bodies. Moreover, a lack of prohibition under one human rights system does not equate to authorisation to disregard prohibition under another, and States should always take care that they are giving effect to their obligations under all human rights treaties to which they are party.

7. **Human Rights-Based Auditing and Follow-up:** Where they do not already exist, States should develop and implement human rights action plans. Once human rights action plans are in place, States should ensure there is no ‘implementation gap’, for example by including freedom of religion or belief benchmarks and indicators in governance performance review and assessment criteria, and consulting with religious and belief communities on their efficacy and impact.
8. **Critical Engagement with Human Rights Council Resolution 53/1:** States should engage critically but constructively with Resolution 53/1. While acknowledging the concerns that led to its adoption, States should advocate for maintaining the balance between combating religious intolerance and safeguarding freedom of expression as stipulated in the Rabat Plan of Action. This engagement might involve proposing amendments or clarifications to the resolution's language to align it more closely with international human rights standards, while acknowledging the hostile and coercive environment some religious or belief communities face.
9. **Reinvigorate the Istanbul Process:** States should actively participate in and revitalize the Istanbul Process, the implementation mechanism for Human Rights Council Resolution 16/18. As a forum for the exchange of best practice, the Istanbul Process thrives when the voices of civil society and religious or belief communities are included. Therefore, States should take steps to ensure the participation of a diverse range of stakeholders.