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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by Association for Progressive Communications (APC), non-governmental organizations in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2017]

¹ * This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Freedom of expression and religion online in Asia

The Association for Progressive Communications (APC) and organisations supporting this joint statement welcome the appointment of Dr. Ahmed Shaheed as the UN Special Rapporteur on freedom of religion or belief and his report to be presented at the 34th session of the Human Rights Council (HRC). We look forward to engaging with the mandate to address the persistent implementation gaps concerning the exercise of the right to freedom of religion or belief.

The space available for expressing opinions in relation to religion has consistently come under attack, especially in online spaces. This worrying trend is particularly pronounced in Asian states where there are multiple ethnicities and religious groups cohabiting, such as Pakistan and Bangladesh.

Online platforms, and more particularly social media, have provided an alternative medium for not only expression of opinion, but the development of discourses that may otherwise be difficult to find in traditional offline platforms. Similarly, the internet has also created a space for expression related to or touching upon issues that deal with or pertain to religion. However, such expression has been increasingly met with censorship, criminalisation and has, at times, resulted in offline attacks and killings in Asia.

Intersection of freedom of religion and expression

The rights to freedom of expression² and freedom of religion³ are internationally recognised and guaranteed rights that are crucial for any democratic society. These independent, interrelated and mutually reinforcing rights have come under violent attack over the past decade, particularly where and when they intersect.⁴ APC recalls the report of the previous Special Rapporteur on freedom of religion or belief, which rejects the pitting of the two rights against one another, and instead, highlights their positive interrelatedness and mutual reinforcement of one another.⁵

Freedom of religion primarily confers a right to act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comment. The right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned, but it does not protect religions or beliefs per se. While the exercise of freedom of expression could, in specific cases, potentially affect the right to freedom of religion of certain identified individuals,⁶ to present this phenomenon conceptually as a conflict between the right to freedom of religion or belief and the right to freedom of opinion or expression is inaccurate.⁷ In

2 Guaranteed in Article 19 of the ICCPR.

3 Guaranteed in Article 18 of the ICCPR.

4 Written statement submitted by the Association for Progressive Communications (APC), a non-governmental organisation in general consultative status: Freedom of expression in the context of religion, A/HRC/31/NGO/179. Available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=26060

5 UN Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief (23 December 2015), A/HRC/31/18. http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf

6 Relating to cases of incitement of violence

7 Report of the Special Rapporteur to the sixty-first session of the Commission on Human Rights (E/CN.4/2005/61) available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10540 and the annex of her report to the sixty-second session of the Commission on Human Rights (E/CN.4/2006/5) available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=11560

many ways, the right to freedom of religion or belief is, itself, an extension of the right to freedom of opinion or expression.

As affirmed in General Comment No. 22 of the Human Rights Committee, “the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) [...] is far-reaching and profound; it encompasses freedom of thought on all matters, personal convictions and the commitment to religion or belief, whether manifested individually or in a community with others. Article 18 [of the ICCPR] protects theistic, non-theistic *and* atheistic beliefs, as well as the right not to profess any religion or belief.”⁸

The HRC in resolution 20/8 has affirmed that “the same rights that people have offline must also be protected online, in particular freedom of expression.” Therefore, the principles and standards relating to the rights to freedom of expression and religion as well as the intersection of these two rights are equally applicable to online spaces. Human Rights Committee General Comment No. 34 provides guidance to states on their obligations in relation to protecting freedom of expression over the internet.⁹

Use of blasphemy laws to target online expression

Across Asia, discourse in support of defamation of religion and blasphemy laws is growing. These laws are being used to combat dissent and criticism of religions or beliefs, which is proving to be a serious threat to the fundamental exercise of freedom of expression. Laws to punish blasphemy or hurting religious sentiments have a stifling effect on dissent and freedom of expression, prohibiting a free exchange of ideas and views on political, social, legal and academic issues that may touch upon religion.

Despite repeated calls by international experts and groups to decriminalise and repeal blasphemy-related laws and provisions, Asian states continue to institute criminal proceedings and enforce such legislation.¹⁰ Regulations and restrictions on expression relating to religion take many shapes. Typically, most states in the region¹¹ have legal provisions against insulting religion, outraging religious feelings and sentiments. For instance, in Malaysia recent

8 Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994) available at <http://hrlibrary.umn.edu/gencomm/hrcom22.htm>

9 Human Rights Committee, General Comment 34, Article 19 (One hundred second session, 2011). CCPR/C/GC/34. <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

10 See Jakarta Recommendations on Freedom of Expression in the Context of Religion, available at <https://globalfreedomofexpression.columbia.edu/publications/jakarta-recommendations-on-freedom-of-expression-in-the-context-of-religion>; General Comment No. 34, Article 19, Freedom of opinion and expression, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>; Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence - Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, available at http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf; and Report of the Special Rapporteur to the General Assembly on hate speech and incitement to hatred, [A/67/357](http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx) available at <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>.

11 Including India, Malaysia, Pakistan, Bangladesh, Sri Lanka, Maldives, Indonesia and Myanmar. See Bytes for All Pakistan and FORUM-ASIA. (2016). *Desecrating Expression - An Account of Freedom of Expression and Religion in Asia*. <http://content.bytesforall.pk/node/205>

amendments to the Sedition Act¹² have brought religion within the purview of sedition and, thus, comments or acts seen as critical of religion may attract sedition charges. States also have provisions to prevent hate and incitement on the basis of religion. Legislation pertaining to offending religious sentiments or blasphemy, as well as some anti-hate speech legislation, poses a serious threat when applied to restrict freedom of legitimate expression and leaves persons accused of such acts largely vulnerable to attacks by non-state actors.

In Pakistan, several individuals have been charged with blasphemy for content generated online. For instance, Usman Liaqat, a Christian, was arrested for allegedly posting content on Facebook that was regarded as “blasphemous” by state authorities in Pakistan using the penal law and constitutional provisions. In Indonesia, a professor has been charged with blasphemy for a Facebook post that he had allegedly made.¹³ Similarly another professor in Pakistan is currently imprisoned for a post on Facebook that was deemed blasphemous.¹⁴ In Malaysia, Eric Paulsen, a lawyer, was arrested and charged with sedition¹⁵ for a tweet on Friday sermons.¹⁶

States have also enacted information and communication technology (ICT) laws that contain provisions on religion. Legislation pertaining to ICTs in Bangladesh and India contain specific provisions for dealing with content that may be seen as offending religious sentiments.¹⁷ Similar legislation has been passed by Pakistan’s legislature in the form of the Prevention of Electronic Crimes Bill which, in Section 9, states that anyone who “prepares or disseminates information, through any information system or device” with the intent to “glorify an offence or the person accused or convicted of a crime and support terrorism or activities of proscribed organizations” and “advance religious, ethnic or sectarian hatred” shall be punished with imprisonment up to five years, a fine up to 10 million rupees (around USD 95,000) – or both. The bill makes journalists, whistleblowers and activists more vulnerable. It declares unlawful any online content that threatens “the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, public order, decency or morality.”

Situation of bloggers

With the closing of space for alternative voices in traditional media, individuals across Asia have increasingly taken to social media to voice their opinions, especially on controversial issues relating to religion and politics. Blogging sites have provided this space for individuals to blog on matters anonymously or in their name. Between 2014 and 2016 over 10 bloggers and an LGBT rights activist in Bangladesh have been killed for their online commentary on social issues

12 Available at <http://www.agc.gov.my/Akta/Vol.%201/Act%2015.pdf>

13 Adyatama, E. (2016, 23 June). Police Question Ade Armando over Blasphemy Charge. *TEMPO.CO*. <http://en.tempo.co/read/news/2016/06/23/055782464/Police-Question-Ade-Armando-over-Blasphemy-Charge>

14 Khatri, S. (2015, 19 December). How your social media activity can land you in jail for blasphemy. *Dawn*. <http://www.dawn.com/news/1227196>

15 For a more detailed discussion on the link between politics and religion, see Bytes for All Pakistan and FORUM-ASIA. (2016). Op. cit.

16 See Case history: Eric Paulsen on the Frontline Defenders website: <https://www.frontlinedefenders.org/en/case/case-history-eric-paulsen>

17 The Information and Communication Technology Act of Bangladesh is available at http://www.ictd.gov.bd/site/view/legislative_information/Acts and the Information Technology Act of India is available at <http://deity.gov.in/content/information-technology-act>

that often touched upon religion.¹⁸ In 2015, four writers and bloggers, Faisal Arefin Dipon, Avijit Roy, Oyasiqur Rahman and Ananta Bijoy, were killed for their views on Islam and other religions. Many kill lists have appeared with more names of bloggers on them. Some bloggers have gone into hiding and others have left the country fearing for theirs and their families' safety.¹⁹ Despite many of these bloggers resorting to anonymity, their identities were leaked to the public, which resulted in them being targeted by extremist factions.²⁰

In January 2017, five Pakistani bloggers and social media activists, Salman Haider, Aasim Saeed, Waqass Goraya, Ahmed Raza Naseer and Samar Abbas, were kidnapped by unknown perpetrators for their liberal expression and political dissent online on religious issues in Pakistan.²¹ The government was completely helpless in their recovery. The conservative sections in the country further added to the injury by portraying these bloggers as blasphemers, and pressuring the state to try all five under notorious blasphemy section 295-C of the Pakistan Penal Code. Malicious online hate campaigns driven by anonymous Facebook and Twitter pages further fanned the situation and incited religious radicals to threaten their families. Some national television stations also contributed to this smear campaign. Although four of these bloggers returned home after three weeks' detention, their families and friends have faced intense fear of being attacked by enraged mobs. Abbas, also an active Shia rights activist, has not returned home. These kidnappings and impunity have threatened liberal and secular voices in the country, resulting in self-censorship as well as the silencing of political and religious dissent.

The situation of bloggers in Pakistan and Bangladesh warrants immediate attention and states must be urged to ensure their physical safety and desist from filing criminal charges in relation to their writings which expose them to the danger of being targeted by non-state actors. In addition, such attacks create a chilling and dangerous environment for media and human rights defenders, who are unable to do their work freely in the face of threats.

Gender and religious expression

The intersection of religious, moral and cultural values of a particular society has become a serious issue, especially for girls, women and people who face discrimination based on their sexual orientation or gender identity (SOGI), who are exposed to additional layers of discrimination, violence and attacks when perceived to have violated a particular norm. The internet is a critical space for people to explore issues related to identity and access SOGI-related information, including on health and education.²² This is especially critical for sections of society who already face extensive

18 Global Voices. (2017, 13 January). Bloggers Under Fire: The Fatal Consequences of Free Thinking in Bangladesh. <https://globalvoices.org/specialcoverage/bloggers-under-fire-the-fatal-consequences-of-free-thinking-in-bangladesh>

19 Rezwan. (2016, 26 January). Why I Went Into Exile: A Bangladeshi Blogger Tells His Story. *Global Voices*. <https://advoc.globalvoices.org/2016/01/26/why-i-went-into-exile-a-bangladeshi-blogger-tells-his-story>

20 Front Line Defenders. (2016). *Victim Blaming: Bangladesh's failure to protect human rights defenders*. <https://frontlinedefenders.atavist.com/bangladesh-report>

21 Bytes for All Pakistan. (2017, 11 January). Bytes for All demands recovery of Pakistan's forcibly 'disappeared' bloggers and activists. <http://content.bytesforall.pk/node/207>

22 United Nations Human Rights Council, Report of the Special Rapporteur on freedom of opinion and expression (22 May, 2015), A/HRC/29/32, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc; see also HRC29: Joint statement by the International Gay and Lesbian Human Rights Commission, the International Lesbian

regulation, silencing and discrimination on the basis of their sexuality and gender. Yet governments in the region are censoring SOGI-related online content deemed to offend religious sentiments. In July 2014 in Malaysia, the Selangor Islamic Religious Council gazetted a fatwa declaring the Muslim women's rights group Sisters in Islam and any other similar "individuals, organisations or institutions" as deviant. The fatwa called for any publications deemed "liberal and plural" to be banned and seized. In addition, it called for any social media content that deviated from the teachings of Islam to be blocked by the Malaysian Communications and Multimedia Commission.²³ The Communications and Information Ministry in Indonesia is currently considering a draft bill to ban websites that host content relating to LGBT and SOGI issues on account of religious sensitivity.²⁴ Such gendered violation of freedom of expression and religion is a direct outcome of entrenched misogyny and discriminatory cultural and social norms and expectations. These examples show that women and sexually marginalised persons face violations of their rights online because of social and cultural values, and we are now seeing this translated into legislation and state policy.

In addition, gender-based hate speech online in the name of religion remains largely unaddressed and women and people who face discrimination based on their sexual orientation or gender identities face severe persecution online, frequently putting them at risk of physical attack as well. These attacks have a chilling effect on freedom of religion as well as freedom of expression. International instruments must address such forms of discrimination and violence, often justified on religious grounds.

Conclusion

APC welcomed the report of the Special Rapporteur on freedom of religion or belief at the HRC's 31st session, which specifically looked at the intersection of the rights to freedom of expression and religion.²⁵ The report explains in detail the interconnected and mutually reinforcing nature of the two rights. Similarly, we welcome the report of the Special Rapporteur on freedom of religion or belief at the 34th session, particularly the attention paid to the politicisation of religion and the emphasis on non-discrimination and the situation of groups and persons in vulnerable situations.

We would urge the Special Rapporteur to continue focusing on these issues with special attention to gender and expression in online spaces. We also call for the strengthening of the Rabat Plan of Action²⁶ to include issues relating to gender and online spaces, to take into account recent trends and to better address realities faced by people across the globe.

and Gay Association and the Association for Progressive Communications, available at <https://www.apc.org/en/node/20587/>

23 Mageswari, M. (2016, 25 June). SIS' application for judicial review dismissed. *The Star Online*. <http://www.thestar.com.my/news/nation/2016/06/25/sis-application-for-judicial-review-dismissed>

24 Jakarta Post. (2016, 5 March). Government drafts ban on LGBT websites. <http://www.thejakartapost.com/news/2016/03/05/government-drafts-ban-lgbt-websites.html>

25 United Nations Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief (23 December 2015), A/HRC/31/18, available at http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf

26 See Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence¹ - Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, available at http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

Bytes for All, Pakistan, Digital Empowerment Foundation (DEF) and Persatuan Kesedaran Komuniti Selangor (EMPOWER) NGO(s) without consultative status, also share the views expressed in this statement.