

ARTICLE¹⁹

Legal Analysis

**Iran: New Penal Code provisions as tools
for further attacks on the rights to freedom
of expression, religion, and belief**

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Executive summary

In this legal analysis, ARTICLE 19 reviews the compliance of two supplementary Articles to Book Five of the Islamic Penal Code (on *Ta'zirat* and Deterrent Punishments) with international human rights law and standards on freedom of expression and freedom of religion and belief.

The two supplementary Articles – prohibiting ‘insulting legally-recognised religions, Islamic branches and Iranian ethnicities’ – along with five notes, were added to the Islamic Penal Code in January 2021. The provisions are divided into two thematic sections:

- Article 499 *bis* imposes heavy punishments on anyone who ‘insults’ legally recognised religions, Islamic branches, and Iranian ethnicities with the intention to cause ‘violence or tension’ in society or with the knowledge that their conduct will result in ‘violence or tension’.
- Article 500 *bis* effectively criminalises adherence to, practicing, and promotion of religions and belief systems that fall outside the legally recognised religions under the Constitution, as well as dissenting opinions within the legally recognised religions.

ARTICLE 19’s analysis highlights three critical problems with these provisions:

- First, the provisions impose broad restrictions on freedom of expression that go beyond what is permitted under international human rights law. In particular, they seek to protect religions and beliefs that do not enjoy protection under international law. Article 499 *bis* effectively criminalises many forms of expression that are protected under international law.
- Second, and in breach of international law, the provisions impose broad and vaguely worded restrictions on the right to freedom of religion and belief.
- Third, the provisions run contrary to the growing global consensus among States and UN human rights bodies, which have agreed that prohibitions of defamation of

religions and protection of religions and beliefs are not only contrary to guarantees of freedom of expression but also counterproductive and prone to being abused against the religious and ethnic minorities they purport to protect.

ARTICLE 19 believes that these provisions pose a major threat to the rights to freedom of expression and freedom of religion and belief in the country and will further diminish the already shrunken space for dissenting voices. They are also likely to disproportionately impact individuals belonging to ethnic and religious minorities, who have faced systematic discrimination and persecution over the past decades while failing to protect them against incitement to hatred and discrimination.

ARTICLE 19 calls on the Iranian authorities to urgently repeal Articles 499 *bis* and 500 *bis* and to take immediate action to amend the country's laws including the Islamic Penal Code to ensure that the rights to freedom of expression, religion, and belief are fully guaranteed, in line with international law and standards.

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Introduction

In January 2021, Iran added two supplementary provisions to its Islamic Penal Code that criminalise insulting ‘legally recognised’ religions and ‘Iranian ethnicities’. These supplementary provisions were initially introduced in 2018 by Iran’s parliamentarians through the Draft Bill for Addition of Articles to Book Five of the Islamic Penal Code (on *Ta’zirat* and Deterrent Punishments) with Regards to Insulting Legally-recognised Religions and Iranian Ethnicities (Draft Bill). On 24 December 2018 the Draft Bill was signed by 82 members of parliament and submitted to the Speaker of Parliament; however, it was not pushed through the legislative process at the time.

In 2020, there was an acceleration in the legislative processes for the passage of the Draft Bill. Ultimately, on 13 January 2021 Iran’s Parliament passed the Bill which was then approved on 3 February by the Guardian Council, a body tasked with ensuring legislative compliance with the Constitution and Sharia Law. It was officially signed by the then President Hassan Rouhani on 18 February. The new law was published on 23 February in the Official Gazette (*Rooznameh Rasmi*), a paper under the auspices of the judiciary that publishes all new laws, and entered into force 15 days later.

ARTICLE 19 had previously criticised the proposed Draft Bill¹ and warned that it would herald a new era of attacks on the rights to freedom of expression, religion, and belief in Iran, and will worsen the situation for individuals belonging to ethnic and religious minorities who have faced systematic discrimination and persecution over the past decades.²

The two new ‘Recurring Articles’³ – Articles 499 *bis* and 500 *bis* (along with their two and three notes, respectively) – have been added to Book Five of the Islamic Penal Code and are divided into two thematic provisions:

1. Article 499 *bis* and its notes criminalise ‘insults’ to legally recognised religions, Islamic schools of thought, and Iranian ethnicities when it is done ‘with the intent to cause violence or tensions in the society or with the knowledge that such [consequences] will follow’.

2. Article 500 *bis* and its notes effectively criminalise adherence to and promotion of religions and belief systems that fall outside the legally recognised religions under the Iranian Constitution, as well as dissenting opinions within the legally recognised religions.

These provisions are accompanied by notes that provide further specification on certain aspects of the respective provisions, in particular the aggravating circumstances that increase the prescribed punishments.

Both provisions build on existing restrictions on freedom of expression and the right to freedom of religion and belief in Iranian laws, in particular the [Constitution](#) and the Islamic Penal Code. Under the 1979 Constitution, Islam is declared the State religion, while only three other religions – Judaism, Christianity, and Zoroastrianism – are granted legal recognition. This has effectively left members of Constitutionally non-recognised religious and belief communities without adequate legal protections.

Furthermore, Iran's Constitution allows restrictions on freedom of expression on the basis of vague qualifications, such as being 'detrimental to the principles of Islam or the rights of the public'.⁴ The Islamic Penal Code contains numerous provisions imposing undue restriction on expression and criminalising dissent; namely, provisions criminalising 'insulting the prophet of Islam' (punishable by the death penalty),⁵ 'any type of propaganda against the [State] or in support of opposition groups and associations',⁶ 'insulting Islamic sanctities',⁷ 'insulting Imam Khomeini, the founder of the Islamic Republic, and/or the Supreme Leader',⁸ 'insulting' public officials such as the heads of the judiciary, parliament and the President,⁹ 'publicly committing the religiously forbidden',¹⁰ the 'failure to abide by the Islamic hijab',¹¹ 'spreading lies with the aim of disturbing the public opinion',¹² and 'satire'.¹³ These provisions and other legislation have resulted in countless cases of arbitrary arrest and detention, imprisonment, and flogging over the past decades.¹⁴

In the following sections, ARTICLE 19 reviews the new provisions in greater detail and draws on the applicable international standards in this area.¹⁵ While this analysis focuses on the text of the supplementary provisions to the Islamic Penal Code, the analysis has been informed by ARTICLE 19's monitoring and research on human

rights violations in Iran, particularly in relation to the rights to freedom of expression, religion, and belief.

ARTICLE 19 calls on the Iranian authorities to urgently repeal Articles 499 *bis* and 500 *bis* and to repeal or substantially amend other restrictive legislation on freedom of expression, religion, and belief to ensure all domestic laws fully comply with international human rights law and standards by which the country is bound.

Applicable international human rights standards

The right to freedom of expression is protected under Article 19 of the [Universal Declaration on Human Rights](#) and Article 19 of the [International Covenant on Civil and Political Rights](#) (ICCPR),¹⁶ to which Iran is a State party. The ICCPR further provides for the protection of the right to freedom of thought, conscience, and religion, or belief (Article 18), and equality before the law and the prohibition of discrimination (Articles 2, 26, and 27).

Iran is bound by the ICCPR and must fully meet the obligations that flow from it. According to Article 9 of [Iran's Civil Code](#), provisions of treaties agreed between the government of Iran and other governments in compliance with the Constitution have the force of law. In particular, Iran is required to enact legislation to bring domestic laws in line with its international human rights obligations, including under the ICCPR and give domestic effect to its provisions.¹⁷

The right to freedom of expression under Article 19 of the ICCPR applies to not only information and ideas generally considered to be useful or correct, but also to any kind of fact or opinion that can be communicated. Specifically, the UN Human Rights Committee, the treaty body charged under the ICCPR with supervising its implementation, has emphasised that Article 19 of the ICCPR encompasses 'news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression.'¹⁸ Moreover, the right to freedom of expression also extends to controversial, false, or even shocking material. The mere fact that an idea is disliked or thought to be incorrect cannot justify preventing a person from expressing it.

Restrictions on the right to freedom of expression

Although the right to freedom of expression under international law is not absolute, restrictions are only permitted in certain narrowly defined circumstances.¹⁹ The Human Rights Committee has held that the right to freedom of expression is of paramount importance in any society, and any restrictions on the exercise of this

right must meet a strict test of justification.²⁰ Any restrictions imposed should be exceptional and must meet the so-called 'three-part test'; namely, they must:

- **Be prescribed by law:** This means a norm must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly. Ambiguous, vague, or overly broad restrictions on freedom of expression are therefore impermissible.
- **Pursue a legitimate aim**, exhaustively enumerated in Article 19(3)(a) and (b) of the ICCPR in respect of the rights or reputations of others, or protection of national security, public order, public health, or morals. Importantly, the ICCPR does not allow restrictions to be placed on the exercise of the right to freedom of expression for the purposes of ensuring respect for values, beliefs, or religions, or protecting them from defamation or abuse.
- **Be necessary** to secure the legitimate aim and meet the test of *proportionality*. Necessity requires that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest. Proportionality requires that a restriction on expression is not over-broad and that it is appropriate to achieve its protective function. It must be shown that the restriction is specific and individual to attaining that protective outcome and is no more intrusive than other instruments capable of achieving the same limited result.

Additionally, Article 20 para 2 of the ICCPR stipulates that States must prohibit 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'. While States are obliged to prohibit this type of expression under the law, restrictions must still be limited to ensure broad restrictions on expression are avoided. At the international level, the [Rabat Plan of Action](#) (Rabat Plan) – adopted by experts following a series of consultations convened by the UN Office of the High Commissioner for Human Rights (OHCHR) – provides guidance on what constitutes incitement under Article 20(2) of the ICCPR.²¹

Restrictions on the right to freedom of religion

Under International law and standards, no limitations whatsoever are allowed on the right to freedom of thought, conscience, or on the freedom to have or adopt a religion or belief. The Human Rights Committee has confirmed that ‘these freedoms are protected unconditionally’.²²

Manifestations of religion or belief may, however, be subjected to restrictions, but only in certain narrowly defined circumstances, similar (but not identical) to the restrictions permitted in Article 19(3) of the ICCPR. Article 18(3) of the ICCPR permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. The Human Rights Committee further clarified Article 18: ‘the freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted’. Furthermore, according to the Human Rights Committee, Article 18(3) must be interpreted in a strict manner; restrictions on grounds not specified under the ICCPR (such as on the ground of national security) are not allowed, any restrictions must be directly related and proportionate to the need for which they are imposed, and – importantly – restrictions cannot be imposed for discriminatory purposes or applied in a discriminatory manner.²³

The right to freedom of religion and belief encompasses the right – either individually or in community with others, and whether in public or private – to manifest the religion or belief in worship, observance, practice, and teaching. Furthermore, the Human Rights Committee has clarified that the right to religion and belief also includes the freedom to teach and disseminate material and engage in missionary activities. In its General Comment No. 22, the Human Rights Committee has stated that ‘the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, ... the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications’.²⁴

The UN Special Rapporteur on freedom of religion or belief has emphasised that ‘the terms “religion” and “belief” are to be interpreted in a broad sense and that human rights protection is not limited to members of traditional religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The contents of a religion or belief should be defined by the worshippers themselves.’²⁵ ‘Freedom from coercion to have or to adopt a religion or belief ... cannot be restricted.’²⁶ States must also ‘take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs’.²⁷

Defamation of religion

The ICCPR (as well as other human right treaties) protects the rights of individual persons – and, in some instances, of groups and persons – but not abstract entities, such as values, religions, beliefs, ideas, or symbols. Article 19(3) of the ICCPR only allows restrictions to be placed on the exercise of the right to freedom of expression when necessary ‘for the respect of the rights and reputations of others; for the protection of national security or public order (ordre public), or of public health or morals’, which does not include the protection of values, beliefs, or religions as a legitimate aim.

Additionally, the Human Rights Committee has not recognised the notion of protecting ‘values’, and neither does it support the prohibition of ‘defamation of religions’ as a legitimate ground for restrictions on the exercise of freedom of expression. In General Comment No. 34 to the ICCPR, it stated:

*[P]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.*²⁸

These provisions reflect the Human Rights Committee’s earlier jurisprudence and also reinforces the position of other UN human rights bodies, notably the UN Human Rights Council (UN HRC).²⁹

Other international human rights bodies have also pointed to the incompatibility of the protection of symbols, religions, and beliefs with international law. The UN Special Rapporteurs on freedom of opinion and expression; freedom of religion or belief; and racism, racial discrimination, xenophobia and related intolerance have repeatedly condemned laws prohibiting 'defamation of religions' and/or blasphemy because they are relied on to persecute religious minorities and dissenters. For example:

- The UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion (Special Rapporteur on freedom of expression) has stated that limitations on the right to freedom of expression were 'designed in order to protect individuals against direct violations of their rights' and 'are not designed to protect belief systems from external or internal criticism.'³⁰
- The UN Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have emphasised that that 'the right to freedom of religion protects primarily the individual and, to some extent, the collective rights of the community concerned, but it does not protect the religions or beliefs per se.'³¹ The UN Special Rapporteur on freedom of religion has recently emphasised that 'the right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticism or ridicule.'³²

The 2012 Rabat Plan, which elaborates on the nature of States' international human rights obligations on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence,³³ also notes the 'negative impact of anti-blasphemy laws'. It indicates that such laws are incompatible with States' international human rights obligations and recommends that States repeal defamation of religion laws, as such laws 'have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion.'³⁴

Similarly, regional human rights instruments do not permit placing restrictions on the exercise of freedom of speech to prevent criticism of religions.³⁵ Importantly, there

exists an emerging movement towards the abolition of blasphemy laws and prohibitions on defamation of religion.³⁶ Additionally, courts in several countries have issued decisions confirming that the freedom to criticise other religions is protected by freedom of religion as a form of religious expression.³⁷

Further, the 2009 Camden Principles on Freedom of Expression and Equality, prepared by ARTICLE 19 on the basis of discussions involving a group of high-level UN officials and international experts on freedom of expression and equality, highlight the principle that 'States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions', unless such expression constitutes incitement to discrimination, hostility, or violence.³⁸

Distinctions between incitement to hatred and religious insult

In its General Comment No. 34, the Human Rights Committee has stated that legislation prohibiting disrespect of a religion or belief system – including laws on blasphemy, defamation of religions, and religious insult and religious offence – are incompatible with international human rights law unless:

- They genuinely constitute prohibitions on incitement to discrimination, hostility, or violence; *and*
- They meet the standards of Article 19(3) of the ICCPR and other provisions of the ICCPR, including those on non-discrimination.³⁹

The boundaries between religious insult and incitement to hatred may sometimes be difficult to identify or could be 'easily blurred'.⁴⁰ However, the Rabat Plan has clarified that 'incitement', under Article 20(2) of the ICCPR, supposes a focus on the specific intent of the speaker to cause acts of discrimination or violence against individuals targeted because of their religion or belief, as well as the likelihood and imminence of those harms occurring in the particular context. The subjective feelings of persons offended or insulted by that speech is therefore not pertinent to the key elements of this offence. This is because the focus is instead on preventing specific harmful actions that may be incited by speech, and the culpability of the

speaker for those outcomes. Therefore, the intent and position of the speaker – and, in particular, their ability to influence their audience to take harmful action – is what is most relevant.

Moreover, as the Rabat Plan has stipulated, State responses to incitement under Article 20(2) of the ICCPR must be proportionate, with responses restrictive of expression considered only as a measure of last resort, and less coercive means considered first. Since Article 20(2) of the ICCPR requires States to *prohibit* incitement but not *criminalise* it, States should apply a variety of legal means to respond to it, including civil, administrative, and other measures. The criminal law penalties should be limited to the most severe forms of incitement and ‘as a last resort measures to be applied in strictly justifiable situations, when no other means appears capable of achieving the desired protection of individual rights in the public interest’. Moreover, the availability of numerous non-coercive measures outside of the criminal law should be considered, in particular as less restrictive means may indeed be more effective in countering intolerance and discrimination.

The Rabat Plan and UN HRC [Resolution 16/18](#) set out a series of positive policy measures that States should take to create an enabling environment for the rights to freedom of expression and freedom of religion or belief. These include preventative measures, such as those in the field of education, and reactive measures, such as speaking out against incidents of intolerance. This demonstrates that international human rights law views religious intolerance as a potential human rights concern. The exceptional nature of permissible restrictions on the right to freedom of expression does not mean States do not have an obligation to respond to incidents of religious intolerance. The crux of the Rabat Plan is that violence and discrimination, as well as the advocacy of hatred constituting incitement to these acts, are best prevented through open dialogue rather than censorship.

Therefore, even extreme views on religious issues deserve protection unless they meet the criteria outlined earlier.

Ensuring and protecting open public debate should be the primary means of protecting inalienable fundamental values like freedom of expression and

*religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas that are fundamentally incompatible with a democratic regime because they incite hatred that should be prohibited.*⁴¹

Analysis of the supplementary provisions

Comments on Article 499 *bis*

Article 499 *bis*⁴² states that ‘anyone who insults Iranian ethnicities or divine religions or Islamic schools of thought recognised under the Constitutions with the intent to cause violence or tensions in the society or with the knowledge that such [consequences] will follow’ will be subjected to harsh punishments. The prescribed punishment in cases where the outlawed conduct ‘leads to violence or tensions’ is an imprisonment sentence of between two and five years and/or a monetary fine. If no ‘violence and tension’ is caused, an imprisonment sentence of between six months and two years and/or a monetary fine can be imposed. Conduct that falls under *Hudud* punishments is excluded from the terms of this provision.

When reviewed under the three-part test (be prescribed by law; pursue a legitimate aim; and be necessary and proportionate to the legitimate aim) on restrictions of the right to freedom of expression (see earlier), ARTICLE 19 finds that the provisions of Article 499 *bis* do not comply with its requirements.

Legality

First, Article 499 *bis* fails to meet the criteria of legality. The principle of legality requires that all legislation must meet certain standards of clarity and precision, enabling individuals to foresee the consequences of their conduct on the basis of the law. Vaguely worded edicts with an unclear scope of application that are open to wide interpretation do not meet this standard, and thus constitute illegitimate restrictions on freedom of expression.

Article 499 *bis* employs vague language, giving undue discretion to the authorities to extend its scope to any conduct they see fit. For instance, it is not clear what exactly is the meaning of ‘insult’ or what does one have to do to ‘insult’ or cause ‘tension’. The answers to these questions raise a multitude of further questions. These terms are so subjective it will be impossible to know in advance whether one is committing a crime under these provisions; this will only be determined after the event,

according to other people's subjective interpretation of the language used, based on a subjective assessment by law-enforcement and judicial officials.

Note 1 to the Article seeks to elaborate on the definition of 'insult' by referring to a number of deeply flawed existing provisions in the Islamic Penal Code and the Press Law. Alarmingly, these provisions in reality provide no definition of the term. For example, Articles 513, 514, 608, and 609 of the Penal Code, cited under Note 1, in broad and vague terms, respectively criminalise 'insulting the Islamic sanctities'; 'insulting Imam Khomeini and the Supreme Leader'; 'insulting individuals including through swear words'; and insulting State officials such as the President, the Head of the Judiciary, and ministers.

ARTICLE 19 believes that to leave these determinations to law enforcement, or even to the judiciary, would lead to devastating results, including arbitrary arrest and detention and that would have an enormous chilling effect on freedom of expression and the ability of the people in Iran to live free of fear, censorship, and arbitrariness.

Legitimate aim

Second, as noted earlier, under international law, religions or religious schools of thought do not enjoy protection from verbal attacks and insults. Under Article 19(3) of the ICCPR, it is not legitimate for States to restrict freedom of expression to protect religions and belief systems from criticism, debate, insults, and offence, nor can they extend restrictions on freedom of expression to protect followers of a religion or belief from offence and insult. As such, Article 499 *bis* provisions are illegitimate under international human rights law.

Under General Comment No. 34, legislation prohibiting displays of lack of respect to a religion or belief system is incompatible with freedom of expression standards unless the expression in question genuinely constitutes incitement to discrimination, hostility, or violence. Such prohibitions must meet the standards of Article 19(3) of the ICCPR, and other provisions of the ICCPR, including those on non-discrimination.⁴³

While Article 499 *bis* makes references to ‘violence’, it does not require an act of expression to have constituted incitement to violence or discrimination or have sought to promote discriminatory hatred towards a target group as required under international law, nor does it state that the audience of the prohibited expression must be incited towards committing a harmful act against the target group. International standards suggest that, to necessitate prohibition, the advocacy of hatred must reach a threshold of severity so high it is likely to incite a proscribed outcome; that is, imminent violence, hostility, or discrimination.

ARTICLE 19 is concerned that Article 499 *bis* will increase the power of the State to target dissenting opinions or certain beliefs. Despite its wording which might suggest a protective role for individuals belonging to ethnic and religious minorities, Article 499 *bis* will not provide any protection for ethnic and religious minorities who face systematic discrimination and human rights violations, as well as demeaning and stereotypical representations and portrayals, on some occasions by State institutions and on others in the public sphere and by non-State actors. Instead, it will further tighten the already shrunken space for freedom of expression in the country. In fact, it is likely to be used against individuals belonging to ethnic groups who have simply been exercising their human rights, including speaking up about violations of their civil and political as well as economic, social, and cultural rights.

Necessity and proportionality

Finally, the prohibitions introduced by Article 499 *bis* do not meet the criterion of necessity and proportionality as they limit freedom of expression in a broad way and are disproportionate to their purported benefits.

ARTICLE 19 reiterates that such prohibitions also violate the rights of believers of minority religions, as well as non-believers, as they might induce fear of prosecution, and/or effectively coerce a person or group to adopt a religion or belief different from that which they would freely choose, and are contrary to guarantees to the rights to freedom of thought, conscience, and religion or belief.

Moreover, Article 499 *bis* not only criminalises what effectively falls under legitimate exercise of freedom of expression, but it also includes harsh punishment:

imprisonment of two to five years and/or a monetary fine of 80–180 million rials (app. 1,905-4,283 USD). These punishments may be further increased by one degree (amounting to imprisonment of five to 10 years and/or a monetary fine of 180–380 million rials) if the ‘offence’ includes one of the aggravating circumstances enumerated under Note 2 to Article 499 *bis*.

ARTICLE 19 notes that international human rights bodies have held that the imposition of a prison sentence for an offence in the areas of political speech or debates on questions of general interest is compatible with freedom of expression only in ‘exceptional circumstances’; notably, where other fundamental rights have been seriously impaired, such as for ‘hate speech’ or incitement to violence.⁴⁴ This principle also applies to prison sentences that are suspended or conditional.⁴⁵

The terms of the provisions aggravate the prescribed penalties in cases where the ‘offence’ in question is committed by organised groups, even though there exists no legal definition of ‘organised crimes’ or ‘organised groups’ in the Iranian legislation. In the absence of a precise legal definition, the authorities will have wide discretion to not only convict individuals for legitimately exercising their right to freedom of expression but also arbitrarily increase the penalties individuals will have to endure. The interpretive discretion granted to the judicial authorities is also likely to result in attacks on the rights to freedom of assembly and association, as peaceful and legitimate assemblies and associations may be deemed ‘organised criminal groups’. Furthermore, the imposition of heavier penalties on government employees and public officials is likely to force these groups to heightened levels of self-censorship.

ARTICLE 19 is also concerned under the provision and its notes nearly all means of dissemination through which the illegitimately criminalised expression may be conveyed, such as social media platforms, are considered aggravating elements and increase the prescribed punishments. This includes public speeches, publication in legacy media, and publication on the Internet, including on social media platforms. In recent years, the publication of material deemed ‘offensive’ by the authorities on social media platforms has resulted in numerous arrests – and, in some cases, issuance of the death penalty – in flagrant violation of international law and standards.⁴⁶

These fears are further heightened in light of the State's accelerating efforts to impose further restrictions on online expression through filtering platforms such as Twitter and Telegram,⁴⁷ as well as other existing and under-consideration pieces of legislation, such as the Computer Crime Law,⁴⁸ the Preservation and Protection of Personal Data Bill,⁴⁹ and the Social Media Organisation Bill.⁵⁰ All three pieces of legislation (the Data Protection and Social Media Organisation Bills remains under consideration) pose serious threats to online privacy, creating a fertile ground for identification of users who fail to abide by the State's undue restrictions on expression. By criminalising 'concealing data, changing passwords, and/or encoding data that could deny access of authorised individuals to data, computer and telecommunication systems', Article 10 of the Computer Crime Law also effectively criminalises encryption.

Purported protection of minority groups from incitement

While the additional provisions to the Islamic Penal Code do not purport to attempt to protect individuals and groups from hate speech, the references made in the preamble of the Draft Bill to social dangers arising from 'insulting' religions and ethnicities, and the wording of Article 499 *bis* may give the impression that limiting hate speech may have been a justification for the introduction of the Bill. The report of the Legal and Judicial Commission on the initial draft also noted an overlap between the initial Draft Bill and a Draft Bill on Combating Racial Discrimination and Ethnic and Religious Hatred,⁵¹ and, as such, integrated them into what was eventually submitted to the Guardian Council. In a January 2021 reply to a communication by a number of UN Special Rapporteurs with regards to the cases of 24 Christian converts, the Iranian authorities made more explicit claims about the ostensible protective role of the Bill. In their reply, they made references to the Bill as a piece of legislation that further strengthens the protection of the rights to freedom of religion and belief in the country.⁵²

ARTICLE 19 disputes these claims. Despite its wording which might suggest a protective role for individuals belonging to ethnic and religious minorities, Article 499 *bis* will not provide any protection for ethnic and religious minorities who face systematic discrimination and human rights violations, as well as demeaning and

stereotypical representations and portrayals, on some occasions by state institutions and on others in the public sphere and by non-state actors. The provisions neither follows the structure of Article 20(2) of the ICCPR nor reflects any of its key elements, and it goes beyond permitted restrictions to freedom of expression in its provisions:

- **Advocacy of discriminatory hatred:** Article 499 *bis* focuses on spreading any expression that might be considered insulting, without requiring actual *advocacy* of discriminatory hatred. Requiring advocacy would imply an act of expression that seeks to promote discriminatory hatred publicly towards the target group. The focus should be on the emotional state of the audience of the expression towards the targets of the hate speech, rather than the emotional impact on the targets of the hate speech.
- **A target group defined by a protected characteristic:** Article 499 *bis* merely refers to ‘religions’ and ‘ethnicities’ in their abstract forms, without naming the groups the prohibited expression is targeting or the protected characteristics. This failure to include all the protected characteristics that appear under the broader non-discrimination provisions of international human rights law – such as race, language, sex, gender identity, sexual orientation, migration or refugee status, political or other opinion, and disability – is despite the fact that individuals and groups with protected characteristics, including the lesbian, gay, bisexual, transgender, questioning, and intersex (LGBTQI) community and migrants and refugees from Afghanistan, have faced systematic hate speech over the past decades. In fact, the Iranian authorities have themselves been at the forefront of disseminating hateful and violent speech against the LGBTQI community; official statements and material published by State-controlled or State-sponsored media frequently describe individuals belonging to the LGBTQI community as ‘immoral’, ‘corrupt’, ‘animalistic’, and ‘sick’, promoting and justifying hatred and violence against them.⁵³

Moreover, the Bill not only includes religion and ethnicity as merely abstract concepts but also intentionally limits the scope of religions by including only those that have been recognised under the country’s Constitution. Under Article 13 of the

Constitution, 'Zoroastrian, Jewish, and Christian Iranians are the only recognised religious minorities'. This has stripped followers of many other religions, faiths, and beliefs of legal protections.

The explicit reference to legally recognised religions takes a more menacing form when examined in the context of the ongoing discrimination against, and persecution of, individuals belonging to religious and belief-based minority groups, such as Bahá'is, Christian converts, Yaresan, Mandaean, Darvishes, and atheists. In fact, the Iranian authorities have actively pursued a policy of disseminating hatred towards certain groups, such as Bahá'is, Yaresan, and Darvishes. Bahá'is have been systematically described by State officials and State-sponsored media as a 'seditious sect', 'cult-like', 'morally corrupt', and 'deviant', and accused of 'involvement in espionage' and Western-orchestrated conspiracies against the Islamic Republic.⁵⁴ Similarly, Christian converts and Darvishes regularly face accusations of furthering the aims of foreign enemies who aim to weaken the Islamic Republic.

ARTICLE 19 urges that instead of Article 499 *bis*, the Iranian Government should adopt legislation aimed at protecting a broad range of characteristics, recognised within Articles 2(1) and 26 of the ICCPR, from incitement to hatred, violence, and discrimination:

- **Incitement to violence, hostility, or discrimination:** The Camden Principles set out proposed definitions for some of these key terms.⁵⁵ Article 499 *bis* does not require the audience of the expression to be incited towards committing a harmful act against the target group. International standards suggest that, to necessitate prohibition, the advocacy of hatred must reach a threshold of severity so high it is likely to incite a proscribed outcome; that is, imminent violence, hostility, or discrimination. Determining whether the severity threshold has been met requires applying the six-part severity threshold test set out below.
- **Intent:** Article 499 *bis* fails not only to mention advocacy to discriminatory hatred but also to clarify what standard of intent must be demonstrated to find a person criminally liable. Given the serious nature of the penalties to be imposed on the

exercise of a fundamental right, specific intent to engage in advocacy of hatred – and, in so doing, to incite particular harms – should be shown. There is therefore a need to show intent to engage in the advocacy of discriminatory hatred, intent to target a particular group on the basis of a protected characteristic, and knowledge that this would likely cause a proscribed outcome (violence, hostility, or discrimination).

The Rabat Plan clarifies that this is a high threshold, to be determined by a judge on the basis of very narrowly drawn laws, setting out six-part severity threshold criteria:⁵⁶

1. **The context of the expression**, taking into account the existence of conflict in society – and, in particular, any history of violence or institutionalised discrimination against the target group – as well as the legal, political, and media landscape;
2. **The identity of the speaker**, in particular their position, authority, or influence in relation to their audience;
3. **Intent** to engage in advocacy of hatred constituting incitement to violence, hostility, or discrimination (as described earlier);
4. **The content or form of the expression**, including what was said, its form and tone, and what the audience would understand from this, in particular where the incitement is indirect;
5. **The extent of the expression**, including how public it was and the reach of the expression; and
6. The likelihood and imminence of inciting violence, hostility, or discrimination.

Importantly, Article 20(2) of the ICCPR does not require criminalisation, as this is a fairly severe sanction. However, where there is incitement to violence and the six-part severity threshold is demonstrated, proportionate criminal sentences may be justifiable.

Apart from the lack of compliance with international human rights standards, ARTICLE 19 raises further concerns about the impact these provisions will have in practice on the rights of religious minority groups, non-believers, and those expressing dissent within Islam, as well as ethnic minorities.

Comments on Article 500 *bis*

Article 500 *bis*⁵⁷ states that:

anyone as part of a sect, group, population or the like and the use of mind control methods and psychological indoctrination in real or cyber space commit the following actions, so long as his/her behaviour does not warrant the Hadd punishment, are sentenced to fifth-degree imprisonment and a monetary fine or one of these two punishments and fifth-degree deprivation of social rights.

The prohibited actions include, among others:

*any deviant educational or proselytising activity that contradicts or interferes with the sacred religion of Islam in ways such as making false claims or lying in religious and Islamic spheres such as claiming divinity, prophecy or Imamate, and/or claiming to be communicating with the prophets or the pure Imams (peace be upon them).*⁵⁸

ARTICLE 19 finds that these provisions impose further and more severe forms of arbitrary and unlawful infringement on the right to freedom of religion and belief imposed through the law. As noted earlier, educational or proselytising activity and other forms of religious expression – such as making ‘false’ religious claims (whose falsity or otherwise is to be decided by persons, not the State), claiming divinity or prophecy, and claiming to be in communication with the prophets – are all protected under the right to freedom of expression and the right to freedom of religion and belief.

The mere contradiction or interference of such conduct with Islam, or the State’s official religion, could not be considered a permissible ground for restriction under Article 18(3) of the ICCPR. As the Human Rights Committee has stated, recognition of a religion as a State religion, or the fact that the majority of a population follows one religion, must not result in any impairment of the rights of others, or any discrimination against the followers of other religions or non-believers.⁵⁹ Therefore, the provisions of Article 500 *bis* do not sustain scrutiny under human rights law.

We reiterate that these provisions will further disproportionately impact religious and belief minority groups, as well as non-believers and those expressing dissent within Islam. As described above, Iran's Constitution does not fully guarantee the right to freedom of religion and belief. Shi'a Islam is declared the State religion, while only three other religions – Judaism, Christianity, and Zoroastrianism⁶⁰ – are granted legal recognition. This has allowed the authorities to prosecute large numbers of individuals for exercising their human rights to religion and faith. Most cases of judicial prosecution take place on the pretext of protecting national security and on the grounds of national security provisions. The additional provisions to the Penal Code grant the authorities further grounds to prosecute individuals for the exercise of their right to freedom of religion and belief.

The wording of Article 500 *bis* particularly sparks fears for followers of the Bahá'í faith, who have been targeted by violence, prosecution, and enforced disappearances; arbitrary, summary, and extrajudicial executions; and destruction of their religious sites for several decades now.⁶¹ These attacks have been facilitated by the authorities' repeated refusal to recognise the Bahá'í faith as a religion, as well as by its categorisation as a harmful 'political faction'⁶² and sect. Many Bahá'ís who are persecuted on the basis of their religious beliefs are accused of proselytising the Bahá'í faith, and face charges such as 'propaganda against the State' and 'membership of an illegal group'.⁶³ Given such precedent, which demonstrates how the authorities have deemed the Bahá'í faith to pose a threat to Islam and national security, the Article 500 *bis* criminalisation of 'proselytising activity that contradicts or interferes with the sacred law of Islam' is expected to provide the State with additional 'legal' tools to deny Bahá'ís their human rights.⁶⁴

Moreover, the note to Article 500, which increases the punishment by one degree if there exists any 'connection of groups subject to this article with [entities] outside the country for the purpose of receiving support or organisational guidance', is likely to further exacerbate the risks already faced by Bahá'ís. This is because, due to the existence of a sacred Bahá'í site, the Shrine of the Báb in Haifa, Bahá'ís are often accused of 'collaboration and connections with Israel'.

Christian converts are another persecuted group who are feared to face heightened levels of repression as a result of the new Penal Code provisions. While apostasy is not codified as criminal offence under the 2013 Islamic Penal Code, Article 167 of the Constitution in violation of the principle of legality, allows judges to refer to uncodified Shari'a law sources where the law is vague or silent on an issue. Article 220 of the 2013 Islamic Penal Code explicitly states that in the cases of *hudud* crimes not stipulated under the Code, judges must act per Article 167 of the Constitution. This effectively allows the judicial authorities to impose the death penalty for the 'crime' of apostasy despite its absence in the law. In practice, the authorities have increasingly used national-security related provisions such as 'propaganda against the system' and 'membership in illegal and enemy groups' to prosecute Christian converts for exercising their right to freedom of expression and belief.⁶⁵

Gonabadi Darvishes, whose civil, political as well as economic, social, and cultural rights are systematically violated, have similarly faced national security charges.⁶⁶ The new Islamic Penal Code provisions will further place Darvishes at risk of persecution solely for exercising their human rights. Similar concerns exist for the Yaresan and Mandaeans as well as other religious minorities.

ARTICLE 19 warns that Article 500 *bis* is also highly likely to be relied on to further prosecute individuals for following and exercising other beliefs, such as followers of *Erfan-e Halgheh* (Inter-Universalism). Generally described by the Iranian State as a 'perverse sect', followers of such spiritual groups often face accusations of 'psychological domination' and 'indoctrination' in order to corrupt the society.⁶⁷ The inclusion of such terms in a piece of legislation would effectively codify such forms of discrimination and persecution.

ARTICLE 19 warns that, similar to Article 499 *bis*, Article 500 *bis* further opens the hands of the Iranian authorities to tighten their grip on online expression.

Recommendations

Based on the foregoing, ARTICLE 19 calls on the Iranian authorities to:

- Immediately repeal Articles 400 *bis* and 500 *bis* of the 2013 Islamic Penal Code;
- Conduct a full and substantial review and reform of all domestic legislation with a view to bringing them into conformity with international law including by repealing or substantially amending vaguely worded and broadly defined provisions of the Islamic Penal Code that unduly restrict the rights to freedom of expression, such as Articles 262, 500, 513, 514, 609, 610, 638, 698, and 700;
- Amend the Constitution, including its Articles 13 and 24, to guarantee the rights to freedom of expression, thought, religion, and belief in line with international human rights law and standards;
- Repeal all provisions in legislation that prohibit and criminalise defamation of religions and/or blasphemy as well as apostasy;
- Ensure only advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence is prohibited, in line with Article 19(3) and Article 20(2) of the ICCPR, establishing a high threshold for limitations on free expression (as set out in the Rabat Plan of Action); and
- Adopt a comprehensive plan on the implementation of the Rabat Plan of Action, including plans for training law-enforcement authorities, the judiciary, and those involved in the administration of justice on issues concerning the prohibition of incitement to hatred and 'hate speech'.

Annex: Unofficial translation of the law

In the name of God

Islamic Republic of Iran
Islamic Consultative Assembly

Number: 30/94697
Date: 27/11/1399 [15 February 2021]
Enclosure:

Speaker

Hojatoleslam Dr Hassan Rouhani

Honourable President of the Islamic Republic of Iran

Pursuant to Article One Hundred and Twenty-Three (123) of the Constitution of the Islamic Republic of Iran, **Statute to Include Two Supplementary Articles of Law in Book Five of the Islamic Penal Code (*Ta'zirat*^[1] and Deterring Punishments)**, which was submitted as Priority One to the Islamic Consultative Assembly in order to incorporate their provisions into Book Five of the Islamic Penal Code (*Ta'zirat* and Deterring Punishments), in relation to insulting official religions and branches of Islam and Iranian ethnicities, subsequent to its ratification in the Open Session on Wednesday 24/10/1399 [13 January 2021] and the endorsement of the esteemed Guardian Council, is hereby issued.

Mohammad Bagher Ghalibaf

[Signature]

Statute to Add Supplementary Articles to Book Five of the Islamic Penal Code (*Ta'zirat* and Deterring Punishments)

Article 1 – An Article, described below, adopted as ‘Recurrent Article 499’ is added to Book Five of the Islamic Penal Code (*Ta'zirat* and Deterring Punishments), ratified on 2/3/1375 [22 May 1996]:

Recurrent Article 499 – Anyone who, with intent to cause violence or tension in society, or with knowledge of their occurring as a result, insults Iranian ethnicities, divine religions, or branches of Islam, as recognised under the Constitution, and causes thereby violence or tension – unless subject to *Hadd*^[2] – and [the conduct] results in violence or tensions is sentenced to imprisonment and a monetary fine of a fifth degree, or one of these two punishments; otherwise, to imprisonment and a monetary fine of a sixth degree, or one of the two.

Note 1 – The term ‘insult’ is defined, as per ‘the law of Estefsarieh^[3]– ratified on 4/10/1379 [24 December 2000] – pertaining to the meaning of insult, the use of offensive language or desecration of someone’s honour as stipulated under the penal provisions, Articles (513), (514), (608) and (609) of the Islamic Penal Code and Para (7) and (8) of Article (6), and Articles (26) and (27) of the Press Law.’

Note 2 – In the event that the crime described in this Article is committed by an organised criminal group or is committed by government or public officials or employees while performing their duties, or in relation to them, or is delivered through speeches in public gatherings or through the use of tools of mass communication in real or cyber spaces, the stipulated penalty is increased by one degree.

Article 2 – An Article, described below, adopted as ‘Recurrent Article 500’ is added to Book Five of the Islamic Penal Code (*Ta’zirat* and Deterrent Punishments), ratified on 2/3/1375 [22 May 1996]:

Recurrent Article 500 – Anyone who, as part of a sect, group, society, or the like, by using methods of mind control and psychological indoctrination, in real or cyber space, commits the following actions – unless his/her behaviour is subject to *Hadd* – is sentenced to imprisonment and a monetary fine of a fifth degree, or one of the two punishments, and a fifth-degree deprivation of social rights. The punishment for leading a sect or group as described above is determined as per Article (130) of the Islamic Penal Code, ratified on 1/2/1392 [21 April 2013]:

1. Any act that results in psychological or physical domination over another in such a way that the person is sexually, physically, or financially abused and exploited; or that as a result of his/her decision-making power being impaired and he/she being encouraged to commit crimes such as immoral acts, consumption of alcohol, drugs, or psychedelic substances, self-harm or abuse of others, the person commits such crimes.
2. Any deviant educational or proselytising activity that contradicts or interferes with the sacred religion of Islam in ways such as making false and unreal claims in religious and Islamic domains, such as laying claim to divinity, prophethood, or Imamate, or claiming to be in communication with the Prophets or the pure Imams (peace be upon them).

Note 1 – Providing financial or any other form of material support to any group subject to this Article, with knowledge of the nature of the group, shall carry a sentence of fifth-degree imprisonment and a monetary fine equal to two to five times the value of the financial aid and material support provided. If the perpetrator is a legal entity, it will be subject to dissolution and payment of the monetary fine as mentioned above.

Note 2 – Communication by groups subject to this Article with anyone outside the country for the purpose of receiving support or organisational guidance will result in the increase of the stipulated punishment by one degree.

Note 3 – The assets of the leaders and the individuals providing financial support to groups subject to this Article, which are the profit of a crime committed, or are used to commit a crime, or are obtained for this purpose, and the assets belonging to the aforementioned groups, shall be confiscated for the benefit of the *Bayt al-mal*.^[4]

Should it become evident that the assets belong to another, or that another has a right to them, and such assets have not been provided to individuals or the abovementioned groups for the purpose of committing criminal activities, the said assets shall be returned to their rightful owners and the perpetrator will be fined an amount equal to their value; or if it becomes evident that the perpetrator is indebted to another, and the assets used in committing a crime or obtained for committing a crime belong to him/her and are not the profit of crime, his/her assets equal to what he/she owes will be returned to the debtors and the perpetrator will be required to pay a monetary fine of an amount equal to the value of the assets.

Note 4 – Matters concerning education, research, and other similar measures, for the purpose of rejecting, negating and responding to the doubts, and critiquing the beliefs, of the groups subject to this Article, are outside the scope of the stipulations of this Article and Recurrent Article 499 of this law.

The above legislation, consisting of two Articles, was ratified in Open Session on Wednesday, the twenty-fourth of Dey, thirteen ninety-nine [13 January 2021] by the Islamic Consultative Assembly, and endorsed by the Guardian Council on 15/11/1399 [3 February 2021].

Mohammad Bagher Ghalibaf

[Signature]

^[1] *Ta’zirat* (discretionary punishments) are offences for which no determined punishment exists in Sharia law.

^[2] [Hadd: offences for which there are predetermined punishments under Shari'a law such as adultery, drinking alcoholic beverages, and certain types of theft.]

^[3] [Questioning/investigation]

^[4] Public treasure of an Islamic State.

Endnotes

¹ See ARTICLE 19, [Iran: Lawmakers must urgently drop the Bill that criminalises fundamental rights and freedoms](#), 10 December 2020.

² See e.g. Center for Human Rights in Iran, [Unrecognized Minorities in Iran Must Now Hide Religion to Obtain Crucial Government ID](#), 27 January 2020; [Detained Kurdish Teacher Falsely Accused of Security Charges, Sister Says](#), 12 November 2019; or [Mass Conviction of Sufi Protesters 'Unprecedented in Iran's Judicial History'](#), 20 August 2018. See also Amnesty International, [Human Rights in the Middle East and North Africa: A Review of 2019](#), 18 February 2020; or Human Rights Watch, [World Report 2020, Events of 2019](#).

³ Recurring Articles are provisions in Iran's legal system that are subsequently added to a piece of legislation and carry the same number as existing provisions without replacing or amending them.

⁴ [The Constitution of the Islamic Republic of Iran](#), Article 24.

⁵ [The Islamic Penal Code](#), Article 262.

⁶ The Islamic Penal Code, Article 500.

⁷ The Islamic Penal Code, Article 513.

⁸ The Islamic Penal Code, Article 514.

⁹ The Islamic Penal Code, Article 609.

¹⁰ The Islamic Penal Code, Article 638.

¹¹ The Islamic Penal Code, Note to Article 638.

¹² The Islamic Penal Code, Article 698.

¹³ The Islamic Penal Code, Article 700.

¹⁴ ARTICLE 19 and Access Now, [Joint Submission to the Universal Periodic Review of Islamic Republic of Iran](#), 4 April 2019.

¹⁵ The analysis is based on an unofficial translation of the Draft Bill (see the Annex to this analysis).

¹⁶ International Covenant on Civil and Political Rights, adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

¹⁷ Article 2(2) of the ICCPR; Articles 2(1)(b) and 15, Vienna Convention on the Law of Treaties, 1969.

¹⁸ UN Human Rights Committee, *Ballantyne and Davidson v Canada*, Comm. No. 359/1989 and *McIntyre v Canada*, Comm. No. 385/1989, UN Doc CCPR/C/47/D/359/1989 and 385/1989/Rev 1, 5 May 1993, Annex para 11.3.

¹⁹ See inter alia *Kim v the Republic of Korea*, Comm. No. 574/1994, views adopted on 3 November 1998 and *Park v the Republic of Korea*, Comm. No. 628/1995, 20 October 1998.

²⁰ See inter alia *Kim v the Republic of Korea*, Comm. No. 574/1994, views adopted on 3 November 1998 and *Park v the Republic of Korea*, Comm. No. 628/1995, views adopted on 20 October 1998.

²¹ The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, [A/HRC/22/17/Add.4](#), Appendix, adopted 5 October 2012. The Rabat Plan has been positively referenced in the UN Human Rights Council's recurring resolutions; see e.g. Resolution on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, UN Doc. [A/HRC/RES/22/31](#), 15 April 2013, para 4. It has also been endorsed by a wide range of the UN Special Procedures, e.g. Report of the Special Rapporteur on protecting and promoting the right to freedom of opinion and expression, 7 September 2012, [A/67/357](#); Report of the Special Rapporteur on freedom of religion or belief, 26 December 2013, [A/HRC/25/58](#); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racism), 6 May 2014, [A/HRC/26/49](#); and the contribution of the UN Special Advisor on the Prevention of Genocide to the expert seminar on ways to curb incitement to violence on ethnic, religious, or racial grounds in situations with imminent risk of atrocity crimes, Geneva, 22 February 2013.

²² UN Human Rights Committee, [CCPR General Comment No. 22, Article 18 \(Freedom of Thought, Conscience or Religion\)](#), 30 July 1993, CCPR/C/21/Rev.1/Add.4, para 3.

²³ General Comment No. 22, para 8.

²⁴ General Comment No. 22.

²⁵ UN HRC, Report of the Special Rapporteur on freedom of religion or belief, [A/HRC/64/159](#), 17 July 2009, para 31.

²⁶ General Comment No. 22, op. cit., para 8.

²⁷ UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992, para 4(2).

²⁸ UN Human Rights Committee, [General Comment No. 34, Article 19: Freedoms of opinion and expression](#), 11–29 July 2011, CCPR/C/GC/34, paras 48–49.

²⁹ The UN HRC has refrained from adopting highly contentious resolutions that have urged States to combat defamation of religions and dropped any reference to defamation of religions or religious insult since the adoption of [Resolution 16/18](#) of 24 March 2011 on 'Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief'. By deliberately omitting any reference to 'defamation of religions', Resolution 16/18 embodied a de facto rejection of the term and denial of its legitimacy in the UN human rights system, and has since been consolidated through similar resolutions adopted by the UN HRC and General Assembly. See UN HRC Resolutions 19/25 of 23 March 2012, 22/31 of 22 March 2013, 25/34 of 28 March 2014, and 28/29 of 27 March 2015, as well as UN General Assembly Resolutions 66/167 of 19 December 2011, 67/178 of 20 December 2012, 68/169 of 18 December 2013, and 69/174 of 18 December 2014.

³⁰ UN HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [A/HRC/7/14](#), 28 February 2008, para 85.

³¹ Report to the Second Session of the Human Rights Committee, [A/HRC/2/3](#), 20 September 2006, para 38.

³² Report of the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [A/HRC/2/3](#), 20 September 2006.

³³ Rabat Plan, [A/HRC/22/17/Add.4](#), op. cit.

³⁴ *Ibid.*, para 25.

³⁵ See also Article 10(2) of the [European Convention on Human Rights](#); Article 32(2) of the [Arab Charter on Human Rights](#); Article 13(5) of the [American Convention on Human Rights](#). For a comparative perspective in Europe, see also Council of Europe, [Recommendation 1805 \(2007\) Blasphemy, religious insults and hate speech against persons on grounds of their religion](#), 29 June 2007; European Commission for Democracy through Law (Venice Commission), [Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred](#), 23 October 2008; European Court of Human Rights, *Klein v Slovakia*, App. No. 72208/01, 31 October 2006; *Handyside v United Kingdom*, App. No. 5493/72, 7 December 1976, Series A No. 24, 1 EHRR 737.

³⁶ For instance, several EU Member States, such as Denmark, the UK, Iceland, Norway, and Malta, have all repealed criminal prohibitions on blasphemy.

³⁷ See e.g. Supreme Court of Korea, decision of 29 August 1997, 97da19755; or the Bombay High Court, *R V Bhasin v State of Maharashtra and Marine Drive Police Station*, CR P C Sections 95 and 92 Criminal Application No. 1421 of 2007, 6 January 2010.

³⁸ ARTICLE 19, [The Camden Principles on Freedom of Expression and Equality](#), April 2009, para 12.3.

³⁹ *Ibid.*, paras 48–49.

⁴⁰ Venice Commission, October 2008, *op. cit.*, paras 64, 68, and 89.

⁴¹ Venice Commission, October 2008, *op. cit.*, p. 46.

⁴² Article 499 of the Islamic Penal Code, which will remain intact if Article 499 *bis* is passed, criminalises membership in any group larger than two people that aims to disrupt national security.

⁴³ General Comment No. 34, *op. cit.*, paras 48–49.

⁴⁴ See e.g. European Court, *Otegi Mondragon v Spain*, App. No. 2034/07, 15 March 2011, para 59; or *Mariya Alekhina and Others v. Russia*, App. No. 38004/12, 17 July 2018, para 227.

⁴⁵ See e.g. European Court, *Mătăşaru v. the Republic of Moldova*, App. Nos 69714/16 and 71685/16, 15 January 2019, para 35.

⁴⁶ See e.g. ARTICLE 19, [Iran: Death sentence imposed on Sina Dehghan is an affront to Iran’s own criminal code](#), 29 March 2017.

⁴⁷ ARTICLE 19, [Iran: Decline for free expression requires increased support for UN scrutiny](#), 6 March 2019.

⁴⁸ ARTICLE 19, [Islamic Republic of Iran: Computer Crimes Law](#), 2012.

⁴⁹ ARTICLE 19, [Iran: Personal Data Protection and Safeguarding Draft Act](#), 27 June 2019.

⁵⁰ ISNA, [The text of the social media organisation bill](#), 19 November 2018.

⁵¹ The [Draft Bill on Combating Racial Discrimination and Ethnic and Religious Hatred](#) was drafted by 52 parliamentarians in December 2018 and it remains in draft form. An analysis of this Bill falls outside the scope of this brief. However, it must be noted that, while the Draft Bill includes a number of progressive provisions that could provide for better protection of individuals and groups with protected characteristics, it remains flawed, as its Article 2 effectively allows for conduct that is discriminatory on the basis of race, colour, sex, ethnicity, religion, and nationality if allowed under the law or Islamic Principles. ARTICLE 19 understands the Draft Bill has remained dormant, and that some parliamentarians had expressed scepticism that it would ever pass into law, stating that such a bill would ‘exacerbate divisions’.

⁵² In [their reply](#), the authorities state ‘Religious minorities are entitled to all freedoms and civil rights as stipulated in the Constitution of the Islamic Republic of Iran. The Civil Rights Charter provides in Articles 10, 33, 77, 97 and 110 for respecting religious and ethnic rights and social and political inclinations whilst banning any hatemongering particularly vis-à-vis children, discrimination in employment, discrimination towards minorities, ethnic groups as well as social and political groups with regard to access to information and in acquisition of knowledge and laying emphasis on enjoyment of right to intercultural communications. Furthermore, Iranian MPs unanimously adopted on 19 May 2020 a piece of legislation to criminalise insult against religions, denominations and Iranian ethnic groups, as recognized by the Constitution.’

⁵³ Iranian Lesbian & Transgender Network 6Rang, [“It’s a great honor to violate homosexuals’ rights”: Official hate speech against LGBT people in Iran](#), 18 December 2017.

⁵⁴ In 2011, the Bahá’i International Community documented and analysed more than 400 press and media items covering a period of over 16 months; it documented how State-controlled and State-sanctioned media systematically demonise and vilify Bahá’is, using false accusations, inflammatory terminology, and repugnant imagery. See Bahá’i International Community, [Inciting Hatred: Iran’s media campaign to demonize Bahá’is](#), October 2011.

⁵⁵ The Camden Principles, op. cit., Principle 12.

⁵⁶ The Rabat Plan of Action, op. cit. See also ARTICLE 19, [‘Hate Speech’ Explained](#), 2015, pp. 78–81.

⁵⁷ Article 500 of the Islamic Penal Code, which will remain intact if Article 500 *bis* is passed, criminalises ‘propaganda against the State or in support of opposition groups and associations’.

⁵⁸ The Article also prohibits ‘any illegal or illegitimate act that causes psychological or physical domination over another in such a way that the person is exploited and sexually, physically or financially abused, or as a result of harming the person’s decision-making power and encouraging him/her to commit crimes or indecent actions, such as the consumption of alcohol, drugs or psychedelic substances, or commit self-harm or the abuse of others.’ The provision includes acts and conduct – such as sexual and physical exploitation and abuse, and incitement to self-harm or commission of violence against others – which amount to internationally recognisable offences. However, the Article, in breach of the principle of legality, fails to provide precise definitions of terms and to adequately establish the elements of the crime. For example, it provides no clarity as to what constitutes ‘mind control methods’ or ‘psychological indoctrination’, thus granting the authorities wide discretion to determine such definitions.

⁵⁹ General Comment No. 22, op. cit., para 9.

⁶⁰ Although Iran’s Constitution recognises Jews, Christians, and Zoroastrians as religious minorities, individuals belonging to these minority groups continue to face discrimination in law and in practice. Under Iran’s laws, non-Muslims are barred from holding certain public and political positions such as the post of the President and that of a judge. The eligibility criteria for parliament membership include ‘belief in Islam’ and religious minority groups are allocated a very limited number of parliament seats. Moreover, the Islamic Penal Code imposes heavier punishments on non-Muslims when it comes to certain offences and the country’s Civil Law prioritises Muslim family members over non-Muslims when it comes to inheritance.

⁶¹ See e.g. F. Vahman, *170 Years of Persecution: A history of the Bahá’is of Iran*, Part One (Oneworld, 2019); The Bahá’i International Community, [The Bahá’i Question Revisited: Persecution and Resilience in Iran](#), October 2016; Justice for Iran, [Putting a Face to the Crime Islamic Republic Figures Responsible for the Persecution of Bahá’is in Iran](#), 10 March 2013; and Amnesty International, [Silenced, Expelled, Imprisoned: Repression of Students and Academics in Iran](#), June 2014.

⁶² In an interview in 1979, Rouhollah Khomeini, the former Supreme Leader of the Islamic Republic, was asked whether the Islamic Republic would grant Bahá’is political and religious freedoms. In response, he stated: “They are a political faction; they are harmful. They will not be accepted.” Similar statements were made by the Islamic Republic’s Attorney General, commenting: “the Quran recognizes only the people of the Book as religious

communities. Others are pagans. Pagans must be eliminated.” Both quoted in Nazila Ghanea, *Human Rights, the UN and the Bahá’is in Iran* (Martinus Nijhoff, 2002), pp. 101–102.

⁶³ See e.g. Center for Human Rights in Iran, [Man Convicted of National Security Crimes in Iran For Allegedly Promoting His Bahá’i Faith](#), 29 July 2019; or [Two Dozen Iranian Bahá’is Sentenced to Six to Eleven Years for Practicing Their Faith](#), 2 February 2016.

⁶⁴ Ibid.

⁶⁵ In a [January 2021 response to the UN Special Rapporteurs with regards to the cases of 24 Christian converts](#), the Iranian authorities stated: ‘The persons mentioned in the Rapporteurs’ report, under cover of promoting Christianity, were in fact communicating with evangelical Zionism with a view to enmity and confrontation with the Islamic Establishment and subversive act against it through organized cults and holding illegal and secret meetings to deceive citizens and exploit the deceived persons, particularly children.’ For more details with regards to human right violations against the Christian minority in Iran, see Center for Human Rights in Iran, [The Cost of Faith: Persecution of Christian Converts and Converts in Iran](#), 2013.

⁶⁶ See Iran Human Rights Documentation Center, [Living under Suppression the Situation of Gonabadi Dervishes in Iran](#), 6 March 2021.

⁶⁷ For example, Mohammad Ali Taher, the founder of the spiritual group Erfan-e Halgheh, was charged with ‘spreading corruption on earth’ for ‘corrupting the thoughts and beliefs of tens of thousands of Muslim citizens across the country’ through his books, writings, and teachings. See Amnesty International, [Iran: Further Information: Prisoner of Conscience Sentenced to Death: Mohammad Ali Taher](#), 31 August 2017.