

# Blasphemy and Related Laws in Selected Jurisdictions

January 2017



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# Blasphemy and Related Laws in Selected Jurisdictions

*by the Staff of the Global Legal Research Center*

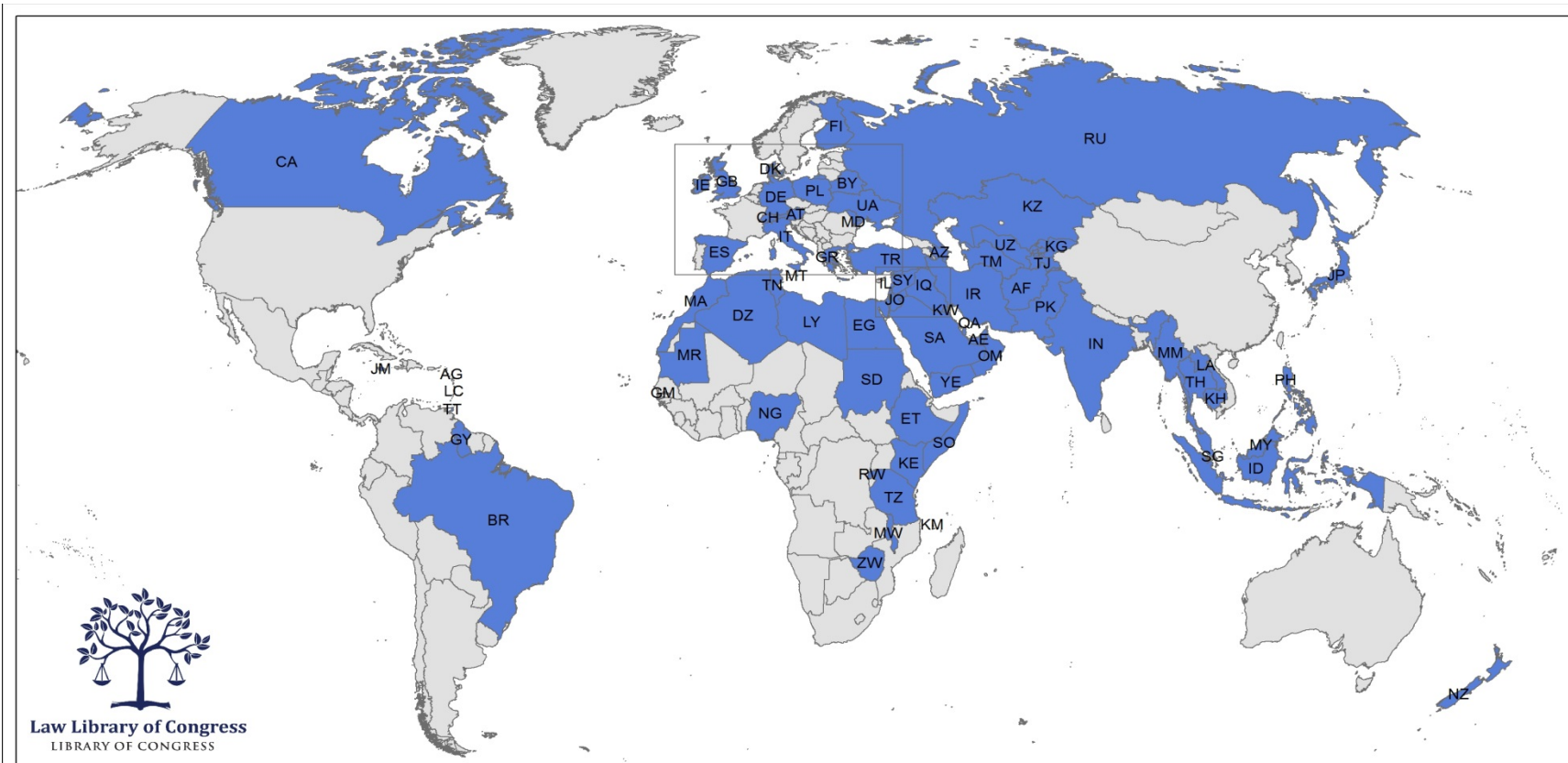
## I. Introduction

This report, prepared by the staff of the Global Legal Research Center of the Law Library of Congress, surveys laws criminalizing blasphemy, defaming religion, harming religious feelings, and similar conduct in seventy-seven jurisdictions. In some instances the report also addresses laws criminalizing proselytization. Laws prohibiting incitement to religious hatred and violence are outside the scope of this report, although in some cases such laws are mentioned where they are closely intertwined with blasphemy. The report focuses mostly on laws at the national level, and while it aims to cover the majority of countries with such laws, it does not purport to be comprehensive. For each surveyed country, the law in question is quoted or paraphrased and examples of enforcement actions are briefly described where reports of such actions were found.

Blasphemy laws are widely dispersed around the globe; regional patterns are apparent. Such laws are more likely to exist and be actively enforced in Islamic countries.

- In Western Europe, many countries retain blasphemy and related laws. While in some countries they are never enforced, there have been prosecutions in recent years in Austria, Finland, Germany, Greece, Switzerland, and Turkey.
- In much of Eastern Europe and Central Asia, laws prohibiting proselytization or insulting religion are prevalent. Recent prosecutions are noted in the entries for Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan.
- Most jurisdictions in the Middle East and North Africa have laws prohibiting insulting Islam or religion generally. Many of them have recently applied such laws, including in Algeria, Bahrain, Egypt, Iran, Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Sudan, Tunisia, the United Arab Emirates, and the West Bank.
- Sub-Saharan African countries covered in this report include Comoros, Ethiopia, The Gambia, Kenya, Malawi, Mauritania, Nigeria, Rwanda, Somalia, Tanzania, and Zimbabwe. These countries have laws prohibiting blasphemy, proselytization, or similar conduct, although only a handful of reports of enforcement were found.
- In South Asia, the Islamic states of Afghanistan and Pakistan have blasphemy laws that are actively enforced, and India has a blasphemy law that reportedly is used by all of India's faith groups when their religious sensibilities are hurt.
- Islamic countries in East Asia and the Pacific, including Brunei, Indonesia, Malaysia, and Myanmar, have blasphemy-related laws that are actively enforced. Other East Asian and Pacific countries with such laws include Japan, Laos, the Philippines, Singapore, Thailand, and New Zealand; the latter has a blasphemy law that has been used only once since its 1893 enactment, in a 1922 case where the defendant was found not guilty.
- In Latin America and the Caribbean, there are only a few countries with blasphemy or religious insult laws on the books, and the laws are not enforced.
- In North America, Canada has a blasphemy law that is not enforced.

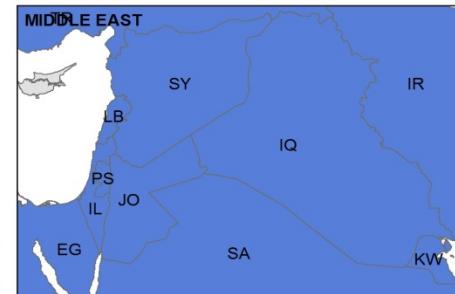
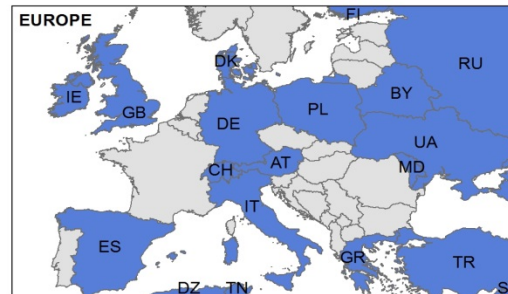
# Blasphemy and Related Laws in Selected Jurisdictions



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## Countries in Study with Blasphemy or Related Laws

- Countries In study
- Countries not in study



Source: Based on Law Library research contained in this report, *Blasphemy and Related Laws in Selected Countries* (Law Library of Congress, Jan. 2017).

## II. Country Surveys by Region

### A. East Asia and Pacific

#### Brunei

Brunei's recently promulgated Syariah (Shari'a) Penal Code Order, 2013, contains certain offenses against religion.<sup>1</sup> The Code includes fixed crimes related to *irtidad* (apostasy) that also relate to blasphemy, including declaring oneself as god;<sup>2</sup> declaring oneself a *Rasul* or *Nabi* (Messenger or Prophet of God);<sup>3</sup> contempt of Nabi;<sup>4</sup> or deriding, etc., verses of the Quran, *hadith* (a collection of traditions containing sayings of the Prophet Muhammad), or obligatory matters with *ijma'* (consensus).<sup>5</sup> Those found guilty of such offenses are punishable by death or imprisonment for up to thirty years and corporal punishment, depending on the type of evidence. If a Sharia'a Court is satisfied that the accused has repented, the Court must order an acquittal.<sup>6</sup>

In the general offenses section of the Code (chapter IV), certain crimes are stipulated that apply to any person or only to non-Muslims. Any person "who, orally, in writing, by visible representation or in any other manner contempts [sic] or brings into contempt, insults, makes fun of, mocks, mimics or ridicules" the religions of Islam is guilty of an offense.<sup>7</sup> Contempt of the Prophet<sup>8</sup> and deriding verses of the Quran or Hadith by non-Muslim are also crimes.<sup>9</sup>

Offenses that prohibit proselytization also exist in the Code. Propagation of a religion other than Islam is criminalized.<sup>10</sup> Persuading Muslims to change their religion,<sup>11</sup> persuading a person having no religion to become a believer of a religion other than Islam,<sup>12</sup> and exposing the beliefs and practices of a religion other than Islam to a minor Muslim child or a child whose parents have no religion, are also crimes.<sup>13</sup> Delivering or giving a publication relating to a religion other than Islam to Muslims or persons having no religion is also proscribed, both privately and in

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<sup>1</sup> Syariah Penal Code Order, 2013, pt. IV, "Offences," ch. I, "Irtidad" (Apostasy) & ch. IV, "General Offences," [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf), archived at <https://perma.cc/3LTU-58ZS>.

<sup>2</sup> *Id.* § 108.

<sup>3</sup> *Id.* § 109.

<sup>4</sup> *Id.* § 110.

<sup>5</sup> *Id.* § 111.

<sup>6</sup> *Id.* § 117.

<sup>7</sup> *Id.* § 220.

<sup>8</sup> *Id.* § 221.

<sup>9</sup> *Id.* § 222.

<sup>10</sup> *Id.* § 209.

<sup>11</sup> *Id.* § 210.

<sup>12</sup> *Id.* § 211.

<sup>13</sup> *Id.* § 212.



public places.<sup>14</sup> According to the 2015 US State Department report on religious freedom in Brunei, “[t]he government issued numerous warnings about restrictions on non-Muslims proselytizing to Muslims or people with no religion.”<sup>15</sup>

The Syariah Penal Code Order was published in Brunei’s official gazette on October 22, 2013, and was meant to come into effect through a phased process. It appears that the death penalty for apostasy will be applied when the third phase of the law goes into effect.<sup>16</sup> Corporal punishment will be applied twelve months after the Syariah Courts Criminal Procedure Code (CPC) is published in the gazette, and capital punishment will be applied twenty-four months after the CPC is published.<sup>17</sup>

The Sultan of Brunei has criticized the Ministry of Religious Affairs and the Attorney General’s Chambers over the delay in implementing the Syariah Criminal Procedure Code (CPC) in its entirety, and has stated that the third phase, when the death penalty becomes enforceable, will have to wait until the year 2018.<sup>18</sup>

## Indonesia

Article 156a of the Indonesian Penal Code provides for a person to be subject to up to five years of imprisonment if he or she “deliberately in public gives expression to feelings or commits an act: a) which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; or b) with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.”<sup>19</sup>

In addition to this provision, the President of Indonesia issued a decision in 1965, Law No. 1/PNPS/1965 on the Prevention of Abuse and/or Defamation of Religion, which prohibits people from knowingly communicating in public, or advocating or seeking support for, interpretations of a religion practiced in Indonesia, or undertaking religious-based activities that resemble the

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<sup>14</sup> *Id.* §§ 214 & 215.

<sup>15</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: BRUNEI, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256091>, archived at <https://perma.cc/6X9P-HZ8V>.

<sup>16</sup> *Laws Criminalizing Apostasy: Brunei*, LAW LIBRARY OF CONGRESS (May 2014), <http://www.loc.gov/law/help/apostasy/index.php#afghanistan>, archived at <https://perma.cc/CBF7-7VU7> (citing *Syariah Penal Code Order Declaration Ceremony – April 30, 2014*, BRUNEI TIMES (Apr. 30, 2014) (Note: *Brunei Times* closed down on Nov. 8, 2016; original article no longer available)).

<sup>17</sup> *Id.* (citing Rabiatul Kamit & Bandar Seri Begawan, *Kedah Officials in Brunei to Observe Syariah Law*, BRUNEI TIMES (May 16, 2014)); see also *Syariah Panel [sic] Code Briefing for Military Personnel*, MINISTRY OF DEFENSE BRUNEI DARUSSALAM (Apr. 10, 2014), [http://www2.mindf.gov.bn/MOD\\_Brunei/index.php/news-archives-mainmenu-70/2310-syariah-panel-code-briefing-for-military-personnel](http://www2.mindf.gov.bn/MOD_Brunei/index.php/news-archives-mainmenu-70/2310-syariah-panel-code-briefing-for-military-personnel), archived at <https://perma.cc/S98Y-9JA8>.

<sup>18</sup> *His Majesty Lambasts Delay in Syariah Law Enforcement*, BORNEO BULLETIN (Feb. 28, 2016), <http://borneobulletin.com.bn/his-majesty-lambasts-delay-in-syariah-law-enforcement>, archived at <https://perma.cc/4QLQ-UMPR>.

<sup>19</sup> PENAL CODE (adopted 1982), art. 156a, unofficial translation available on the U.N. Office on Drugs and Crime website, at [https://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf), archived at <https://perma.cc/S3VC-RZ6J>.

religious activities of the religion in question, where such interpretations and activities deviate from the basic teachings of the religion.<sup>20</sup> It also specifies that the six recognized religions in Indonesia are Islam, Buddhism, Protestantism, Catholicism, Hinduism, and Confucianism.<sup>21</sup>

The Penal Code provision and the presidential decision were upheld by the Constitutional Court in April 2010.<sup>22</sup>

There have been a number of reported prosecutions and convictions for blasphemy in Indonesia.<sup>23</sup> Amnesty International counted at least 106 such convictions between 2005 and 2014.<sup>24</sup> Most recently, a blasphemy case involving the governor of Jakarta, an ethnic Chinese Christian man, has gained considerable media attention in Indonesia and abroad. He is accused of insulting the Quran during his election campaign, in September 2016, by telling voters not to believe those who were using a particular verse to justify the claim that Muslims should not be led by non-Muslims.<sup>25</sup> Court hearings in the case continued in January 2017.<sup>26</sup>

## Japan

Profaning places of worship and interference with religious service are prohibited in Japan. Article 188 of the Penal Code states as follows:

- (1) A person who in public profanes a shrine, temple, cemetery or any other place of worship shall be punished by imprisonment with or without work for not more than 6 months or a fine of not more than 100,000 yen [US\$ 900].

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<sup>20</sup> Penetapan Presiden Republik Indonesia Nomor 1 Tahun 1965 tentang Pencegahan Penyalahgunaan Dan/Atu Penodaan Agama (1/PNPS/1965), art. 1, <http://www.peraturan.go.id/inc/view/11e44c4e2b836b80835f313231323134.html> (in Indonesian), archived at <https://perma.cc/LS5A-WGRH>.

<sup>21</sup> *Id.* (explanation of article 1).

<sup>22</sup> Constitutional Court Decision No. 140/PUU-VII/2009 (Apr. 2010), [http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/putusan\\_sidang\\_Putusan%20PUU%20140\\_Senin%2019%20April%202010.pdf](http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/putusan_sidang_Putusan%20PUU%20140_Senin%2019%20April%202010.pdf), archived at <https://perma.cc/YXC2-WDWV>.

<sup>23</sup> See *Indonesia's Blasphemy Laws*, THE ECONOMIST (Nov. 24, 2016), <http://www.economist.com/blogs/economist-explains/2016/11/economist-explains-15>, archived at <https://perma.cc/DDT3-8YZF>.

<sup>24</sup> Press Release, Amnesty International, Indonesia: Drop Blasphemy Case Against Jakarta Governor (Nov. 16, 2016), <https://www.amnesty.org/en/latest/news/2016/11/indonesia-drop-case-against-jakarta-governor/>, archived at <https://perma.cc/Z2VU-WHP8>.

<sup>25</sup> *Indonesian Court Gives Go-Ahead to Blasphemy Trial of Jakarta Governor Ahok*, THE GUARDIAN (Dec. 27, 2016), <https://www.theguardian.com/world/2016/dec/27/indonesia-court-blasphemy-trial-ahok-jakarta-governor>, archived at <https://perma.cc/QJ7L-CNRW>.

<sup>26</sup> See, e.g., Callistasia Anggun Wijaya, *Witnesses Reject Seeking Clarification from Ahok Alleged Blasphemy*, JAKARTA POST (Jan. 11, 2017), <http://www.thejakartapost.com/news/2017/01/11/witnesses-reject-seeking-clarification-from-ahok-for-alleged-blasphemy.html>, archived at <https://perma.cc/5K92-UWMD>.

(2) A person who interferes with a sermon, worship or a funeral service shall be punished by imprisonment with or without work for not more than 1 year or a fine of not more than 100,000 yen [US\$ 900].<sup>27</sup>

## Laos<sup>28</sup>

A report by the US State Department suggests that foreigners are not allowed to proselytize in Laos under the country's Decree Regarding Governance and Protection of Religious Activity in the Lao PDR (Prime Minister's Decree No. 92/PM).<sup>29</sup>

## Malaysia

Chapter XV of the Malaysian Penal Code sets out “offenses relating to religion.”<sup>30</sup> The offenses include “injuring or defiling a place of worship with intent to insult the religion of any class” (punishable by up to two years of imprisonment or a fine, or both);<sup>31</sup> “disturbing a religious assembly” (up one year of imprisonment or a fine or both);<sup>32</sup> and “trespassing on burial places, etc” (up to one year of imprisonment or a fine or both).<sup>33</sup> Section 298 contains the following offense:

**Uttering words, etc., with deliberate intent to wound the religious feelings of any person**

298. Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

In addition, section 298A is a detailed provision that criminalizes “causing, etc., disharmony, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion.” This is punishable by between two and five years of imprisonment.<sup>34</sup>

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<sup>27</sup> PENAL CODE, Act No. 45 of 1907, *amended by* Act No. 54 of 2016, art. 188, English translation as of 2007 available in the Ministry of Justice's online database, at [http://www.japaneselawtranslation.go.jp/law/detail\\_main?re=02&vm=02&id=1960#en\\_pt2ch25](http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&vm=02&id=1960#en_pt2ch25), archived at <https://perma.cc/DR44-NFVJ>.

<sup>28</sup> At present there are no Law Library of Congress research staff members versed in Laotian. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>29</sup> US DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: LAOS, <https://www.state.gov/documents/organization/256329.pdf>, archived at <https://perma.cc/AVS4-UWNT>.

<sup>30</sup> PENAL CODE (Act 574) (as amended to Jan. 1, 2015), ch. XV, <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>, archived at <https://perma.cc/9N5M-ZCJU>.

<sup>31</sup> *Id.* § 295.

<sup>32</sup> *Id.* § 296.

<sup>33</sup> *Id.* § 297.

<sup>34</sup> *Id.* § 298A(1).

The provision defines aspects of the offense, and also states that “[i]t shall not be a defence to any charge under this section to assert that what the offender is charged with doing was done in any honest belief in, or in any honest interpretation of, any precept, tenet or teaching of any religion.”<sup>35</sup>

Furthermore, the Sedition Act 1948<sup>36</sup> was amended in 2015 to include in the definition of “seditious tendency” a tendency “to promote feelings of ill will, hostility or hatred between persons or groups of persons on the ground of religion.”<sup>37</sup> Under the Act, a person may be liable to a term of imprisonment of between three and seven years where he or she

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) propagates any seditious publication.<sup>38</sup>

In addition, federal and state laws that set out Syariah (Shari‘a) criminal offenses (applicable only to Muslims) contain provisions related to, among others, wrongful worship; teaching false doctrines; propagating religious beliefs and doctrines other than those of Islam among persons professing the Islamic faith; claiming that a person is a prophet or knows of unnatural happenings; insulting or bringing into contempt the religion of Islam; and deriding, insulting, ridiculing or bringing into contempt verses of the Quran.<sup>39</sup> These laws have been used to charge Muslims with blasphemy offenses for certain actions, such as a 2015 case in Perak involving a Muslim man who sought clarification from religious teachers and others regarding the history of the practice of declaring faith.<sup>40</sup>

The US Department of State has reported on the application of the above laws in its annual reports on international religious freedom. For example, the 2015 report stated that

[t]he government continued to forbid non-Sunni practice of Islam, barred Muslims from converting to another religion, and imposed fines, detentions, and canings on those classified under the law as Muslim who contravened sharia codes. It also limited

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<sup>35</sup> *Id.* § 298A(7).

<sup>36</sup> Sedition Act 1948 (Act 15) (as amended to Jan. 1, 2006), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%2015.pdf>, archived at <https://perma.cc/MRP3-KYM4>.

<sup>37</sup> Sedition (Amendment) Act 2015 (Act A1485), § 3, inserting new § 3(1)(ea) into the Sedition Act 1948, [http://www.federalgazette.agc.gov.my/outputaktap/20150604\\_A1485\\_BI\\_Act%20A1485.pdf](http://www.federalgazette.agc.gov.my/outputaktap/20150604_A1485_BI_Act%20A1485.pdf), archived at <https://perma.cc/WUQ4-ZDG3>.

<sup>38</sup> Sedition Act 1948, § 4(a), as amended by § 4 of the Sedition (Amendment) Act 2015.

<sup>39</sup> *See, e.g.*, Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) (as amended to Jan. 1, 2013), §§ 3–8, [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 559 - Syariah Criminal Offences \(Federal Territories\) Act 1997.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559-SyariahCriminalOffences(FederalTerritories)Act1997.pdf), archived at <https://perma.cc/SX36-UXSN>.

<sup>40</sup> Zurairi Ar, *For Seeking Answers on Islam, Muslim Gets Charged with Blasphemy*, MALAY MAIL ONLINE (May 29, 2015), <http://www.themalaymailonline.com/malaysia/article/for-asking-questions-muslim-gets-charged-with-blasphemy>, archived at <https://perma.cc/6Z2X-MYBV>.

proselytization by non-Muslim religious groups and restricted the distribution of religious texts. The government prosecuted some deemed to have “insulted Islam” under sedition laws, often following criticism of the government’s policies on religion. Because Islam, Malay ethnic identity, and the ruling United Malays National Organization (UMNO) party are closely linked, it is difficult to categorize many incidents as being solely based on religious identity.<sup>41</sup>

## Myanmar<sup>42</sup>

Section 295A of Myanmar’s Penal Code states that anyone who, by spoken or written words or visible representations, insults or attempts to insult the religion or the religious beliefs of persons with the deliberate and malicious intent of outraging the religious feelings of such persons shall be punished with imprisonment and/or a fine.<sup>43</sup>

Section 298 of the Code further states that anyone, “with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment” and/or a fine.<sup>44</sup>

There have been recent prosecutions for blasphemy under section 295A of the Code. For example, in 2015, a bar manager from New Zealand and two local colleagues were sentenced to two years’ imprisonment for posting an image of the Buddha wearing headphones on Facebook.<sup>45</sup> The same year, a writer was sentenced to two years’ imprisonment with hard labor for a recorded speech that he gave at a literary event in which he “criticized some groups for using religion to stoke discrimination.”<sup>46</sup>

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<sup>41</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: MALAYSIA, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dclid=256119>, archived at <https://perma.cc/D5US-UU9X>.

<sup>42</sup> At present there are no Law Library of Congress research staff members versed in Burmese. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>43</sup> PENAL CODE (India Act XLV. 1860) (May 1, 1861), § 295A, available in the Online Burma/Myanmar Library, at [http://www.burmalibrary.org/docs6/MYANMAR\\_PENAL\\_CODE-corr.1.pdf](http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf), archived at <https://perma.cc/57RZ-Z288>.

<sup>44</sup> *Id.* § 298.

<sup>45</sup> Wai Moe & Austin Ramzy, *Myanmar Sentences 3 to Prison for Depicting Buddha Wearing Headphones*, NEW YORK TIMES (Mar. 17, 2015), <https://www.nytimes.com/2015/03/18/world/asia/myanmar-sentences-3-to-prison-for-defaming-buddhism.html>, archived at <https://perma.cc/448B-2Z9L>.

<sup>46</sup> Press Release, Amnesty International, Myanmar: Guilty Verdict for “Insulting Religion” Must be Overturned Immediately (June 2, 2015), <https://www.amnesty.org/en/press-releases/2015/06/myanmar-guilty-verdict-for-insulting-religion-must-be-overturned-immediately/>, archived at <https://perma.cc/CGS9-2Y7L>.

## New Zealand

Section 123 of the Crimes Act 1961 sets out the offense of “blasphemous libel,” stating as follows:

- (1) Every one is liable to imprisonment for a term not exceeding 1 year who publishes any blasphemous libel.
- (2) Whether any particular published matter is or is not a blasphemous libel is a question of fact.
- (3) It is not an offence against this section to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.
- (4) No one shall be prosecuted for an offence against this section without the leave of the Attorney-General, who before giving leave may make such inquiries as he or she thinks fit.<sup>47</sup>

The offense is not further defined in the law and the courts have not provided any clarification. According to an organization that advocates for the repeal of the provision, “[i]n more than 120 years since the introduction of the New Zealand law of Blasphemous Libel in 1893, only one charge has reached the courts.”<sup>48</sup> This occurred in 1922 under the Crimes Act 1908, with the accused found not guilty of the charge.<sup>49</sup>

## Philippines

Article 133 of the Revised Penal Code of the Philippines provides that “anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful” may be punished with imprisonment.<sup>50</sup> In 2013, an individual was convicted for this crime.<sup>51</sup>

## Singapore

Chapter XV of the Singapore Penal Code (Cap 224) contains offenses relating to religion and race.<sup>52</sup> Under this chapter, section 295 provides that injuring or defiling a place of worship with

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<sup>47</sup> Crimes Act 1961, s 123, <http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html>, archived at <https://perma.cc/9BM6-WSG8>.

<sup>48</sup> *Historical Application of Blasphemy Charges in New Zealand*, BLASPHEMY IN NZ, <http://blasphemy.nz/background/history/nz/> (last visited Jan. 13, 2017), archived at <https://perma.cc/BQ5K-YCUD>.

<sup>49</sup> *Id.*

<sup>50</sup> REVISED PENAL CODE OF THE PHILIPPINES, Act No. 3815, as Amended, art. 133, reproduced in 2 MIRIAM DEFENSOR SANTIAGO, PENAL CODE ANNOTATED 28 (2d ed. 2015).

<sup>51</sup> Patricia Ann Escalona & Leon Ma. Angel Caguioa, *The Crime of Offending Religious Feelings and Carlos Celdran*, 58 ATENEO L.J. 400, 402 (2013), <http://www.ateneolawjournal.com/Media/uploads/3e9d7fb5c25c78da5364d50c66389550.pdf>, archived at <https://perma.cc/HKA5-6XBB>.

<sup>52</sup> Penal Code (Chapter 224) (Ordinance 4 of 1871; revised Nov. 30, 2008), ch. XV, <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:21a9d09f-717b-47a5-a93a-5a44aa8ca1a9>, archived at <https://perma.cc/2WUP-73F6>.

intent to insult the religion of any class is punishable by up to five years of imprisonment, a fine, or both.<sup>53</sup> Section 296 provides that disturbing a religious assembly is punishable by up to three years of imprisonment, a fine, or both.<sup>54</sup> Section 297 provides that trespassing on burial places, etc. to wound the feeling of others or insult the religion of others is punishable by up to three years of imprisonment, a fine, or both.<sup>55</sup>

According to section 298, uttering words, etc., with deliberate intent to wound the religious or racial feelings of any person is punishable by up to three years of imprisonment, a fine, or both. Section 298 provides,

[w]hoever, with deliberate intention of wounding the religious or racial feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, or causes any matter however represented to be seen or heard by that person, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.<sup>56</sup>

Section 298A further provides that promoting enmity between different groups on grounds of religion or race and engaging in acts prejudicial to the maintenance of harmony is punishable by up to three years of imprisonment, a fine, or both. According to section 298A,

[w]hoever —

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or
- (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquility,

shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.<sup>57</sup>

In addition, the Maintenance of Religious Harmony Act (Cap 167A), passed in 1990,<sup>58</sup> empowers the Singaporean government to restrain religious leaders and members from engaging in any acts that will cause feelings of enmity, hatred, ill-will, or hostility between different

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<sup>53</sup> *Id.* § 295.

<sup>54</sup> *Id.* § 296.

<sup>55</sup> *Id.* § 297.

<sup>56</sup> *Id.* § 298.

<sup>57</sup> *Id.* § 298A.

<sup>58</sup> Maintenance of Religious Harmony Act (Chapter 167A) (Act 26 of 1990; revised July 31, 2001), <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A77026343-e30d-40e2-a32e-b1f5d46c5bd7%20%20Status%3Ainforce%20Depth%3A0;rec=0#legis>, archived at <https://perma.cc/49DS-B59T>.

religious groups.<sup>59</sup> Breaching such a restraining order is punishable by a fine of up to SGD10,000 (about US\$7,000), up to two years of imprisonment, or both. A second offense is punishable by a fine of up to approximately US\$20,000, up to three years of imprisonment, or both.<sup>60</sup>

Furthermore, the Sedition Act (Cap 290) provides that it is seditious to “promote feelings of ill-will and hostility between different races or classes of the population of Singapore.”<sup>61</sup> This offense, which includes uttering seditious words, is punishable by a fine of up to SGD5,000, up to three years of imprisonment, or both for a first offense, and up to five years of imprisonment for a subsequent offense.<sup>62</sup>

Under the Undesirable Publications Act (Cap 338), a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters of race or religion “in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups.”<sup>63</sup> Offenses involving objectionable publications is punishable by a fine of up to SGD5,000, up to twelve months of imprisonment, or both.<sup>64</sup>

Recently, a young Singaporean was convicted of wounding the religious feelings of Christians and Muslims by his online comments. In September 2016, Yee pleaded guilty to six charges under section 298 of the Penal Code and was sentenced to six weeks of imprisonment. Previously, in July 2015, he was sentenced to three weeks of imprisonment for the same section 298 offense.<sup>65</sup> According to the judge,

[Yee] has, on several occasions, deliberately elected to do harm by using offensive and insulting words and profane gestures to hurt the feelings of Christians and Muslims. His contemptuous and irreverent remarks have the tendency to generate social unrest and undermine the religious harmony in our society. It is therefore in the public interest that such conduct by the Accused should not be condoned or tolerated by this court.<sup>66</sup>

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<sup>59</sup> *Id.* § 8.

<sup>60</sup> *Id.* § 16.

<sup>61</sup> Sedition Act (Chapter 290) (M Ordinance 14 of 1948; revised Aug. 31, 2013) § 3(1)e, <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:466d0ef9-dd7b-4a2e-9963-0199ee9fb374>, archived at <https://perma.cc/W9GU-CMDF>.

<sup>62</sup> *Id.* § 4(1).

<sup>63</sup> Undesirable Publications Act (Chapter 338) (Act 3 of 1967; revised Dec. 15, 1998) § 4(1), <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:b0016a41-923d-490d-973b-5930fa509b9e>, archived at <https://perma.cc/7NTC-8TMA>.

<sup>64</sup> *Id.* § 12.

<sup>65</sup> Principal District Judge Ong Hian Sun, *MAC-904523-2016 & 7 Ors, PP v. Amos Yee Pang Sang, Brief Sentencing Remarks*, para. 5 (Sept. 29, 2016), [https://www.statecourts.gov.sg/Resources/Documents/29092016%20Oral%20sentencing%20remarks%20-%20PP%20v%20Amos%20Yee%20\(web\).pdf](https://www.statecourts.gov.sg/Resources/Documents/29092016%20Oral%20sentencing%20remarks%20-%20PP%20v%20Amos%20Yee%20(web).pdf), archived at <https://perma.cc/KA4A-95EG>.

<sup>66</sup> *Id.*



## Thailand<sup>67</sup>

The State Department's *International Religious Freedom Report for 2012: Thailand* stated that "the 1962 Sangha Act [last amended in 2007] specifically prohibits the defamation or insult of Buddhism and the Buddhist clergy. Violators of the law can face up to one year's imprisonment or fines of up to 20,000 baht (approximately [US]\$667)."<sup>68</sup> The 2015 report contained a similar statement but did not mention the name of the law.<sup>69</sup>

Article 44 of the 1962 Sangha Act, without taking into account later amendments, states that "[w]hoever charges the Order of Sangha of Thailand with an accusation that could produce disgrace and discord shall be punished with a fine of not more than five thousand Baht or an imprisonment of not more than one year or both."<sup>70</sup>

The Criminal Code also contains sections setting forth offenses relating to religion.<sup>71</sup> Section 206 prohibits insulting acts directed at the object or place of religious worship of any group of persons. Section 207 prohibits disturbing the worship of a religious group or a religious ceremony. Section 208 prohibits dressing like or using a symbol manifesting oneself to be a Buddhist monk or novice, holy man, or clergyman of any religion. Violators of these sections may be imprisoned and/or fined.

## B. Europe and Central Asia

### Austria

Section 188 of the Austrian Criminal Code provides that

[a]nyone who publicly disparages or mocks a person or a thing that is the object of worship of a domestic church or domestic religious society, or a religious doctrine, a legally admissible custom, or a legally admissible institution of such a church or religious

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<sup>67</sup> At present there are no Law Library of Congress research staff members versed in Thai. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>68</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012: THAILAND, <https://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm?year=2012&dliid=208270>, archived at <https://perma.cc/PCW3-ML5W>.

<sup>69</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: THAILAND, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256145>, archived at <https://perma.cc/GYB9-HSH5>.

<sup>70</sup> MAHAMAKUTA EDUCATION COUNCIL, BUDDHIST UNIVERSITY, ACTS ON THE ADMINISTRATION OF THE BUDDHIST ORDER OF SANGHA 57 (1963), bibliographic information at <https://lccn.loc.gov/88177657>.

<sup>71</sup> CRIMINAL CODE, B.E. 2499 (1956), as amended by CRIMINAL CODE (No. 17), B.E. 2547 (2003), available at <http://www.thailaws.com> (click "Thailand Acts in English," and then "Criminal Code (No. 14), B.E. 2540 (1997)"), archived at <https://perma.cc/LA75-LVRJ>.

society, in a manner that is capable of causing legitimate offense, shall be liable to imprisonment not exceeding six months or a fine of up to 360 daily units.<sup>72</sup>

The Austrian Supreme Court of Justice (*Oberster Gerichtshof*) held that there can be no “legitimate offense” if the expression of opinion is in accordance with articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) of the European Convention on Human Rights (ECHR).<sup>73</sup>

The criminal law provision is still enforced. In 2015, a total of seven people were charged with “disparaging religious teachings” as compared to ten in the previous year.<sup>74</sup> Most recently, the Austrian Supreme Court of Justice upheld the conviction of a woman sentenced to a fine of 120 daily units of €4 to a total of €480 (around US\$514), or alternatively to a term of imprisonment of sixty days, for characterizing the prophet Mohammed as a “pedophile.”<sup>75</sup>

## Azerbaijan

Article 1 of Azerbaijan’s Law on Freedom of Religious Beliefs states that “[c]arrying out religious propaganda by foreigners and persons without citizenship shall be prohibited.”<sup>76</sup>

Amendments added in 2015 to article 168 of the Criminal Code provide for imprisonment of up to one year or a fine of two to five thousand Manats (approximately US\$1,086 to \$2,716) for any citizen who, after receiving religious training abroad, conducts any Islamic ritual.<sup>77</sup> Newly introduced article 168-1.2 of the Criminal Code punishes foreigners and stateless persons with a two-year term of imprisonment for distributing religious propaganda.<sup>78</sup>

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<sup>72</sup> Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch - StGB) [Criminal Code], BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] No. 60/1974, as amended, <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10002296/StGB%2c%20Fassung%20vom%2017.01.2017.pdf> (translation by author), archived at <http://perma.cc/WVU4-HEA4>.

<sup>73</sup> OBERSTER GERICHTSHOF [OGH] [SUPREME COURT OF JUSTICE], Dec. 11, 2013, docket no. 15Os52/12d, at 12, [https://www.ris.bka.gv.at/Dokumente/Justiz/JJT\\_20131211\\_OGH0002\\_0150OS00052\\_12D0000\\_000/JJT\\_20131211\\_OGH0002\\_0150OS00052\\_12D0000\\_000.pdf](https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20131211_OGH0002_0150OS00052_12D0000_000/JJT_20131211_OGH0002_0150OS00052_12D0000_000.pdf), archived at <http://perma.cc/W89F-BJH2>; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), Nov. 4, 1950, 213 U.N.T.S. 221, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), archived at <http://perma.cc/H88Y-KGN9>.

<sup>74</sup> BUNDESMINISTERIUM FÜR INNERES [BMI] [MINISTRY OF THE INTERIOR], SICHERHEITSBERICHT KRIMINALITÄT 2015. VORBEUGUNG UND BEKÄMPFUNG [SECURITY REPORT CRIME 2015. PREVENTION AND COMBAT] 50, [http://www.bmi.gv.at/cms/BMI\\_Service/SIB\\_2015/SIB2015\\_Hauptteil\\_V20160627\\_web.pdf](http://www.bmi.gv.at/cms/BMI_Service/SIB_2015/SIB2015_Hauptteil_V20160627_web.pdf), archived at <http://perma.cc/5VV6-Y59A>.

<sup>75</sup> OGH, *supra* note 73.

<sup>76</sup> Law No. 281 of August 20, 1992, on Freedom of Religious Beliefs art. 1, available at [http://multiculturalism.preslib.az/en\\_a8-2.html](http://multiculturalism.preslib.az/en_a8-2.html), archived at <https://perma.cc/36HG-F8HP>.

<sup>77</sup> Law No. 31-VQD of December 4, 2015, on Amending the Criminal Code of the Republic of Azerbaijan, <http://www.e-qanun.az/framework/31511> (in Azerbaijani), archived at <https://perma.cc/L8L6-4WJ2>.

<sup>78</sup> *Id.*

## Belarus

There is no blasphemy law in Belarus. All authorized religious activities are detailed in the Law on Freedom of Conscience and Religious Organizations. That Law prohibits importing religious materials without a positive conclusion from the state's theological examination and defines rules for registration of permitted religious organizations.<sup>79</sup> Membership in an unregistered religious organization is penalized by a two-year term of imprisonment.<sup>80</sup>

Human Rights Watch has reported that this provision was used in 2013 against a Belarus citizen who was charged with establishing an unregistered religious organization after opening a shelter with a prayer room for homeless people in his house.<sup>81</sup>

## Denmark

Blasphemy is criminalized in Denmark. Article 140 of the Danish Penal Code states that “[a]ny person who, in public, ridicules or insults the dogmas or worship of any lawfully existing religious community in this country shall be liable to a fine or to imprisonment not exceeding four months.”<sup>82</sup>

The provision in current form was adopted in 1930 and has been sparingly used since then. The last time it was successfully invoked was in 1938.<sup>83</sup> The most recent instance of an unsuccessful prosecution under the provision occurred in 1971.<sup>84</sup>

Only the Danish Rigsadvokat (National Prosecutor) can initiate a prosecution under the blasphemy provision.<sup>85</sup> Recent examples of when the National Prosecutor decided not to prosecute for blasphemy include the case of the Danish newspaper *Jyllandsposten* over the caricatures of the prophet Mohammed it published in 2005.<sup>86</sup>

<sup>79</sup> Law of the Republic of Belarus No. 2054-XII on Freedom of Conscience and Religious Organizations of December 17, 1992, art. 26, NARODNAIA GAZETA, Jan. 13, 1993 (official publication, in Russian), available at <http://forb.by/node/78>, archived at <https://perma.cc/J8FG-B78T>.

<sup>80</sup> CRIMINAL CODE OF THE REPUBLIC OF BELARUS art. 193.1, [http://etalonline.by/?type=text&regnum=HK9900275#load\\_text\\_none\\_1](http://etalonline.by/?type=text&regnum=HK9900275#load_text_none_1) (official publication, in Russian), archived at <https://perma.cc/48LA-MECV>.

<sup>81</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2014 at 421 (2014), [https://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/wr2014_web_0.pdf), archived at <https://perma.cc/9S87-AJWB>.

<sup>82</sup> STRAFFELOVEN [DANISH PENAL CODE], LOVBEKENDTGØRELSE [LBK] nr 1052 af 04/07/2016, <https://www.retsinformation.dk/Forms/R0710.aspx?id=181992> (translation by author), archived at <https://perma.cc/ZJ78-F7YC>.

<sup>83</sup> Ugeskrift for retsvæsen [UfR] [Supreme Court Reporter] 1938 at 419 Ø (regarding anti-Semitic propaganda).

<sup>84</sup> Gladsaxe Ret [Gladsaxe District Criminal Court] Oct. 21, 1971, Case No. B. 459/1971; see also discussion of the case in Straffelovrådets udtalelse om de juridiske konsekvenser af en ophævelse af straffelovens § 140 om blasfemi, Bet. 1548 2014, at 56–59 (hereinafter Bet. 1548 2014), <http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Straffelovraadets%20udtalelse.pdf>, archived at <https://perma.cc/B7VM-NJX3>.

<sup>85</sup> §§ 719–720 RETSPLEJELOVEN [CRIMINAL PROCEDURE ACT], LBK nr 1257 af 13/10/2016, <https://www.retsinformation.dk/Forms/R0710.aspx?id=183537>, archived at <https://perma.cc/FX8B-H8PB>.

<sup>86</sup> Rigsadvokatens afgørelse af 15 marts 2006 (J.nr. RA-2006-41-0151) [National Prosecutor Decision of March 15, 2005], <http://www.ft.dk/samling/20051/almdel/reu/bilag/485/257384.pdf>, archived at <https://perma.cc/8K36-2JVG>.

Public debate has called for the abolition of the provision since the mid-1970s.<sup>87</sup> The most recent initiative to abolish the provision resulted in a Danish Justice Ministry Report in 2014 on the legal effects of eliminating the provision.<sup>88</sup> In its comment the Danish Justice Ministry said that if the blasphemy law was abolished it would become legal to publicly burn holy texts, for instance the Bible and the Quran, something the Justice Department argued they want to continue to prevent.<sup>89</sup> Thus, blasphemy is still illegal in Denmark but the provision is very sparingly used.

## Finland

Blasphemy is criminalized in Finland through a “crime against the sanctity of religion” provision in the Finnish Penal Code,<sup>90</sup> which provides as follows:

A person who

- 1) publicly blasphemes against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community, as referred to in the Freedom of Religion Act (267/1998), or
- 2) by making noise, acting threateningly or otherwise, disturbs worship, ecclesiastical proceedings, other similar religious proceedings or a funeral, shall be sentenced for a crime against the sanctity of religion to a monetary fine or to imprisonment not exceeding six months.<sup>91</sup>

In 2012 the Finnish Supreme Court convicted a Finnish member of Parliament under this provision after he published a blog piece in which he called Islam a pedophilic religion, specifically stating that Mohammed was a pedophile.<sup>92</sup>

The crime of blasphemy is often prosecuted in connection with hate speech and has reportedly been used to convict persons criticizing Islam as recently as January 16, 2017.<sup>93</sup>

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<sup>87</sup> See Bet. 1548 2014, *supra* note 84, at 76–96.

<sup>88</sup> *Id.*

<sup>89</sup> Press Release, Justitsministeriet, Straffelovrådets udtalelse om de juridiske konsekvenser af en ophævelse af straffelovens § 140 om blasfemi (Feb. 26, 2015), <http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2015/straffelovraadets-udtalelse-om-de-juridiske-konsekvenser-af-en>, archived at <https://perma.cc/SM5H-ACJZ>.

<sup>90</sup> 17 ch. 10 § STRAFFLAG [FINNISH PENAL CODE] (Finsk Författningssamling [FFS] 19.12.1889/39), <http://www.finlex.fi/sv/laki/ajantasa/1889/18890039001?search%5Btype%5D=pika&search%5Bpika%5D=brott> (in Swedish), archived at <https://perma.cc/Q88T-88EF>.

<sup>91</sup> *Id.* (translation by author).

<sup>92</sup> KKO 2012:58 [Finnish Supreme Court Reporter 2012 no. 58], <http://www.finlex.fi/fi/oikeus/kko/kko/2012/20120058> (in Finnish), archived at <https://perma.cc/8VYL-T4UJ>.

<sup>93</sup> District Court Decision from Oulu (Uleåborg) District Court, *as reported in* Dan Ekholm, *Sebastian Tynkkynen dömd för hets mot folkgrupp*, YLE (Jan. 17, 2017), <https://svenska.yle.fi/artikel/2017/01/16/sebastian-tynkkynen-domd-hets-mot-folkgrupp>, archived at <https://perma.cc/KG8W-42LG>.

## Germany

Section 166 of the German Criminal Code provides that anyone who “publicly or through dissemination of written materials defames the religion or ideology of others in a manner that is capable of disturbing the public peace, shall be liable to imprisonment not exceeding three years or a fine.”<sup>94</sup> The provision only criminalizes behavior that is capable of disturbing the public peace—not a general defamation of god or hurt religious feelings of believers.

The criminal law provision is still enforced. In general, an average of fifteen people per year are convicted of defamation of religion.<sup>95</sup> As an example, in 2014, the right-wing political activist Michael Stürzenberger was sentenced to a fine for comparing Islam to a “cancerous ulcer.”<sup>96</sup>

## Greece<sup>97</sup>

The Greek Penal Code states that “[o]ne who publicly and maliciously and by any means blasphemes God shall be punished by imprisonment for not more than two years,”<sup>98</sup> that “one who by blasphemy publicly manifests a lack of respect for the divinity shall be punished by imprisonment for not more than three months,”<sup>99</sup> and that “[o]ne who publicly and maliciously and by any means blasphemes the Greek Orthodox Church or any other religion permitted in Greece shall be punished by imprisonment for not more than two years.”<sup>100</sup> Persons are occasionally prosecuted, and while such cases are usually dismissed by the court of first instance or convictions are overturned on appeal, they have a chilling effect on expression.<sup>101</sup>

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<sup>94</sup> Strafgesetzbuch [StGB] [Criminal Code], repromulgated on Nov. 13, 1998, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 3322, as amended, § 166, <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>, archived at <http://perma.cc/FM99-KCA7>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.pdf](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf), archived at <http://perma.cc/W2HP-YX75>.

<sup>95</sup> DEUTSCHER BUNDESTAG:DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 16/3579, Gotteslästerungsparagraf (§ 166 Strafgesetzbuch) im Verhältnis zur Kunst- und Meinungsfreiheit [Blasphemy Provision (§ 166 of the Criminal Code) in Relation to the Freedom of Art and Expression], at 2, <http://dipbt.bundestag.de/dip21/btd/16/035/1603579.pdf>, archived at <http://perma.cc/UM9M-A697>.

<sup>96</sup> Amtsgericht München [AG München] [Munich District Court], Oct. 03, 2014, docket no. 844 Cs 111 Js 126317/13 (unpublished decision).

<sup>97</sup> At present there are no Law Library of Congress research staff members versed in Greek. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>98</sup> GREEK PENAL CODE (Nicholas B. Lolis trans. 1973), art. 198, para. 1, available in Hein Online Foreign & International Law Resources Database (subscription required).

<sup>99</sup> *Id.* art. 198, para. 2.

<sup>100</sup> *Id.* art. 199.

<sup>101</sup> FREEDOM HOUSE, POLICING BELIEF: THE IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS – GREECE (2010), available at <http://www.refworld.org/docid/4d5a700bc.html>, archived at <https://perma.cc/V7SN-AQUE>.

In addition to blasphemy, Greek law prohibits proselytism.<sup>102</sup> “Illegal proselytism” is defined by Greek law as

any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement . . . or moral support or material assistance, or by fraudulent means or by taking advantage of the other person’s inexperience, trust, need, low intellect, or naiveté.<sup>103</sup>

Violators are subject to criminal prosecution.<sup>104</sup>

The European Court of Human Rights on two occasions has addressed Greek prosecutions for proselytism, ruling that a conviction for proselytizing to the general public breached the right to freedom of religion under article 9 of the European Convention on Human Rights,<sup>105</sup> but that convictions of military officers for proselytizing to service members was not contrary to the Convention.<sup>106</sup>

## Ireland

Article 40.6.1.i. of the Irish Constitution provides that “[t]he publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.” This offense was reportedly included in the Constitution to replicate the common-law offense of blasphemy, which at the time covered “speech likely to cause gross outrage to religious sensitivities.”<sup>107</sup>

In a case brought before the Supreme Court in 1999 that addressed blasphemy, the Court found that the offense of blasphemy could not be judicially determined:

In this state of the law, and in the absence of any legislative definition of the constitutional offence of blasphemy, it is impossible to say of what the offence of blasphemy consists . . . [and] it was impossible to say, from the previously decided case

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<sup>102</sup> CONSTITUTION OF GREECE, rev. May 27, 2008, art. 13 para. 2, available at <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>, archived at <https://perma.cc/665V-LMSJ>.

<sup>103</sup> Law 1363/1938 § 4, as amended by Law 1672/1939, translated in Kyriakos N. Kyriazopoulos, *Proselytization in Greece: Criminal Offense vs. Religious Persuasion and Equality*, 20 J. L. & RELIGION 149 (2004–05).

<sup>104</sup> *Id.*

<sup>105</sup> *Kokkinakis v. Greece*, 17 Eur. Ct. H.R. 397 (1993), available at <http://www.worldlii.org/eu/cases/ECHR/1993/20.html>, archived at <https://perma.cc/GW3G-AEVX>.

<sup>106</sup> *Larissis & Others v. Greece*, 27 Eur. Ct. H.R. 329 (1998), available at <http://www.bailii.org/eu/cases/ECHR/1998/13.html>, archived at <https://perma.cc/86XX-L8RJ>.

<sup>107</sup> Neville Cox, *The Development of Irish Blasphemy Law* ¶ 10 (2013), <https://www.constitution.ie/AttachmentDownload.ashx?mid=54533e30-c843-e311-8571-005056a32ee4>, archived at <https://perma.cc/HEM4-XHM3>.

law, what the different elements of the crime of blasphemy were. It is thus now impossible to bring a blasphemy prosecution in Ireland.<sup>108</sup>

The court ultimately held that the status of the law was so unclear that in essence prosecution for the offense is unfeasible.<sup>109</sup>

To clarify the laws on blasphemy and define the acts that constitute blasphemy, section 36 was inserted into the Defamation Act of 2009 and provides that publishing or uttering blasphemous materials is a criminal offense punishable with a fine of up to €25,000 (about US\$26,841).<sup>110</sup> Section 37 of this Act defines the constitutional offense of blasphemy as arising when a person publishes or utters blasphemous matter, if

- (a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and
- (b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

It is a defense to this Act if the defendant can prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offense relates.<sup>111</sup>

There do not appear to be any recent prosecutions under the blasphemy laws. The laws were reviewed by the Constitutional Convention convened in 2013 to review the Irish Constitution, including the provision relating to blasphemy. This Convention found that the offense should be replaced in the Constitution with a general provision that includes incitement to religious hatred.<sup>112</sup> The Law Reform Commission has suggested a referendum to remove the offense. Given that the offense has little practical application, one scholar has suggested that such a referendum should be held in conjunction with referendums on other issues so as not to waste money.<sup>113</sup>

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<sup>108</sup> SELECT COMMITTEE ON RELIGIOUS OFFENCES, RELIGIOUS OFFENCES IN ENGLAND AND WALES, 2002-03, HL 96, App. 5, ¶¶ 38 & 46, <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/9515.htm>, archived at <https://perma.cc/65RM-6NTH>, (citing *Corway v. Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484, <http://www.bailii.org/ie/cases/IESC/1999/5.html>, archived at <https://perma.cc/T299-W79U>).

<sup>109</sup> *Id.*

<sup>110</sup> Defamation Act 2009, No. 31 of 2009, <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/pdf>, archived at <https://perma.cc/PGP5-HMKZ>.

<sup>111</sup> *Id.* § 36(3).

<sup>112</sup> Hugh O'Connell, *Blasphemy Offence Should Be Replaced in the Constitution, Says Convention*, THE JOURNAL (Ireland) (Nov. 3, 2013), <http://www.thejournal.ie/constitutional-convention-blasphemy-1158623-Nov2013>, archived at <https://perma.cc/34FY-2ZT5>.

<sup>113</sup> Cox, *supra* note 107, ¶ 12.

## Italy

The Italian Criminal Code previously contained a provision on “Blasphemy and Outrageous Demonstrations Against the Deceased” that read as follows:

Whoever publicly blasphemes, with invectives or outrageous words, against the divinity or symbols or persons venerated by the religion of the State is punished with a monetary administrative penalty of €1 to 309 [about US\$54 to \$326].<sup>114</sup>

Referring to the scope of article 724 of the Criminal Code, the Italian Supreme Court held in 1992 that it was “absurd and out of place to extend the application of blasphemy to the manifestation of thoughts and to the constitutionally-guaranteed freedom of such manifestation.”<sup>115</sup> What article 724 really punishes, the Supreme Court said, “is not the manifestation of a thought but a public manifestation of a vulgarity,” and consequently “the right to a free manifestation of thoughts finds its own limit in the prohibition of manifestations contrary to good customs.”<sup>116</sup>

Later, in 1995, the Italian Constitutional Court declared unconstitutional and eliminated the phrase “or symbols or persons venerated by the religion of the State” from article 724 of the Criminal Code.<sup>117</sup> Consequently, the current provision on blasphemy in the Italian Criminal Code reads as follows:

Whoever publicly blasphemes with invectives or outrageous words against the divinity is punished with a monetary administrative penalty of €1 to 309 [about US\$54 to \$326].

The amended article 724 has been the subject of several court decisions, including the following:

- On November 13, 2007, a local Bologna court approved the public prosecutor’s request for the acquittal of a homosexual organization that had been denounced for allegedly insulting the Mother of God in a public spectacle performed in Bologna.<sup>118</sup> The court accepted the

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<sup>114</sup> CODICE PENALE [CRIMINAL CODE] art. 724, available at <http://www.altalex.com/documents/news/2014/08/25/delle-contravvenzioni-di-polizia> (all translations by author), archived at <https://perma.cc/G38V-4JYY>.

<sup>115</sup> Cass., sez. un. Penali, 27 mar. 1992, *Foro. It.*, 116, 3, 149–56, <https://www.jstor.org/stable/pdf/23186180.pdf>, archived at <https://perma.cc/SS43-3G7K>.

<sup>116</sup> *Id.*

<sup>117</sup> Cass., 18 oct. 1995, n.440, in Università degli Studi RomaTre, Centro Europeo di Documentazione sulle Istituzioni Religiose [University Roma Tre, European Center for the Documentation of Religious Institutions] (database documenting state-religious institution relations in Europe), [http://host.uniroma3.it/progetti/cedir/cedir/Giur\\_doc/Corte\\_Cost\\_ita/ItSent440-95.pdf](http://host.uniroma3.it/progetti/cedir/cedir/Giur_doc/Corte_Cost_ita/ItSent440-95.pdf) (last visited Jan. 24, 2017), archived at <https://perma.cc/VFK4-8X9R>.

<sup>118</sup> Giulia Ziino, *Il caso: “La Madonna non è una divinità, offenderla non è reato [The Case: “The Mother of God Is Not a Divinity, to Offend Her Is Not a Crime”]*, *CORRIERE DELLA SERA* (July 29, 2007), [http://www.corriere.it/Primo\\_Piano/Cronache/2007/07\\_Luglio/29/caso\\_madonna\\_non\\_divinita.shtml?refresh\\_ce-cp](http://www.corriere.it/Primo_Piano/Cronache/2007/07_Luglio/29/caso_madonna_non_divinita.shtml?refresh_ce-cp), archived at <https://perma.cc/2CZZ-YL5L>.



prosecutor's reasoning that, in theological terms, the Mother of God is not a divinity, and therefore does not fall into the category established in article 724 of the Criminal Code.<sup>119</sup>

- On November 6, 1996, the District Court of Avezzano, in the Abruzzo region, acquitted an individual from blasphemy charges brought by the local public prosecutor based on his blasphemous utterances against the Mother of God. The Court's holding was based on the 1995 decision of the Italian Constitutional Court to eliminate the reference to "symbols or persons venerated by the religion of the State" from article 724 of the Criminal Code.<sup>120</sup> The Court held that the utterances of the accused constituted only *turpiloquio* (foul language), punishable by article 726 of the Criminal Code.<sup>121</sup>

## Kazakhstan

Under Kazakhstani law, deliberate actions aimed at insulting the religious feelings of others, disseminating propaganda of exclusivity, or creating superiority or inferiority of citizens according to their attitude towards religion, if committed publicly, through the media, or through telecommunications networks, is a crime punishable by restriction of freedom or imprisonment for a period of two to seven years.<sup>122</sup> Radio Liberty/Radio Free Europe reported that in 2015, a Kazakh national who belonged to the Adventist Church was charged with inciting hatred by insulting Muslims under this provision and sentenced to seven years of probationary imprisonment for discussing Islam with his fellow church congregants.<sup>123</sup>

While missionary activity is not prohibited, it and all other religious activities must be registered with and sanctioned by the state authorities. Conducting "unregistered missionary activity; teaching of doctrine of unregistered religious associations; and use of religious literature, informational materials and items without a positive conclusion from the state's theological examination" is a misdemeanor punishable by fines.<sup>124</sup> A double fine (up to the equivalent of about US\$1,372) is prescribed for unregistered religious activities such as rituals, ceremonies,

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<sup>119</sup> *Id.*

<sup>120</sup> Osservatorio delle liberta ed istituzioni religiose [Observatory of Religious Freedom and Institutions], Ordinanza 06 novembre 1996, Vilipendio alla religione e reato di turpiloquio [Decision of November 6, 1996, Vilification of the Religion and Crime of Foul Language], <http://www.olir.it/documenti/index.php?documento=3810>, archived at <https://perma.cc/R7T7-GDM9>.

<sup>121</sup> *Id.*

<sup>122</sup> CRIMINAL CODE OF THE REPUBLIC OF KAZAKHSTAN, Law No. 226-V of July 3, 2014, art. 174(1), [https://online.zakon.kz/Document/?doc\\_id=31575252](https://online.zakon.kz/Document/?doc_id=31575252) (in Russian), archived at <https://perma.cc/RSJ7-XMGA>.

<sup>123</sup> Madi Bekmaganbetov, *Protestant in Freedom, But Limited*, RADIO AZATTYQ (Nov. 9, 2015), <http://rus.azattyq.org/a/kabduakasov-protestant-adventisty-sedmogo-dnja-prigovor/27353933.html> (in Russian), archived at <https://perma.cc/ZL38-6QX7>.

<sup>124</sup> CODE OF THE REPUBLIC OF KAZAKHSTAN ON ADMINISTRATIVE OFFENSES art. 490(3), Law No. 235-V of July 5, 2014, [https://online.zakon.kz/Document/?doc\\_id=31577399#pos=1:-217](https://online.zakon.kz/Document/?doc_id=31577399#pos=1:-217) (in Russian), archived at <https://perma.cc/C49B-UWMM>.

and gatherings.<sup>125</sup> The same fine is applied to those who insult the religious feelings of others or desecrate religious items, buildings, and places venerated by followers of a religion.<sup>126</sup>

## Kyrgyzstan

Proselytizing, i.e., “persistent actions aimed at converting believers of one religion to another,” and illegal missionary activities are prohibited by Kyrgyzstan’s Law on Freedom of Conscience and Religious Organizations, but no specific punishment for these activities has been found in the legislation.<sup>127</sup> Forum 18 News Service has reported that violators of these rules who are accused of failing to register a religious organization are usually charged under article 395 of the Code of Administrative Responsibility, which imposes a fine in an amount equal to approximately US\$7 (“of up to five base units”).<sup>128</sup> For example, in 2015 a Kyrgyz national was charged with illegal religious activity after holding a religious meeting in the rented hall of a café.<sup>129</sup>

## Liechtenstein

Liechtenstein coordinates its Criminal Code with Austria. The text of section 188 of the Liechtenstein Criminal Code is identical to the Austrian Criminal Code and reads as follows:

Anyone who publicly disparages or mocks a person or a thing that is the object of worship of a domestic church or domestic religious society, or a religious doctrine, a legally admissible custom, or a legally admissible institution of such a church or religious society, in a manner that is capable of causing legitimate offense, shall be liable to imprisonment not exceeding six months or a fine of up to 360 daily units.<sup>130</sup>

It is unclear whether the provision is enforced. No recent court decisions or detailed crime statistics could be located.

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<sup>125</sup> *Id.* art. 490(1).

<sup>126</sup> *Id.* art. 490(2).

<sup>127</sup> Law No. 282 of December 31, 2008, on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic, with the latest amendments of Dec. 7, 2012, art. 5.4, <http://cbd.minjust.gov.kg/act/view/ru-ru/202498> (in Russian), archived at <https://perma.cc/ZP49-L2CH>.

<sup>128</sup> Law No. 114 of Aug. 4, 1998, CODE ON ADMINISTRATIVE RESPONSIBILITY, ZHOGORKU KINESHA 1998, No. 36, Item 173 (official publication, in Russian), available at <http://www.genstaff.gov.kg/кодекс-кр-об-админи-стративной-ответс/>, archived at <https://perma.cc/9Z9F-4G4S>.

<sup>129</sup> Mushfig Bayram, *Kyrgyzstan: Police Impunity for Torturing People at Religious Meeting?*, FORUM 18 (Oct. 20, 2015), [http://www.forum18.org/archive.php?article\\_id=2112](http://www.forum18.org/archive.php?article_id=2112), archived at <https://perma.cc/2BZU-9JJD>.

<sup>130</sup> Strafgesetzbuch [StGB] [Criminal Code], June 24, 1987, LANDESGESETZBLATT NUMMER [LGBL.-NR.] [OFFICIAL LAW GAZETTE NO.] 1988.037, as amended, <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=1988037000&version=18&signed=n&tablesel=0>, archived at <http://perma.cc/Z7RE-NXS2>.

## Moldova

Moldova's Law on Freedom of Conscience, Thought and Religion does not mention missionaries or other religious group activity. However article 4.4 forbids excessive proselytizing, i.e., by means of coercion.<sup>131</sup> Also, the Code on Misdemeanors penalizes insulting the religious feelings of others and the desecration of venerable objects, spaces, monuments, and conceptual symbols.<sup>132</sup> It also bans religious activities by foreign citizens in public areas without prior notice to local authorities.<sup>133</sup>

## Northern Ireland

Northern Ireland inherited its common law from the Republic of Ireland,<sup>134</sup> and the common law offenses of blasphemy and blasphemous libel continue in force. Despite the existence of the law, there have never been any reported prosecutions for the common-law offense of blasphemy in Northern Ireland and, as such, it is difficult to precisely determine the elements of the offense.<sup>135</sup>

A 2003 government report from Westminster considered whether the offense continues to be valid as it protected the beliefs of the Church of Ireland, which was disestablished by the Irish Church Act 1869.<sup>136</sup> On November 5, 2009, the House of Lords considered an amendment in the Coroners and Justice Bill to abolish these offenses, but the amendment was withdrawn after the Lords noted that the churches and religious bodies that may be affected by the legislation had not been consulted, and that the political parties and churches in Northern Ireland had not made any moves for the offense to be repealed.<sup>137</sup> The House of Lords determined that the Northern Ireland Assembly was better placed to consider the repeal of the law.

## Poland

Under article 196 of Poland's Criminal Code, offending a person's religious feelings through public defamation of an object or place of worship is a crime punishable by restriction of liberty or imprisonment for a term of up to two years.<sup>138</sup> In 2014, The Krasnals, an anti-establishment

<sup>131</sup> Law No. 125 of May 11, 2007, on Freedom of Conscience, Thought and Religion, with the latest amendments of Dec. 27, 2011, art. 4.4, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=324889&lang=2> (in Russian), archived at <https://perma.cc/QYW6-MNFE>.

<sup>132</sup> Code No. 218 of October 24, 2008, on Misdemeanors art. 54 (5), MONITORUL OFFICIAL 2009, No. 3-6, Item 15 (official gazette, in Romanian), available in Russian at <http://lex.justice.md/ru/330333/>, archived at <https://perma.cc/RX6E-AAG6>.

<sup>133</sup> *Id.* art. 55(40).

<sup>134</sup> *R v. Petcherine* (1855) 7 Cox CC 79 at 84.

<sup>135</sup> SELECT COMMITTEE ON RELIGIOUS OFFENCES, *supra* note 108, App. 5, ¶ 138.

<sup>136</sup> Irish Church Act 1869, ch. 42, <http://www.irishstatutebook.ie/eli/1869/act/42/enacted/en/print.html>, archived at <https://perma.cc/5HV8-GB57>.

<sup>137</sup> 714 Parl. Deb. (5th ser.) 2009 H.L. 402 <http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/91105-0006.htm>, archived at <https://perma.cc/ZK5H-F66A>.

<sup>138</sup> CRIMINAL CODE OF POLAND, DZIENNIK USTAW (official gazette) 1997, No. 88, Item 533, English text available at [https://www.imolin.org/doc/amlid/Poland\\_Penal\\_Code1.pdf](https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf), archived at <https://perma.cc/C3EQ-GMHJ>.

art collective, was charged with offending religious feelings for depicting the late Pope John Paul II being breastfed by Father Tadeusz Rydzyk, head of a right-wing Catholic radio station.<sup>139</sup>

## Russia

In 2013, the Criminal Code of the Russian Federation was amended with provisions criminalizing activities aimed at insulting the religious feelings of believers.<sup>140</sup> Article 148 of the Criminal Code provides for a fine or up to one year of imprisonment or forced labor for “actions demonstrating disrespect to the society if performed with the purpose of insulting religious feelings of believers.” The amount of the fine and the term of imprisonment are significantly increased if these actions were performed in places designated for religious services and ceremonies. Reportedly, these “blasphemy amendments” were added to the Code because of the legal vacuum discovered during the trial of three members of the Pussy Riot music band who conducted a protest performance at a cathedral in Moscow and were sentenced to two years of imprisonment for hooliganism.<sup>141</sup> Since 2013, only a few cases have been prosecuted under article 148 of the Criminal Code; the harshest sentence was two hundred hours of public service for arguing the divinity of the Bible in an online social network discussion.<sup>142</sup>

Most blasphemy-related cases are prosecuted under article 282 of the Criminal Code, which bans “actions aimed at inciting hatred [or] enmity, or diminishing the dignity of a person or a group of people because of their religion, [that are] conducted publicly, or using mass media, or the Internet.” These actions can be prosecuted by varied fines, compulsory labor, bans on specific professional activities, or imprisonment for a term of two to five years.<sup>143</sup>

The intentional public desecration of religious literature, materials used in religious services, religious symbols, and objects of religious significance is a misdemeanor punishable by a fine of up to 200,000 rubles (approximately US\$3,500).<sup>144</sup> In July 2016, a new misdemeanor was added to the Code of Administrative Violations; fines, seizure of property, and deportation (if the violation was conducted by a foreigner or stateless person) are prescribed for the distribution of

<sup>139</sup> INTERNATIONAL HUMANIST AND ETHICAL UNION, THE FREEDOM OF THOUGHT REPORT: POLAND, <http://freethoughtreport.com/countries/europe-eastern-europe/poland/> (last visited Jan. 20, 2017), archived at <https://perma.cc/6VCQ-56JA>.

<sup>140</sup> Federal Law No. 136 on Amending Article 148 of the Russian Federation Criminal Code and Select Legislative Acts of the Russian Federation with the Purpose of Counteracting Insulting the Religious Views and Feelings of Citizens, PRAVO.GOV.RU, published June 29, 2013, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102166335&intelsearch=o.+136> (official publication, in Russian), archived at <https://perma.cc/TV8E-N9QY>.

<sup>141</sup> Geraldine Fagan, *Russia: Pussy Riot, Blasphemy, and Freedom of Religion or Belief*, FORUM 18 (Oct. 19, 2012), [http://forum18.org/archive.php?article\\_id=1754](http://forum18.org/archive.php?article_id=1754), archived at <https://perma.cc/E3MN-S7R2>.

<sup>142</sup> *Court Rulings and Decisions under Article 148 of the RF Criminal Code*, ROSPRAVOSUDIE, [https://rospravosudie.com/law/Статья\\_148\\_УК\\_РФ](https://rospravosudie.com/law/Статья_148_УК_РФ) (in Russian; last visited Jan. 24, 2017), archived at <https://perma.cc/QHH3-NJ2U>.

<sup>143</sup> CRIMINAL CODE OF THE RUSSIAN FEDERATION art. 282, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102041891> (official publication, in Russian), archived at <https://perma.cc/4CQC-MWCM>.

<sup>144</sup> CODE OF ADMINISTRATIVE VIOLATIONS OF THE RUSSIAN FEDERATION art. 5.26, ROSSIISKAIA GAZETA No. 2868, Dec. 31, 2001 (official publication, in Russian), <https://rg.ru/2001/12/31/admkodeks-dok.html>, archived at <https://perma.cc/23U2-26X5>.

religious literature and other materials without the proper seal of approval and in violation of the rules concerning the performance of missionary work. The amount of such fines is up to 1 million rubles (approximately US\$16,000).

A full set of rules regulating missionary activities in Russia, the types of materials that can be used by missionaries, and the admission of missionaries to the country was passed by the legislature in July 2016.<sup>145</sup>

## Scotland

Blasphemy in Scotland was enshrined in statute from 1661<sup>146</sup> until its repeal in 1813.<sup>147</sup> Despite the repeal of the statutory crime of blasphemy, it continues in force as a common-law offense.<sup>148</sup>

The *Stair Memorial Encyclopaedia* includes the common-law offense of blasphemy as a crime against public order and decency<sup>149</sup> and “the prerequisite for blasphemy, namely a standard of faith acknowledged by law as applying within Scotland is also still on the statute book, by virtue of the Confession of Faith Ratification Act 1690.”<sup>150</sup> A personal interest is required in any case of blasphemy before any private prosecution can be commenced, and a government report has noted that “since the state is unlikely to want to prosecute for blasphemy, a prosecution, even if technically possible, is unlikely to occur.”<sup>151</sup>

The last time the law was used was in 1843 when bookseller Thomas Paterson was imprisoned for fifteen months for selling literature that was deemed to be blasphemous. In this case the judge stated that blasphemous works are those that are not “of fair and serious speculation or argument upon these sacred topics, but such as indicated an obvious intention to bring them into ridicule and contempt.”<sup>152</sup>

<sup>145</sup> Federal Law No. 374 on Amending the Federal Law on Counterterrorism and Select Legislative Acts of the Russian Federation Concerning the Creation of Additional Measures Aimed at Countering Terrorism and Protecting Public Safety art. 11, § 1(b), PRAVO.GOV.RU, published July 7, 2014, <http://publication.pravo.gov.ru/Document/View/0001201607070016> (official publication, in Russian), archived at <https://perma.cc/9ZFE-RCWA>.

<sup>146</sup> Act Against the Cryme of Blasphemie 1661, Charles II, RPS 1661/1/264, [http://rps.ac.uk/search.php?action=fetch\\_jump&filename=charlesii\\_ms&jump=charlesii\\_t1661\\_1\\_264\\_d7\\_trans&type=ms&fragment=m1661\\_1\\_264\\_d7\\_ms](http://rps.ac.uk/search.php?action=fetch_jump&filename=charlesii_ms&jump=charlesii_t1661_1_264_d7_trans&type=ms&fragment=m1661_1_264_d7_ms), archived at <https://perma.cc/YJQ2-4FUM>; Act Against Blasphemy 1695, Will. II, [http://rps.ac.uk/search.php?action=fetch\\_jump&filename=williamii\\_ms&jump=williamii\\_t1695\\_5\\_117\\_d7\\_trans&type=ms&fragment=m1695\\_5\\_117\\_d7\\_ms](http://rps.ac.uk/search.php?action=fetch_jump&filename=williamii_ms&jump=williamii_t1695_5_117_d7_trans&type=ms&fragment=m1695_5_117_d7_ms), archived at <https://perma.cc/QA3N-BU5Y>.

<sup>147</sup> Trinity Act 1813 53 Geo. III, c. 160.

<sup>148</sup> CALLUM BROWN ET AL., RELIGION IN SCOTS LAW: REPORT OF AN AUDIT AT THE UNIVERSITY OF GLASGOW 201 (Humanist Society Scotland, 2016), available at <https://www.humanism.scot/wp-content/uploads/2016/02/Religion-in-Scots-Law-Final-Report-22-Feb-16.pdf>, archived at <https://perma.cc/PXZ3-9SD9>.

<sup>149</sup> “Criminal Law (Reissue)” § 17, “Crimes Against Public Order and Decency” ¶ 19, STAIR MEMORIAL ENCYCLOPAEDIA (2005 reissue).

<sup>150</sup> BROWN ET AL., *supra* note 148, at 205.

<sup>151</sup> SELECT COMMITTEE ON RELIGIOUS OFFENCES, *supra* note 108, App. 3, ¶ 9 (citing G. Maher, *Blasphemy in Scots Law*, SCOTS LAW TIMES 257, 260 (1977)).

<sup>152</sup> R v. Thomas Paterson (1843) 1 Broun 629.

Despite its inclusion in the *Stair Memorial Encyclopaedia*, some legal scholars consider that the offense is a “lingering feature of common law.”<sup>153</sup> A review on the laws of blasphemy stated as follows:

it [can be] argued that the law of blasphemy remains part of Scots law at common law, although no case has been reported on this head since 1843. Consequently, it can be stated that blasphemy is no longer prosecuted in Scotland. Although not in desuetude, any such prosecution would probably contravene the European Convention on Human Rights.<sup>154</sup>

Scotland has received many calls to repeal its blasphemy laws. The chief executive of the Humanist Society Scotland stated that having such a law “should be a badge of shame for any progressive nation.”<sup>155</sup>

## Spain

Spain’s Penal Code provides that anyone who, with the intention of offending the feelings of members of a religious creed, publicizes in writing or through any other type of document derisive remarks related to the religion’s dogmas, faith, rituals, or ceremonies may be subject to a fine consisting of a daily “quota” established by law for a period of eight to twelve months.<sup>156</sup> The same sanction applies to persons who publicly harass those who profess or practice such religion or those who do not profess any creed or religion.<sup>157</sup>

This provision of the Penal Code has been applied infrequently. On the few occasions it was used, it was directed at defending Catholic sentiments, since the Spanish population is strongly Catholic by tradition. One of the only recent cases involving this provision occurred in 2012 when Javier Krahe, a Spanish celebrity, was prosecuted—and eventually acquitted—for violation of religious sentiments after a 2004 documentary showed him allegedly cooking a crucifix.<sup>158</sup>

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<sup>153</sup> BROWN ET AL., *supra* note 148, at 202.

<sup>154</sup> *Id.*

<sup>155</sup> Helen Coffey, *Humanists Call For Scotland’s Blasphemy Law To Be Scrapped*, CHRISTIAN TODAY (Dec. 7, 2016), <http://www.christiantoday.com/article/humanists.call.for.scotlands.blasphemy.law.to.be.scrapped/102758.htm>, archived at <https://perma.cc/AFV7-MFMC>.

<sup>156</sup> Ley Orgánica 10/1995, CÓDIGO PENAL arts. 50(2), (4) & 525, BOLETÍN OFICIAL DEL ESTADO [B.O.E.] [OFFICIAL GAZETTE], Nov. 24, 1995, <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>, archived at <https://perma.cc/HM7T-9A5P>. Fines for individuals are measured at a rate of €2 to €400 per day (about US\$2.14 to \$428) and months are counted as thirty days. *Id.* art. 50.

<sup>157</sup> *Id.* art. 525.

<sup>158</sup> *Krahe Absuelto do Ofender Sentimientos Religiosos*, LA VANGUARDIA (June 8, 2012), <http://www.lavanguardia.com/musica/20120608/54308915398/krahe-absuelto-sentimientos-religiosos.html>, archived at <https://perma.cc/BDE8-YXZQ>.

## Switzerland

Article 261 of the Swiss Criminal Code provides as follows:

Any person who publicly and maliciously insults or mocks the religious convictions of others, and in particular their belief in God, or maliciously desecrates objects of religious veneration,

any person who maliciously prevents, disrupts or publicly mocks an act of worship, the conduct of which is guaranteed by the Constitution,  
or

any person who maliciously desecrates a place or object that is intended for a religious ceremony or an act of worship the conduct of which is guaranteed by the Constitution,

is liable to a monetary penalty not exceeding 180 daily penalty units.<sup>159</sup>

The Swiss Federal Supreme Court has held that the element “maliciously” is not a subjective element and has to be manifested through behavior that “crosses a certain threshold; a serious insult.”<sup>160</sup> Whether an insult is sufficiently serious has to be judged from the point of view of an average religious follower of that particular faith.<sup>161</sup>

Between 1960 and 2010, there were a total of 161 court cases dealing with article 261 of the Swiss Criminal Code. On average, there were three convictions per year.<sup>162</sup> Most of these cases have not been published. In 1986, the Swiss Federal Supreme Court convicted the defendant Kurt Fahrner for an “attack on the freedom of faith and the freedom to worship” for a painting that depicted a Christian cross to which a naked woman was nailed, posed in a sexually provocative manner.<sup>163</sup>

## Tajikistan

A fine in the amount of ten to fifty base units (approximately US\$63 to \$317) is imposed on individuals in Tajikistan who insult the religious feelings of others or desecrate items, signs, and

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<sup>159</sup> Schweizerisches Strafgesetzbuch [StGB] [Swiss Criminal Code], SYSTEMATISCHE RECHTSSAMMLUNG [SR] [SYSTEMATIC COLLECTION OF LAWS] 311.0, <https://www.admin.ch/opc/de/classified-https://www.admin.ch/opc/de/classified-compilation/19370083/201701010000/311.0.pdf>, archived at <http://perma.cc/DMS3-H8SJ>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/19370083/201701010000/311.0.pdf>, archived at <http://perma.cc/22RP-4SRQ>.

<sup>160</sup> BUNDESGERICHT [BGE] [FEDERAL SUPREME COURT], Feb. 26, 1960, 86 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] [DECISIONS OF THE SWISS FEDERAL SUPREME COURT] IV 19, 23 et seq., [http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show\\_document&highlight\\_docid=atf://86-IV-19](http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show_document&highlight_docid=atf://86-IV-19), archived at <http://perma.cc/RPK3-RDXV>.

<sup>161</sup> *Id.* at 24.

<sup>162</sup> Tom Freytag, *Art. 261*, in BASLER KOMMENTAR, STRAFRECHT II [BASEL COMMENTARY, CRIMINAL LAW II] 1987, 1988 (Niggli & Wiprächtiger eds., 3rd ed. 2013).

<sup>163</sup> BGE, *supra* note 160, at 24.

symbols of worship.<sup>164</sup> Separate fines are possible for religious activities performed by foreign individuals or organizations without registration,<sup>165</sup> preaching in educational institutions and residences,<sup>166</sup> the dissemination of religious materials without a positive conclusion from the state's theological examination,<sup>167</sup> and establishing international relations between religious communities or organizations without the approval of the government.<sup>168</sup>

## Turkey<sup>169</sup>

Turkey does not have a separate law on blasphemy. The Criminal Code, article 216, has been applied to punish people for offenses related to “provoking people to be rancorous and hostile,” including the offense of showing public disrespect for religious beliefs. Article 216(3) states, “[a]ny person who openly disrespects the religious belief of [a] group [*halkın bir kesiminin benimsediği dini değerleri alenen aşağılamak*] is punished with imprisonment from six months to one year if such act causes potential risk for public peace.”<sup>170</sup> The provisions are still being enforced. Article 125 of the Code penalizes insulting a person's declaration, dissemination, or practice of religious beliefs, or insulting “subject matter . . . deemed sacred to the religion” to which the person belongs.<sup>171</sup>

Following are some examples of relatively recent cases:

- The 2013 prosecution of Turkish pianist Fazıl Say, on grounds of “publicly insulting the religious beliefs held by group of people” for “retweeting several lines attributed to 11th-century Persian poet Omar Khayyam,”<sup>172</sup> resulting in a suspended ten-month sentence. Say

<sup>164</sup> CODE OF THE REPUBLIC OF TAJIKISTAN ON ADMINISTRATIVE OFFENSES, BULLETIN OF THE TAJIK LEGISLATURE 2008, No. 12(1), Item 990 (official publication, in Russian) art. 86, available for download at <http://mmk.tj/ru/legislation/legislation-base/codecs/>, archived at <https://perma.cc/X34V-24D4>.

<sup>165</sup> *Id.* art. 478.

<sup>166</sup> *Id.* art. 474.3.

<sup>167</sup> *Id.* art. 474.1.

<sup>168</sup> *Id.* art. 474.4.

<sup>169</sup> At present there are no Law Library of Congress research staff members versed in Turkish. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>170</sup> TÜRK CEZA KANUNU [TURKISH CRIMINAL CODE], Law No. 5237 (Sept. 26, 2004, as last amended Dec. 2, 2016), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf>, archived at <https://perma.cc/Z2YZ-CZ2B>, English translation available at <http://www.legislationline.org/documents/action/popup/id/6872/preview>, archived at <https://perma.cc/242A-3P85>.

<sup>171</sup> *Id.* art. 125(3)(b)&(c); see also JEROEN TEMPERMAN, RELIGIOUS HATRED AND INTERNATIONAL LAW 194 n.4 (2016).

<sup>172</sup> Mesut Hasan Benli, *Top Appeals Court Reverses Blasphemy Decision Against Turkish Pianist Say*, HÜRRIYET DAILY NEWS (Oct. 26, 2015), <http://www.hurriyetdailynews.com/top-appeals-court-reverses-blasphemy-decision-against-turkish-pianist-say.aspx?pageID=238&nID=90336&NewsCatID=339>, archived at <https://perma.cc/YFP6-E6GQ>.



was provisionally acquitted on appeal to the Supreme Court of Appeals in October 2015, then finally acquitted of the charges on September 7, 2016, by an Istanbul court.<sup>173</sup>

- The May 2013 sentencing of author and human rights activist Sevan Nişanyan, of Armenian descent, to thirteen months in prison for “insulting the religious beliefs held by a section of society” because he made reference to the Prophet Muhammad in a blog post he wrote in September 2013, stating, “[i]t is not [a] ‘hate crime’ to poke fun at some Arab leader who, many [hundreds of] years ago, claimed to have established contact with [a] Deity and [gained] political, economic and sexual profit as a result. It is almost a kindergarten-level case of what we call freedom of expression.”<sup>174</sup>

One journalist, Mustafa Akyol, has questioned whether Say was in fact convicted of blasphemy, given that blasphemy law “by definition, is a law that presupposes God, and aims at protecting him from irreverence,” and article 216 “is not such a religious law. It does not presuppose God, it does not speak of God,” but only penalizes “the public denigration of religious values that are shared by a part of the population.” In other words, it does not claim to protect a higher being, but only the feelings of those who believe in such a being,” and in his view constitutes hate speech, rather than blasphemy.<sup>175</sup>

## Turkmenistan

Insulting religious feelings and disseminating religious materials without a positive conclusion from the state’s theological examination is a misdemeanor under the Turkmen Code on Administrative Offenses. These violations of the Code are punishable by a fine of 2 to 20 base units (approximately US\$57 to \$571).<sup>176</sup> Forum 18 News Service reports on the application of these provisions describe police raids on the houses of Catholics in this predominantly Muslim country and efforts to force Catholics to denounce their religious views, according to the Christian organization Barnabas Aid. Former attendees of Christian meetings were required to

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<sup>173</sup> INTERNATIONAL HUMANIST AND ETHICAL UNION, THE FREEDOM OF THOUGHT REPORT: TURKEY (Nov. 1, 2016), <http://freethoughtreport.com/countries/asia-western-asia/turkey/>; Benli, *supra* note 172; *Turkish Pianist Fazıl Say Acquitted of Blasphemy Charges After Four-Year Legal Battle*, HÜRRİYET DAILY NEWS (Sept. 7, 2016), <http://www.hurriyetdailynews.com/turkish-pianist-fazil-say-acquitted-of-blasphemy-charges-after-four-year-legal-battle.aspx?pageID=238&nID=103664&NewsCatID=339>, archived at <https://perma.cc/82TQ-5N8D>.

<sup>174</sup> Palash Ghosh, *Turkish-Armenian Author Sentenced to 13 Months in Jail for Blasphemy*, INT’L BUS. TIMES (May 23, 2013), <http://www.ibtimes.com/turkish-armenian-author-sentenced-13-months-jail-blasphemy-1277361>, archived at <https://perma.cc/GAN7-HXWS>; Orhan Kemal Cengiz, *Why Is Turkish Writer Sevan Nisanyan in Jail?*, AL MONITOR (Jan. 30, 2014), <http://www.al-monitor.com/pulse/originals/2014/01/nisanyan-turkish-jail.html>, archived at <https://perma.cc/Y82T-RVZ2>.

<sup>175</sup> Mustafa Akyol, *Blasphemy in Turkey – and the Fazıl Say Affair*, AL MONITOR (Apr. 21, 2013), <http://www.al-monitor.com/pulse/originals/2013/04/fazil-say-blasphemy-poet-turkey.html>, archived at <https://perma.cc/89ZF-NXZ7>.

<sup>176</sup> CODE OF TURKMENISTAN ON ADMINISTRATIVE OFFENSES arts. 75, 76, <http://www.turkmenistan.gov.tm/?id=4878> (official publication, in Russian), archived at <https://perma.cc/C949-B5GK>.

“go to the mosque to publicly declare their repentance for having left Islam and say that they had been deceived when they converted to Christianity.”<sup>177</sup>

## Ukraine

The Ukrainian Criminal Code includes a provision stating that “insulting the feelings of others in connection with their religious convictions” is a criminal offense punishable by a fine in the amount of two hundred to five hundred base units (approximately US\$124 to \$310) or a restriction of freedom of up to five years.<sup>178</sup> A separate article provides for a fine in the amount of up to two hundred base units (approximately US\$124), community service for up to 240 hours, detention for up to six months, or deprivation of freedom for up to three years for the illegal retention, desecration, or destruction of religious sanctities.<sup>179</sup>

## Uzbekistan

According to article 216-2 of Uzbekistan’s Criminal Code, it is illegal to conduct unauthorized religious activities or missionary work, or to proselytize. Individuals found guilty of these crimes may be fined up to the equivalent of US\$4,607, or sentenced to up to three years of imprisonment.<sup>180</sup> The Code on Administrative Offenses also prohibits the unauthorized importation or dissemination of religious materials<sup>181</sup> and conducting religious teachings without authorization or in private.<sup>182</sup> The Organization for Security and Co-operation in Europe regularly reports on government abuses and police brutality toward Jehovah’s Witnesses, who are often charged with keeping illegal literature or conducting illegal religious activity for holding religious services at home.<sup>183</sup> The Forum 18 News Service has reported on numerous trials in different regions of the country where Jehovah’s Witnesses were sentenced to varied terms of imprisonment for proselytizing.<sup>184</sup>

<sup>177</sup> *Christian Leader Visiting a Family in Turkmenistan Fined for “Holding a Religious Meeting”*, BARNABAS FUND (Mar. 19, 2015), <https://barnabasfund.org/news/Christian-leader-visiting-a-family-in-Turkmenistan-fined-for-holding-a-religious-meeting?audience=DE>, archived at <https://perma.cc/B2F3-CU44>.

<sup>178</sup> CRIMINAL CODE OF UKRAINE art. 161, VIDOMOSTI VERKHOVNOI RADY UKRAINY, 2001, No. 25-26, Item 131 (official gazette, in Ukrainian), *English translation at* [https://www.unodc.org/tldb/pdf/Criminal\\_Code\\_of\\_Ukraine\\_31.05.2007\\_ENG\\_text.pdf](https://www.unodc.org/tldb/pdf/Criminal_Code_of_Ukraine_31.05.2007_ENG_text.pdf), archived at <https://perma.cc/D2P8-6CL5>.

<sup>179</sup> *Id.* art. 179.

<sup>180</sup> CRIMINAL CODE OF THE REPUBLIC OF UZBEKISTAN, *as amended*, VEDOMOSTI VERKHOVNOGO SOVETA RESPUBLIKI UZBEKISTAN (official gazette, in Russian, 1995, No. 1, available at [http://lex.uz/pages/getpage.aspx?lact\\_id=111457](http://lex.uz/pages/getpage.aspx?lact_id=111457), archived at <https://perma.cc/4H5Y-SEKK>.

<sup>181</sup> CODE OF THE REPUBLIC OF UZBEKISTAN ON ADMINISTRATIVE RESPONSIBILITY (as amended), VEDOMOSTI VERKHOVNOGO SOVETA RESPUBLIKI UZBEKISTAN (official gazette, in Russian,) 1995, No. 9, Item 193, art. 184.2, available at [http://lex.uz/Pages/GetAct.aspx?lact\\_id=97661](http://lex.uz/Pages/GetAct.aspx?lact_id=97661), archived at <https://perma.cc/B5YX-H5CT>.

<sup>182</sup> *Id.* art. 241.

<sup>183</sup> EUROPEAN ASSOCIATION OF JEHOVAH’S CHRISTIAN WITNESSES, JEHOVAH’S WITNESSES IN UZBEKISTAN 2–4 (Sept. 26, 2016), available at <http://www.osce.org/odihr/268446?download=true>, archived at <https://perma.cc/3NAR-3T89>.

<sup>184</sup> Igor Rotar, *Uzbekistan: Increasing Use of Criminal Law Against Jehovah’s Witnesses*, FORUM 18 (Aug. 10, 2005), available at [http://www.ecoi.net/file\\_upload/1329\\_1205829871\\_uzbekistan626.pdf](http://www.ecoi.net/file_upload/1329_1205829871_uzbekistan626.pdf), archived at <https://perma.cc/UBD7-XSWM>.

## C. Latin America and Caribbean

### Antigua and Barbuda

Section 9 of the Small Charges Act provides that it is an offense to use blasphemous language in a public place, or in any place that would cause annoyance to the public.<sup>185</sup> The crime is punishable with a fine of up to 500 Eastern Caribbean dollars (approximately US\$185) and/or imprisonment for up to one month.<sup>186</sup>

While the offense remains on the statute books, this offense is reportedly not being enforced.<sup>187</sup>

### Brazil

Article 208 of the Brazilian Penal Code punishes with detention of one month to one year or a fine a person who mocks someone publicly for reasons of his/her belief or religious role, prevents or disturbs a religious ceremony or practice, or publicly vilifies an act or object of religious worship.<sup>188</sup> If the conduct involves the use of violence, the punishment is increased by one-third, without prejudice to the punishment corresponding to the act of violence itself.<sup>189</sup>

### Guyana

Guyana's Criminal Law (Offenses) provides as follows:

Blasphemous libel:

- (1) Everyone who publishes any blasphemous libel shall be guilty of a misdemeanor and liable to imprisonment for one year.
- (2) It shall be a question of fact whether any particular published matter is not a blasphemous libel:  
Provided that no person shall be liable to be convicted on any blasphemous libel only for expressing in good faith and in decent language, or attempting to establish by arguments used in good faith and conveyed in decent language, any opinion whatever upon any religious subject.<sup>190</sup>

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<sup>185</sup> Small Charges Act 1892, cap. 405, § 9, <http://laws.gov.ag/acts/chapters/cap-405.pdf>, archived at <https://perma.cc/RJS6-6NE3>.

<sup>186</sup> *Id.*

<sup>187</sup> INTERNATIONAL HUMANIST AND ETHICAL UNION, THE FREEDOM OF THOUGHT REPORT: ANTIGUA AND BARBUDA, <https://freethoughtreport.com/countries/americas-caribbean/antigua-and-barbuda> (last visited Jan. 25, 2017), archived at <https://perma.cc/M8Z3-YQQP> (citing 2013 Report on International Religious Freedom).

<sup>188</sup> CÓDIGO PENAL, Decreto-Lei No. 2.848, de 7 de Dezembro de 1940, art. 208, [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del2848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm), archived at <https://perma.cc/LM5A-RVTA>.

<sup>189</sup> *Id.* art. 208 (sole para.).

<sup>190</sup> Criminal Law (Offences), Part V, § 347, LAWS OF GUYANA Cap. 8:01 (L.R.O. 1/2012), <http://mola.gov.gy/information/laws-of-guyana/903-chapter-00801-criminal-law-offences>, archived at <https://perma.cc/3UWJ-6PMW>.

## Jamaica

Jamaica's Libel and Slander Act, 1851, as amended, provides that

[a] fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged:

Provided that nothing in this section shall authorize the publication of any seditious, blasphemous or indecent matter.<sup>191</sup>

In 2008 a government committee reportedly recommended the abolition of “the common law offences of criminal libel including blasphemous, obscene and seditious libel.”<sup>192</sup> Although in 2011 the House of Representatives approved an additional report from a joint select committee on this issue, no progress appears to have been made and “blasphemous” libel remains prohibited under Jamaican Law.<sup>193</sup>

## Saint Lucia

Under the Saint Lucia Criminal Code “[n]o plea of justification shall be pleaded [in a defamation suit] to any indictment or count of a charge of seditious, blasphemous or obscene libel.”<sup>194</sup>

According to the US State Department's *International Religious Freedom Report for 2012*, however, “[t]he anti-blasphemy law is not enforced.”<sup>195</sup>

## Trinidad and Tobago

Under the Trinidad and Tobago Criminal Offenses Act 1844, as amended, any person who is convicted of any act or an attempt to commit “blasphemy, writing and publishing, or printing and publishing, any blasphemous libel . . . is liable to a fine and to imprisonment for two years.”<sup>196</sup>

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<sup>191</sup> Libel and Slander Act, 1851, *as amended*, § 15, LAWS OF JAMAICA Cap. 219, <http://moj.gov.jm/sites/default/files/laws/Libel%20and%20Slander%20Act.pdf>, archived at <https://perma.cc/U2H2-QX58>.

<sup>192</sup> *Jamaica*, END BLASPHEMY LAWS, <http://end-blasphemy-laws.org/countries/americas/jamaica/> (last visited Jan. 18, 2017), archived at <https://perma.cc/4DQK-65KY>.

<sup>193</sup> *Id.*

<sup>194</sup> Saint Lucia Criminal Code No. 9 of 2004, § 326(6), p. 273, available on the Institute for International and Comparative Law in Africa (ICLA) website, at <http://www.icla.up.ac.za/images/un/use-of-force/latin-america-caribbean/SaintLucia/Criminal%20Code%20Saint%20Lucia%202004.pdf> (last visited Jan. 18, 2017), archived at <https://perma.cc/FNM7-YD7T>.

<sup>195</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012: SAINT LUCIA 1, <https://www.state.gov/documents/organization/222623.pdf>, archived at <https://perma.cc/J8LW-DAYH>.

<sup>196</sup> Criminal Offenses Act 1844, *as amended*, §5, LAWS OF TRINIDAD AND TOBAGO Chap. 11:01, [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/11.01.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.01.pdf), archived at <https://perma.cc/RP6B-G67E>.

According to the US State Department's *International Religious Freedom Report for 2013*, however, "[t]he anti-blasphemy law is not enforced."<sup>197</sup>

## D. Middle East and North Africa

### Algeria

Algerian law criminalizes any behavior, whether through writings, drawings, statements, or any other means, that insults the prophet of Islam or the other prophets, or ridicules any Islamic religious rites. The penalty for such behavior is between three and five years' imprisonment and/or a fine of between 50,000 and 100,000 Algerian dinars (about US\$455 to \$909).<sup>198</sup>

The law was applied in the recent case of Slimane Bouhafs. In August 2016, Bouhafs, an evangelical Christian, was sentenced to five years in prison and ordered to pay a fine of 100,000 dinars (about US\$900) for insulting Islam and its prophet. In September 2016, after filing an appeal, Bouhafs had his five-year sentence reduced to three years and the fine was dropped.<sup>199</sup>

### Bahrain

Article 309 of the Bahrain Penal Code of 1976 penalizes individuals who insult any religious sect with a term of imprisonment not exceeding one year or a fine not exceeding one hundred Bahraini dinars (approximately US\$265). Article 310 also punishes any person who prints or publishes a holy book for members of a recognized religion but deliberately alters the text in a manner intended to change the meaning of the book or ridicule its teachings and principles. Likewise, it sanctions any person who publicly insults a symbol or a person that is glorified or considered sacred by members of a particular sect. Finally, it prohibits any person from imitating in public a religious ritual or ceremony with the intention of ridiculing it.<sup>200</sup>

In August 2012, a Bahraini court sentenced a man to two years in prison for making insulting comments about one of the wives of Mohammed.<sup>201</sup>

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<sup>197</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013: TRINIDAD AND TOBAGO 2, <https://www.state.gov/documents/organization/222623.pdf>, archived at <https://perma.cc/VSG4-XP5A>.

<sup>198</sup> Law No. 15-66 of 1966, art. 144 bis(2), <http://www.joradp.dz/TRV/APenal.pdf> (in Arabic), archived at <https://perma.cc/5Q7H-UPC4>.

<sup>199</sup> *Update: Protests in Algeria for Release of Sick Christian*, WORLD WATCH MONITOR (Nov. 4, 2016), <https://www.worldwatchmonitor.org/2016/08/4582070>, archived at <https://perma.cc/FZ5A-T2BM>.

<sup>200</sup> Law 15 of 1976, *al Jarida al Rasmiyya*, vol. 1170, 8 April 1976, <http://www.legalaffairs.gov.bh/Legislation/SearchDetails.aspx?id=4069> (in Arabic), archived at <https://perma.cc/EE6D-H4SZ>.

<sup>201</sup> *Bahrain Court Jails Man Two Years for Insult to Prophet's Wife*, REUTERS (Aug. 12, 2012), <http://www.reuters.com/article/us-bahrain-insult-idUSBRE87B0C020120812>, archived at <https://perma.cc/B98P-28LX>.

## Egypt

Article 98(f) of Egypt’s Penal Code, as amended by Law 147/2006, states that “whoever makes use of religion in propagating, either by words, in writing, or by any other means, extreme ideas for the purpose of inciting strife, ridiculing or insulting a heavenly religion or a sect following it, or damaging national unity” is punishable with six months to five years of imprisonment and/or a fine of five hundred to one thousand Egyptian pounds (approximately US\$25 to \$50).<sup>202</sup>

In May 2015, an Egyptian court of first instance found television show host Islam El-Beheiry guilty of insulting the religion of Islam. The court sentenced him to five years of imprisonment.<sup>203</sup> In December 2015, the Court of Appeal reduced the sentence to one year.<sup>204</sup>

## Gaza Strip

The law applicable in the Gaza Strip criminalizes as a misdemeanor the publishing of any print, writing, picture or effigy intending to insult the religious feelings or belief of others.<sup>205</sup> Offenders are subject to one year of imprisonment. The utterance in public and in the hearing of another person of a word or sound with the same intention is subject to the same penalty.<sup>206</sup>

## Iran<sup>207</sup>

Chapter two of book five of the Penal Code of Iran is on “insulting sacred religious values and criminal attempt on national authorities.” It comprises three articles, two of which relate to the crime of blasphemy. Article 513 states,

[a]nyone who insults the sacred values of Islam or any of the Great Prophets or [twelve] Shi’ite Imams or the Holy Fatima, if considered as Saab ul-nabi [as having committed actions warranting the hadd punishment for insulting the Prophet], shall be executed; otherwise, they shall be sentenced to one to five years’ imprisonment.<sup>208</sup>

<sup>202</sup> Law 58 of 1937 (Criminal Code of 1937), art. 98(f), available at <http://www.mohamoon.com/montada/Default.aspx?action=ArabicLaw&ID=20> (in Arabic; translation by author), archived at <https://perma.cc/EWJ5-2FBX>.

<sup>203</sup> See George Sadek, *Egypt: Court Sentences TV Show Host to Five Years of Imprisonment*, GLOBAL LEGAL MONITOR (Law Library of Congress, June 4, 2015), <http://www.loc.gov/law/foreign-news/article/egypt-court-sentences-tv-show-host-to-five-years-of-imprisonment/>, archived at <https://perma.cc/RKP8-UTRE>.

<sup>204</sup> *Egyptian Court Sends TV Host Islam Behery to Jail for One Year Over Blasphemy*, AHRAM ONLINE (Dec. 29, 2015), <http://english.ahram.org.eg/NewsContent/1/64/177654/Egypt/Politics-/Egyptian-court-sends-TV-host-Islam-Behery-to-jail-.aspx>, archived at <https://perma.cc/HFR3-KU8A>.

<sup>205</sup> PENAL CODE No. 74 of 1936, art. 149, [http://www.dft.gov.ps/index.php?option=com\\_dataentry&pid=12&leg\\_id=%20107](http://www.dft.gov.ps/index.php?option=com_dataentry&pid=12&leg_id=%20107), archived at <https://perma.cc/U36V-9E2M>.

<sup>206</sup> *Id.*

<sup>207</sup> At present there are no Law Library of Congress research staff members versed in Persian. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>208</sup> PENAL CODE OF THE ISLAMIC REPUBLIC OF IRAN, Book Five (adopted May 22, 1996, with all amendments up to Jan. 2012), available at <http://iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html#2>, archived at <https://perma.cc/EXQ7-L4RA>; QĀNŪN-I

Article 514 states, “[a]nyone who, by any means, insults Imam Khomeini, the founder of the Islamic Republic, and/or the Supreme Leader shall be sentenced to six months to two years’ imprisonment.”<sup>209</sup>

In addition, there is a crime of “swearing at the Prophet” (Sabb-e nabi) under article 262 of the Penal Code: “[a]nyone who swears at or commits qazf against the Great Prophet [of Islam] . . . or any of the Great Prophets, shall be considered as Sāb ul-nabi [a person who swears at the Prophet], and shall be sentenced to the death penalty.” A note on the article states that swearing at the [twelve] Shi’ite Imams or the Holy Fatima will be considered Sab-e nabi.<sup>210</sup> However, under article 263, if the accused claims that the statements were made under coercion or by mistake, in a state of drunkenness, in anger or by a slip of the tongue, by failing to pay attention to the meaning of one’s words, or in quoting someone else, then the accused will not be considered to be a person who swears at the Prophet.<sup>211</sup>

According to one nongovernmental organization, the government of Iran “jails and executes periodically dozens of individuals on charges of ‘enmity against God’ (moharebeh).”<sup>212</sup> In the view of IHEU, while “this crime is framed as a religious offense, and may be used against atheists and other religious dissenters, it is most often used as a punishment for political acts that challenge the regime (on the basis that to oppose the theocratic regime is to oppose Allah).”<sup>213</sup> Examples of recent cases of possible charges of or conviction for blasphemy are as follows:

- Four (and possibly more) Zoroastrians were convicted in 2011, and were still in prison as of April 2016, on charges of blasphemy, among other charges.<sup>214</sup>
- Members of the Iranian metal band Confess, Nikan Siyanor Khosravi and Khosravi Arash Chemical Ilkhani, were reported in February 2016 as having been imprisoned after being arrested “for promoting music considered to be Satanic, writing anti-religious lyrics, and granting interviews to forbidden foreign radio stations,” and subjected to sentences of six months to six years in prison, unless found guilty of blasphemy, for which they could face execution.<sup>215</sup>

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MUJĀZĀT-I ISLĀMĪ [ISLAMIC PENAL CODE], available at <http://www.ghavanin.ir/detail.asp?id=1232> (in Persian), archived at <https://perma.cc/YPR8-PSR2>.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* A note to the article states that when the offense of swearing at the Prophet “is committed in the state of drunkenness, or anger or quoting someone else, if it is considered to be an insult, the offender shall be sentenced to a ta’zir punishment of up to seventy-four lashes.”

<sup>212</sup> INTERNATIONAL HUMANIST AND ETHICAL UNION, THE FREEDOM OF THOUGHT REPORT: IRAN (Nov. 1, 2016), <http://freethoughtreport.com/countries/asia-southern-asia/iran/>, archived at <https://perma.cc/8S9Y-4NTH>.

<sup>213</sup> *Id.*

<sup>214</sup> UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, ANNUAL REPORT 2015: IRAN 47 (Apr. 2016), <http://www.uscirf.gov/sites/default/files/Iran%202015.pdf>, archived at <https://perma.cc/NQ95-BYSR>.

<sup>215</sup> Joelle Fiss, *Anti-Blasphemy Offensives in the Digital Age: When Hardliners Take Over* (Brookings Project on U.S. Relations with the Islamic World, Analysis Paper No. 25, Sept. 2016), at 13, [https://www.brookings.edu/wp-content/uploads/2016/09/brookings-analysis-paper\\_joelle-fiss\\_web.pdf](https://www.brookings.edu/wp-content/uploads/2016/09/brookings-analysis-paper_joelle-fiss_web.pdf), archived at <https://perma.cc/329G-N88P>

- In September 2014, Iranian blogger Soheil Arabi “was found guilty of insulting the Prophet Muhammad on Facebook and sentenced to death,” but the Iranian Supreme Court struck down the sentence in 2015 and returned the case to a lower court, “which removed the charge of ‘insulting the Prophet’ and sentenced him to seven and a half years in prison, two years of religious studies (to prove his repentance), and a two-year ban from traveling abroad.”<sup>216</sup>

The May 2014 sentencing of eight people (arrested in 2013) “to a combined 123 years in prison for various charges including insulting the country’s supreme leader on Facebook,” with individual prison sentences “ranging from seven to 20 years for charges of blasphemy . . . and insulting Iran’s Supreme Leader Ayatollah Ali Khamenei.”<sup>217</sup>

## Iraq

Article 372 of Iraq’s Penal Code of 1969 provides that any individual who insults the creed of a religious sect or its practices, or publicly insults a symbol or person that is an object of sanctification, worship, or reverence for a religious sect, may be punished with a term of imprisonment not exceeding three years or a fine not exceeding 300 Iraqi dinars (about US\$0.25).<sup>218</sup>

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(citing Robert Pasbani, *Iranian Musicians Jailed, Facing Possible Execution for Playing Metal*, METAL INJECTION (Feb. 10, 2016), <http://www.metalinjection.net/metal-crimes/iranian-musicians-jailed-facing-possible-execution-for-playing-metal>, archived at <https://perma.cc/DGZ4-7BW5>). According to *Fox News*, an anonymous letter posted on a Canadian music site stated that the two men had been held in Iran’s Evin Prison in solitary confinement for almost two months and were released on February 5, 2016, after paying 1,000,000,000 Rial (about US\$30,000), and were then awaiting trial. Perry Chiaramonte, *Iranian Heavy Metal Band Faces Possible Death Penalty for Playing Music?*, FOX NEWS (Feb. 17, 2016), <http://www.foxnews.com/entertainment/2016/02/17/iranian-heavy-metal-band-faces-possible-death-penalty-for-playing-music.html>, archived at <https://perma.cc/MN3E-4QEK>.

<sup>216</sup> Fiss, *supra* note 215, at 12 (citing Michael Rundle, *Iranian Blogger Soheil Arabi to Be Executed for Posting ‘Insults’ on Facebook*, HUFFINGTON POST (Dec. 3, 2014), [http://www.huffingtonpost.co.uk/2014/12/03/iranian-blogger-soheil-arabi\\_n\\_6261904.html](http://www.huffingtonpost.co.uk/2014/12/03/iranian-blogger-soheil-arabi_n_6261904.html), archived at <https://perma.cc/8KK9-Q35A>). Arabi stated in court that he was “not in a suitable state of mind” when he wrote some of his posts, therefore making it possible for his offense to be considered under article 263 of the Penal Code. *Man Imprisoned for Facebook Posts Seeks Reduced Sentence*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Aug. 12, 2016), <https://www.iranhumanrights.org/2016/08/soheil-arabi-6/>, archived at <https://perma.cc/7AKX-ASSU>.

<sup>217</sup> Fiss, *supra* note 215, at 12 (citing Lorenzo Franceschi-Bicchierai, *Iran Sentences 8 Facebook Users to Combined 123 Years in Jail*, MASHABLE (May 28, 2014), <http://mashable.com/2014/05/28/iran-jails-8-facebook-users/>, archived at <https://perma.cc/787V-WDYR>). One of the eight, a British woman named Roya Saberinejad Nobakht, reportedly received a twenty-year sentence “over comments she had made to friends on Facebook and in online chat, calling Iran’s government too controlling and ‘too Islamic’.” *Id.* According to Gissou Nia, Executive Director of The Iran Human Rights Documentation Center, “the Judge mistakenly applied ‘a new and controversial provision’ of the nation’s penal code and gave harsher sentences than would have otherwise been allowed.” Franceschi-Bicchierai, *supra*.

<sup>218</sup> Law 111-1969, *al Jarida al Rasmiyya*, vol. 1778, 15 December 1969, available at <https://www.rwi.uzh.ch/dam/jcr:00000000-0c03-6a0c-ffff-ffff96be3560/penalcode1969.pdf> (in Arabic), archived at <https://perma.cc/6V FH-XC BJ>.



## Israel

The infliction of “injury to religious sentiments” constitutes a criminal offense in Israel and is punishable by one year of imprisonment. Indictments under this offense, however, are extremely rare. As discussed below, under limited circumstances the potential for harming religious feelings may also constitute a ground for prohibiting the screening of movies or the distribution of publications.

Section 173 of the Penal Law 5737-1977 provides as follows:

### **Injury to Religious Sentiments**

173. If a person does any of the following, then he is liable to one year imprisonment:
- (1) he publishes a publication that is liable crudely to offend the religious faith or sentiment of others;
  - (2) he voices in a public place and in the hearing of another person any word or sound that is liable crudely to offend the religious faith or sentiment of others.<sup>219</sup>

In a 1998 decision the Supreme Court rejected an appeal from a conviction of attempting to injure religious sentiments by trying to post flyers in Hebron, a city with a majority of Muslims that had experienced a high level of tension between Jews and Arabs in recent years. The flyers depicted a pig wearing an Arab head cover and labeled “Muhammad” stepping on an open book titled “Quran.” The Court noted that, considering that freedom of speech constitutes a basic principle of a democratic state, indictments under section 173 of the Penal Law were rare. In the circumstances of the case, however, there was no need for expert opinions to prove that the flyers could cause injury to the feelings of Muslims in Hebron and crossed the line of what was permitted as free speech.<sup>220</sup>

Two leading decisions explain the scope of the prohibition on publication of materials that may inflict injury to religious sentiments vis-à-vis the principle of freedom of expression under Israeli law. In a 1988 case the Supreme Court addressed the constitutionality of prohibiting the screening of the movie *The Last Temptation of Christ* based on concerns for the religious sentiments of the Christian community in Israel. The Supreme Court held that freedom of expression is one of the basic values in the Israeli legal system and is viewed as the essence of democracy. Freedom of expression, however, is not unlimited and should not harm the rights and freedoms of others or public order. The Court recognized that the movie was screened in many countries around the world, including countries with Christian populations. Moreover, there was no obligation to watch the movie; therefore no serious and severe injury to the feelings of those who did not watch it existed.<sup>221</sup>

<sup>219</sup> Penal Law 5737-1977, SEFER HAHUKIM [SH] [BOOK OF LAWS (official gazette)] 5737 No. 864 p. 226, English translation available at <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf>, archived at <https://perma.cc/R3KA-ZAW2>.

<sup>220</sup> CrimA 697/98 Tatiana Suskin v. State of Israel (July 8, 1998), <http://elyon1.court.gov.il/files/98/970/006/E02/98006970.e02.pdf> (in Hebrew), archived at <https://perma.cc/7HLM-DX3M>.

<sup>221</sup> HCJ 806/88 Universal City Studios Inc. v. Association for Review of Movies and Plays (Supreme Court, June 15, 1989), available at the Nevo Legal website, <http://www.nevo.co.il> (in Hebrew; by subscription), archived at <https://perma.cc/8HTP-XBLG>.

In 2015, a request to prohibit distribution of the 2015 edition of the French satirical magazine *Charlie Hebdo* based on it allegedly being offensive to Muslims in Israel was rejected by the Haifa District Court. The Court decided that the title page, which showed a cartoon of a teary-eyed Muhammad holding a sign saying *je suis Charlie* (“I am Charlie”) under the heading *tout est pardonné* (“all is forgiven”) did not constitute an offense to the religious feelings of Muslims in violation of section 173 of the Penal Law. Instead, the Court determined, the cartoon conveyed the protest of Muhammad against the murder of Charlie Hebdo’s workers and two others, and the injury of many.<sup>222</sup>

## Jordan

Jordan explicitly criminalizes blasphemy. Article 273 of Jordan’s Penal Code of 1960 punishes with a term of imprisonment of one to three years any individual who insults the Prophet Mohammed. In addition, article 278 provides that anyone who publishes anything, whether it be printed, a manuscript, a picture, a drawing, or a symbol, that results in offending religious feelings or beliefs is punishable by a term of imprisonment not exceeding three months or a fine not exceeding twenty dinars (about US\$28).<sup>223</sup>

In a recent case decided in August 2016, Nahid Hattar was accused of blasphemy for sharing a satirical cartoon on his Facebook page. Hattar was detained for fifteen days on charges of insulting the Islamic religion. In September 2016, he was shot to death by Islamic extremists on the day of his trial.<sup>224</sup>

## Kuwait

Kuwait has laws that have been used to punish individuals accused of blasphemy. Law 19 of 2012 on National Unity amended article 111 of the Penal Code to criminalize and impose harsher penalties for any publications or broadcasts, including via social media, that could be considered offensive to religious sects or groups. The law punishes such crimes with a fine ranging from US\$36,000 to \$720,000 and a maximum of seven years in prison.<sup>225</sup>

In April 2016, a prominent female academic and human rights activist in Kuwait was charged with blasphemy under the law. Sheikha al-Jassem was summoned to the public prosecutor’s office after legal complaints were filed against her over an interview she gave on TV about the

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<sup>222</sup> Request 51269-01-15 Mizan Organization for Human Rights v. Stimatski (Haifa District Court, Jan. 26, 2015), available at <http://www.nevo.co.il> (in Hebrew; by subscription), archived at <https://perma.cc/GJ78-5XNK>.

<sup>223</sup> Law 16 of 1960, *al Jarida al Rasmiyya*, vol. 1487, 1 January 1960, p. 374, <http://www.wipo.int/edocs/lexdocs/laws/ar/jo/jo064ar.pdf> (in Arabic), archived at <https://perma.cc/5GT2-3LB5>.

<sup>224</sup> *Jordan: Writer in Blasphemy Case Nahid Hattar Killed*, BBC News (Sept. 25, 2016), <http://www.bbc.com/news/world-middle-east-37465656>, archived at <https://perma.cc/67Q9-72G5>.

<sup>225</sup> Law 19 of 2012, *al Jarida al Rasmiyya*, vol. 1102, 21 October 2012, available at <http://www.gcc-legal.org/LawAsPDF.aspx?country=1&LawID=4075> (in Arabic), archived at <https://perma.cc/F9TT-MEM6>.

Islamic religion. According to news reports, al-Jassem stated that the Constitution of Kuwait should be above the Quran and Islamic law (Shari‘a).<sup>226</sup>

## Lebanon

Lebanese law criminalizes publicly cursing the name of God. The penalty for this offense is between one month and one year of imprisonment.<sup>227</sup> In addition, anyone who publicly acts in contempt of the rites of any religion or encourages such acts is punishable by six months’ to three years’ imprisonment.<sup>228</sup>

## Libya

Libyan law criminalizes acts that publicly offend any of the religions that perform their rites in the open by imposing on the actor a penalty of up to one year imprisonment or a fine of up to 50 Libyan dinars (about US\$35).<sup>229</sup> Such acts include the reenactment of a religious celebration or rite for the purpose of mockery or entertainment.<sup>230</sup> Offenses against the Islamic religion and verbal statements not befitting the Divine Being, the Messenger of Islam, or the prophets are punished by up to two years’ imprisonment.<sup>231</sup>

## Malta

Article 2 of the Maltese Constitution provides that the Roman Catholic Apostolic Religion is the official state religion of Malta.<sup>232</sup> While it did not use the specific term “blasphemy,” Malta had a blasphemy law until early 2016, contained in articles 163 and 164 of its Criminal Code, which prohibited the public vilification of the Roman Catholic Apostolic Religion.<sup>233</sup> There were many prosecutions under these articles.<sup>234</sup>

<sup>226</sup> Sebastian Usher, *Kuwait Academic Charged with Blasphemy*, BBC News (Apr. 14, 2016), <http://www.bbc.com/news/world-middle-east-36046706>, archived at <https://perma.cc/4RYH-STGE>.

<sup>227</sup> Law No. 340 of 1943, art. 473, available at [https://www.unodc.org/res/cld/document/lebanon-penal-code\\_html/Lebanon\\_Penal\\_Code\\_1943.pdf](https://www.unodc.org/res/cld/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf) (in Arabic), archived at <https://perma.cc/UP8Z-ZMH4>.

<sup>228</sup> *Id.* art. 474.

<sup>229</sup> PENAL CODE OF 1953, art. 290, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/115997/F-671669284/LBY97659%20Ara.pdf> (in Arabic), archived at <https://perma.cc/A9PG-P8Z5>.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* art. 291.

<sup>232</sup> CONSTITUTION OF MALTA art. 2, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>, archived at <https://perma.cc/EN4A-WUEB>.

<sup>233</sup> CRIMINAL CODE, cap. 9, arts. 163 & 164, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>, archived at <https://perma.cc/CG4Z-95LG>, repealed by An Act to Amend the Criminal Code, Cap. 9 and to Provide for Any Other Matters Ancillary or Consequential Thereto, 2016, No. 37/2016, art. 3, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27811&l=1>, archived at <https://perma.cc/UFK3-MLXQ>.

<sup>234</sup> *Malta Among Dwindling Number of EU States Still With Blasphemy Laws*, MALTA INDEPENDENT (Dec. 2, 2012), <http://www.independent.com.mt/articles/2012-12-02/news/malta-among-dwindling-number-of-eu-states-still-with-blasphemy-laws-470450177>, archived at <https://perma.cc/34WZ-J8G8>.

Article 342 of the Criminal Code continues to provide that any person who commits an act that constitutes a public order offense under article 338 of the Criminal Code faces a minimum penalty of a fine of €11.65 (approximately US\$12.50) and a maximum penalty of three months' imprisonment if the offense "consists in uttering blasphemous words or expressions."<sup>235</sup>

## Morocco

The newly enacted Press Law of 2016 refers to the crime of offending the religion of Islam.<sup>236</sup> However, no provisions that define the elements of this crime or the penalties assigned to it were located.

In addition, under Moroccan law anyone who entices a Muslim to abandon his Islamic belief or follow another religion by exploiting his weakness or need for assistance, or through the use of educational, health, or other institutions, is subject to a penalty of six months to three years' imprisonment and a fine of 200 to 500 Moroccan dirhams (about US\$20 to \$50).<sup>237</sup> The same penalties apply to anyone who intentionally interferes with religious rites or celebrations where this causes disturbances or affects the dignity of such religious acts.<sup>238</sup>

In August 2013, Moroccan authorities arrested Mohamed El Baladi, a Christian convert from Islam, for proselytizing two other Muslims. A week after his arrest, El Baladi was found guilty of attempting to incite at least one young Muslim to leave Islam and was sentenced to thirty months in prison, along with a fine of 1,500 dirhams (about US\$182). After filing an appeal, the court of appeal acquitted El Baladi for lack of evidence.<sup>239</sup>

## Oman

Article 209 of Oman's Penal Code makes punishable with a term of imprisonment of between ten days and three years, or a fine of five to five hundred Omani Riyals (approximately US\$13 to \$1,300), any individual who (1) publicly blasphemes God or the Prophet Mohammed, (2) commits an affront to religions and faiths through the spoken or written word, or (3) breaches the peace of a lawful religious gathering.<sup>240</sup>

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<sup>235</sup> CRIMINAL CODE, cap. 9, arts. 338 & 342.

<sup>236</sup> Royal Decree 1.16.122, art. 71, OFFICIAL GAZETTE No. 6491 of 2016, [http://www.sgg.gov.ma/BO/Ar/2016/BO\\_6491\\_Ar.PDF?ver=2016-08-18-141835-253](http://www.sgg.gov.ma/BO/Ar/2016/BO_6491_Ar.PDF?ver=2016-08-18-141835-253), archived at <https://perma.cc/BSG2-BZ5A>.

<sup>237</sup> Royal Decree No. 1.59.413 of 1962, art. 220, [http://adala.justice.gov.ma/production/legislation/ar/Nouveautes/القانون الجنائي.pdf](http://adala.justice.gov.ma/production/legislation/ar/Nouveautes/القانون%20الجنائي.pdf) (in Arabic), archived at <https://perma.cc/ZX8C-GUX2>.

<sup>238</sup> *Id.* art. 221.

<sup>239</sup> *Christian Convert from Islam Has "Proselytism" Conviction Overturned in Morocco*, CHRISTIAN POST (Feb. 6, 2014), <http://www.christianpost.com/news/christian-convert-from-islam-has-proselytism-conviction-overturned-in-morocco-114260>, archived at <https://perma.cc/KYS2-SZRU>.

<sup>240</sup> Royal Decree 7-1974, *al Jarida al Rasmiyya*, 26 February 1974, <http://www.rop.gov.om/pdfs/roplaws/arabic/ROPRULE-1.pdf> (in Arabic), archived at <https://perma.cc/MT2D-6MK5>.

## Qatar

Article 256 of Qatar's Law No. 11 of 2004 incorporates punishment against individuals who are considered as being in contempt of God or Islam. It reads as follows:

Whoever commits the following acts shall be punished with imprisonment for a term not exceeding seven years:

- 1- Insulting Allah through writing, drawing, gesturing or in any other way or through any other means.
- 2- Offending, misinterpreting or violating the Holy Quran.
- 3- Offending the Islamic religion or any of its rites and dictates.
- 4- Cursing any of the divine religions according to the regulations of Islamic law.
- 5- Insulting any of the prophets through writing, drawing, gesturing or in any other way or through any other means.
- 6- Sabotaging, breaking, damaging or violating sites or their contents if they are made to perform religious rites for one of the divine religions according to the regulations of Islamic law.<sup>241</sup>

Qatar also criminalizes proselytizing. Under article 257 of Law No. 11 of 2004, any individual who establishes an organization to proselytize may be punished with a term of imprisonment of up to seven years.<sup>242</sup>

In May 2013 a Nepali teacher who taught chemistry at Qatar Academy was jailed in Doha on felony charges for insulting Islam after allegedly comparing Muslims to terrorists in a verbal exchange with students—an allegation that the teacher denied.<sup>243</sup>

## Saudi Arabia

Islamic law (Shari'a) is the law of the land in Saudi Arabia. The country has no penal code. The main sources of Islamic law are the Quran (Muslims' holy book) and the *hadith* (ascribed sayings of the Prophet Mohamed). The Quran and Hadith do not explicitly mention any worldly punishment for blasphemy. Quranic verse 33:57 states that God will damn those individuals who annoy God or his prophet, but does not mention a specific punishment.<sup>244</sup>

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<sup>241</sup> Law 11-2004, art. 256, *al Jarida al Rasmiyya*, vol. 7, 30 May 2004, p. 53, available at [http://gulfmigration.eu/database/legal\\_module/Qatar/National%20Legal%20Framework/Anti-trafficking/2.2%20Penal%20Code%2011%202004\\_EN.pdf](http://gulfmigration.eu/database/legal_module/Qatar/National%20Legal%20Framework/Anti-trafficking/2.2%20Penal%20Code%2011%202004_EN.pdf) (from Qatari legal portal Al Meezan), archived at <https://perma.cc/L9G5-DW3L>.

<sup>242</sup> *Id.* art. 257.

<sup>243</sup> Anup Kaphle, *Qatar Jails a Nepali Teacher on Charges of Insulting Islam*, WASHINGTON POST (May 9, 2013), [https://www.washingtonpost.com/news/worldviews/wp/2013/05/09/qatar-jails-a-nepali-teacher-on-charges-of-insulting-islam/?utm\\_term=.ffb32bfa15](https://www.washingtonpost.com/news/worldviews/wp/2013/05/09/qatar-jails-a-nepali-teacher-on-charges-of-insulting-islam/?utm_term=.ffb32bfa15), archived at <https://perma.cc/VYR4-BUEN>.

<sup>244</sup> Surah Al-Ahzab 33:57, English translation by Sahih International available at <https://quran.com/33:57>, archived at <https://perma.cc/L8SC-YMLJ>.

The Saudi legal system also encompasses royal decrees and *fatwas* issued by the Council of Senior Religious Scholars. Punishments for blasphemy involve imprisonment, fines, and lashing by whip, and may include death.<sup>245</sup>

In addition, questioning the fundamentals of Islam is considered an act of terrorism. Article 1 of the antiterrorism law issued in January 2014 defines a “terrorist act” as “the act of questioning the fundamentals of the Islamic religion on which this country is based.”<sup>246</sup>

In December 2016, Ponnam Shankar, an Indian citizen, was arrested for allegedly offending Islamic sentiments by displaying the Hindu God Shiva on a wall.<sup>247</sup>

In November 2015, the Shari‘a General Court of Abha (a city in the southwest region of Saudi Arabia) found Ashraf Fayadh, a poet, guilty of blasphemy and apostasy and sentenced him to death. However, the death sentence was subsequently overturned, to be replaced with 800 lashes and imprisonment for eight years, in exchange for Fayadh publicly renouncing his poetry.<sup>248</sup> He was charged with an array of blasphemy and apostasy-related offenses, including blaspheming “the divine self” and the Prophet Mohammad, spreading atheism and promoting it among the youth in public places, mocking the verses of God and the prophets, refuting the Quran, denying the day of resurrection, and objecting to “fate and divine decrees” cited in Sunnah (speeches and actions of the Prophet) and Quranic text.<sup>249</sup>

## Sudan

Under Sudanese law anyone who in any manner curses or insults in public any of the religions, their rituals, beliefs, or sacred sites, or incites a feeling of belittling their followers, is subject to a

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<sup>245</sup> *National Laws on Blasphemy: Saudi Arabia*, BERKLEY CENTER FOR RELIGION, PEACE & WORLD AFFAIRS, <https://berkeleycenter.georgetown.edu/essays/national-laws-on-blasphemy-saudi-arabia> (last visited Jan. 23, 2017), archived at <https://perma.cc/RB9H-6BXH>.

<sup>246</sup> Decree M/16 on Crimes of Terrorism and its Funding, issued Jan. 31, 2014, posted on the Council of Ministers website, at [http://www.sama.gov.sa/ar-sa/AntiMoney/AntiDocuments/نظام\\_جرائم\\_الارهاب\\_وتمويله.pdf](http://www.sama.gov.sa/ar-sa/AntiMoney/AntiDocuments/نظام_جرائم_الارهاب_وتمويله.pdf), archived at <https://perma.cc/K6FC-26U8>; see also *Saudi Arabia: New Terrorism Regulations Assault Rights*, HUMAN RIGHTS WATCH (Mar. 20, 2014), <https://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>, archived at <https://perma.cc/D2FY-X4JC>.

<sup>247</sup> *Indian in Saudi Arabia Arrested on Charges of Blasphemy*, THE TIMES OF INDIA (Dec. 15, 2016), <http://timesofindia.indiatimes.com/nri/citizen-journalists/citizen-journalists-reports/akbar-ponani/indian-arrested-in-saudi-arabia-for-blasphemy/articleshow/56007478.cms>, archived at <https://perma.cc/9SWS-W5KK>.

<sup>248</sup> David Batty & Mona Mahmood, *Palestinian Poet Ashraf Fayadh’s Death Sentence Quashed by Saudi Court*, THE GUARDIAN (Feb. 2, 2016), <https://www.theguardian.com/world/2016/feb/02/palestinian-poet-ashraf-fayadhs-death-sentence-overturned-by-saudi-court>, archived at <https://perma.cc/LR5F-49J5>.

<sup>249</sup> See George Sadek, *Saudi Arabia: Poet Sentenced to Death*, GLOBAL LEGAL MONITOR (Law Library of Congress, Dec. 7, 2015), <http://www.loc.gov/law/foreign-news/article/saudi-arabia-poet-sentenced-to-death/>, archived at <https://perma.cc/C4GE-ZZVQ>.

penalty of up to six months' imprisonment, a fine, or up to forty lashes.<sup>250</sup> The law also criminalizes apostasy.<sup>251</sup>

In 2015, two Sudanese pastors, a Czech aid worker, and a Sudanese civil rights activist were arrested on the suspicion that they were trying to encourage Muslims to convert to Christianity and for publicly speaking out against the ill-treatment of Christians in Sudan. They were still in prison as of December 2016, a year after their arrest.<sup>252</sup>

## Syria

Syrian law criminalizes any acts committed publicly through writings, oral statements, or gestures that insult or encourage insulting religious rituals practiced in public. An offender is subject to a penalty of two months' to two years' imprisonment.<sup>253</sup>

## Tunisia

The Tunisian Constitution assigns to the state the obligation of protecting and preventing violations of the sacred.<sup>254</sup> Article 121(3) of the Penal Code makes it an offense to “distribute, offer for sale, publicly display, or possess, with the intent to distribute, sell, display for the purpose of propaganda, tracts, bulletins, and fliers, whether of foreign origin or not, that are liable to cause harm to the public order or public morals.”<sup>255</sup> Offenders are punishable with imprisonment for six months to five years and a fine of between 120 and 1,200 dinars (about US\$53 to \$528), and the offending materials are immediately confiscated.

Furthermore, article 226(2) states that individuals who “openly violate good morals and public decency through gestures, speech, or trouble others in an obscene way shall be punished by a period of imprisonment of six months and a fine of 1,000 dinars [about US\$436].”<sup>256</sup>

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<sup>250</sup> PENAL CODE OF 1991, art. 125, available at <http://www.wipo.int/edocs/lexdocs/laws/ar/sd/sd004ar.pdf> (in Arabic), archived at <https://perma.cc/TE6E-38ML>.

<sup>251</sup> *Id.* art. 126.

<sup>252</sup> *Nuba Pastors Face Death Penalty*, NUBA REPORTS (Dec. 23, 2016), <http://nubareports.org/nuba-pastors-face-death-penalty-christianity-on-trial>, archived at <https://perma.cc/LC8J-8CAV>.

<sup>253</sup> PENAL CODE OF 1949, art. 462, available at <http://www.pogar.org/publications/ac/compendium/syria/criminalization-lawenforcement/sy-penal-code.pdf> (in Arabic), archived at <https://perma.cc/J3CT-96MG>.

<sup>254</sup> TUNISIAN CONSTITUTION OF 2011, art. 6, available at [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf) (in French), archived at <https://perma.cc/8SKH-A6G8>.

<sup>255</sup> Law 43 of 2001, Amending Provisions on the Press, *Al-Ra'id Al-Rasmiy* (official gazette), vol. 36, 4 May 2001, available on the website of the Tunisian Prime Minister, at <http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CONNECT/SITEIORT> (in Arabic), archived at <https://perma.cc/6HXA-JUQ5>.

<sup>256</sup> Law 73 of 2004, Amending Provisions on Good Morals, *Al-Ra'id Al-Rasmiy*, vol. 63, 6 August 2004, available on the website of the Tunisian Prime Minister, at <http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CONNECT/SITEIORT> (in Arabic), archived at <https://perma.cc/5HC3-A3BZ>; see also HUMAN RIGHTS FIRST, BLASPHEMY, FREEDOM OF EXPRESSION, AND TUNISIA'S TRANSITION TO DEMOCRACY 2 (May 2013), [http://www.humanrightsfirst.org/uploads/pdfs/HRF\\_blasphemy\\_in\\_tunisia\\_report\\_apr2013.pdf](http://www.humanrightsfirst.org/uploads/pdfs/HRF_blasphemy_in_tunisia_report_apr2013.pdf), archived at <https://perma.cc/LS2S-9E3Z>; AMNESTY INTERNATIONAL, ANNUAL REPORT: TUNISIA 2013, at 3 (May 29, 2013),

In addition, the 2011 Press Law provides that anyone who intentionally and publicly undermines any of the authorized religious rites through writings, statements, or other means of communications shall be punished by a fine of 1,000 to 2,000 Tunisian dinars (about US\$436 to \$872).<sup>257</sup> It also provides that anyone “calling for hatred between the races, religions, or members of the population by inciting to discrimination, using hostile means or violence, or publishing ideas based on racial discrimination shall be punished by a period of imprisonment between one and three years and a fine between 1,000 and 2,000 dinars.”<sup>258</sup>

In March 2012, Jabeur Mejri was sentenced to seven-and-a-half years in prison and ordered to pay a fine for posting images on Facebook deemed blasphemous against the Prophet of Islam. He was found guilty of “undermining public morals” and “attacking sacred values through actions.” In 2014, Jabeur Mejri received a presidential pardon.<sup>259</sup>

### United Arab Emirates

Articles 312, 315, and 319 of the Penal Code of the United Arab Emirates (UAE) criminalize the act of religious blasphemy. Article 312 provides that an individual who insults the rituals or practices of Islam, the divine, and the recognized religions must be punished by imprisonment, a fine, or both. Article 315 stipulates that individuals insulting the rituals and practices of other religions must be punished by imprisonment, a fine, or both as long as those rituals and practices are protected by Islamic law. Finally, article 319 states that individuals who resist or defame the foundations or teachings of the Islamic religion or its essential doctrines, vilify Islam, preach religions other than Islam, or call for a different doctrine or thought are to be punished by a period of imprisonment not exceeding five years.<sup>260</sup>

In July 2015, the UAE issued Law No. 2 of 2015 on banning the act of insulting religion and religious figures. Article 4 of the Law prohibits any act that would be considered as insulting the Divine, or one of his prophets or their wives or companions. It penalizes individuals committing those acts with a period of imprisonment of no less than seven years and a fine of between five hundred thousand Dyrhams (approximately US\$136,124) and one million Dyrhams (approximately US\$272,249).<sup>261</sup>

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<http://www.amnestyusa.org/research/reports/annual-report-tunisia-2013?page=3>, archived at <https://perma.cc/C3H3-5HWG>.

<sup>257</sup> Presidential Decree No. 115 of 2011, arts. 50 & 53, OFFICIAL GAZETTE No. 84 of 2011, available on the website of the Tunisian Prime Minister, at <http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CONNECT/SITEIORT> (in Arabic), archived at <https://perma.cc/C9XN-6HPS>.

<sup>258</sup> *Id.* art. 52.

<sup>259</sup> Press Release, Amnesty International, Jabeur Mejri Imprisoned for Facebook Posts in Tunisia (May 9, 2014), <https://www.amnesty.org.uk/jabeur-mejri-imprisoned-facebook-posts-tunisia>, archived at <https://perma.cc/N5RS-FVD2>.

<sup>260</sup> Law 3 of 1987, *al Jarida al Rasmiyya*, vol. 182, 8 December 1987, available on the Government of the Ras Al-Khamah Emirate official website, Public Prosecution Department, at <http://www.rakpp.rak.ae/en/Laws/قوانين دولة الإمارات العربية المتحدة/قوانين العقوبات>.pdf (in Arabic), archived at <https://perma.cc/K8WK-W745>.

<sup>261</sup> Royal Decree promulgating Law No. 2 of 2015, *al Jarida al Rasmiyya*, vol. 582, 15 July 2015, available on the official website of the Government of the Ras Al-Khamah Emirate, Public Prosecution Department, at



In a case decided in May 2015, the Dubai Court of First Instance convicted an Indian national of blasphemy against Islam for posting a status update on Facebook cursing the Prophet and Islam after watching a news report about the war in Iraq.<sup>262</sup>

## West Bank

The law applicable in the West Bank criminalizes the publishing, through writings, pictures, drawings, or symbols, anything that insults the religious feelings or beliefs of other persons. Offenders are subject to a penalty of up to three months' imprisonment or a fine of up to 20 dinars (about US\$28).<sup>263</sup> The same penalty applies to any person who publicly and in the hearing of another person utters similar insulting words.<sup>264</sup> A higher penalty of one to three years' imprisonment applies to anyone who curses one of the recognized prophets.<sup>265</sup>

In November 2010, Waleed Hasayin, a blogger, was detained by the Palestinian Authority in the West Bank after being accused of mocking Islam, the Koran, and the Prophet Mohammed in online postings under the username "God Almighty."<sup>266</sup>

## Yemen

Articles 194(1) and 195 of the Penal Code of Yemen sanction the act of blasphemy. Article 194 provides that "whoever publicly broadcasts (i.e., communicates) views including ridicule and contempt of religion, in its beliefs, practices, or teachings" is "punishable by imprisonment not exceeding three years, and a fine."<sup>267</sup> Article 195 also states that the punishment for this offense must be imprisonment not exceeding five years or a fine if Islam is the religion or doctrine that is the subject of ridicule, contempt, or belittlement.<sup>268</sup>

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<http://rakpp.rak.ae/ar/Pages/الكراهية-والتمييز-والكراهية-مكافحة-2015-بشأن-مكافحة-التمييز-والكراهية.aspx> (in Arabic), archived at <https://perma.cc/5TYX-S2LC>.

<sup>262</sup> *Facebook Status Lands Man in Court*, GULF NEWS (Apr. 13, 2015), <http://gulfnews.com/news/uae/courts/facebook-status-lands-man-in-court-1.1491112>, archived at <https://perma.cc/E4GX-836E>; *Indian in UAE Jailed for 'Blasphemous' Facebook Status*, THE INDIAN EXPRESS (May 29, 2015), <http://indianexpress.com/article/world/indians-abroad/indian-in-uae-jailed-for-blasphemous-facebook-status/>, archived at <https://perma.cc/6G4C-ME5F>.

<sup>263</sup> JORDANIAN PENAL CODE No. 16 of 1961, art. 278, [http://www.mowa.pna.ps/Local\\_laws/LL11.pdf](http://www.mowa.pna.ps/Local_laws/LL11.pdf) (in Arabic), archived at <https://perma.cc/E9E3-BGL2>.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* art. 273.

<sup>266</sup> Jon Donnison, *Palestinian Blogger Facing Prison for Islam "Insults"*, BBC NEWS (Nov. 23, 2010), <http://www.bbc.com/news/world-middle-east-11820615>, archived at <https://perma.cc/78BZ-HYMU>.

<sup>267</sup> Presidential Decree of Law 12-1994, *al Jarida al Rasmiyya*, vol. 19, 12 October 1994, available at <http://www.wipo.int/edocs/lexdocs/laws/ar/ye/ye007ar.pdf> (in Arabic), archived at <https://perma.cc/DOG9-FHGF>.

<sup>268</sup> *Id.*

## E. North America

### Canada

According to Canada's Criminal Code, publishing blasphemous libel is an indictable offense for which the penalty is a prison sentence of no more than two years.<sup>269</sup> Section 296 of the Code does not define the term "blasphemous libel"; it simply states that the existence of blasphemous libel in a publication is a question of fact.<sup>270</sup> However, it does state as follows:

No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion on a religious subject.<sup>271</sup>

The offense was added to the Criminal Code in 1892 and, according to a 2010 article, "[i]n the 117 years since the Criminal Code was enacted, its prohibition on blasphemous libel has been enforced only five times in reported cases."<sup>272</sup> The last prosecution was in 1935 in Quebec.<sup>273</sup> Since the mid-1930s, section 296 has become an unused and archaic offense.<sup>274</sup> According to *Martin's Annual Criminal Code*, if a charge was to be laid according to section 296, it would likely to be challenged in court and, in all likelihood, would be found contrary to the Canadian Charter of Rights and Freedoms,<sup>275</sup> particularly the fundamental rights to freedom of conscience and "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."<sup>276</sup>

Many secular groups have called on the government to remove this section in recent years, especially following the attack on the staff of the satirical magazine *Charlie Hebdo* of January 7, 2015.<sup>277</sup>

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<sup>269</sup> Criminal Code, R.S.C., 1985, c. C-46, s. 296(1), <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-70.html#h-90>, archived at <https://perma.cc/RW2R-DVYR>.

<sup>270</sup> *Id.* § 296(2).

<sup>271</sup> *Id.* § 296(3).

<sup>272</sup> Jeremy Patrick, *Canadian Blasphemy Law in Context: Press, Legislative, and Public Reactions*, 16(1) ANN. SURV. OF INT'L & COMP. L. 1 (2010), <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1141&context=annlsurvey>, archived at <https://perma.cc/849C-7REV>.

<sup>273</sup> *R. v. Rahard*, [1936] 3 D.L.R. 230 (Qc. C.S.P.).

<sup>274</sup> Dennis Baker & Benjamin Janzen, *Is It Time to Overhaul the Criminal Code of Canada?*, MLI COMMENTARY 4 (Macdonald-Laurier Institute, May 2013), [http://www.macdonaldlaurier.ca/files/pdf/2013.05.25-Commentary-Criminal\\_Code\\_Overhaul-vFinal-web.pdf](http://www.macdonaldlaurier.ca/files/pdf/2013.05.25-Commentary-Criminal_Code_Overhaul-vFinal-web.pdf), archived at <https://perma.cc/3SX9-2M27>.

<sup>275</sup> *Id.* (citing EDWARD GREENSPAN ET AL., MARTIN'S ANNUAL CRIMINAL CODE 2015 § 296 (2014)).

<sup>276</sup> Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), s.2(a) & (b), <http://laws-lois.justice.gc.ca/eng/const/page-15.html>, archived at <https://perma.cc/G9B4-4GR2>.

<sup>277</sup> Shanifa Nasser, *In Wake of Charlie Hebdo Attacks, Secularist Groups to Seek End of Canada's Blasphemy Law*, NATIONAL POST (Jan. 24, 2015), <http://news.nationalpost.com/news/canada/in-wake-of-charlie-hebdo-attacks-secularist-groups-to-seek-end-to-canadas-blasphemy-law>, archived at <https://perma.cc/MYD3-LPF4>.

## F. South Asia

### Afghanistan

Though some schools of Islamic jurisprudence view them separately, under the Hanafi interpretation of Islamic law that is predominant in Afghanistan, those who make blasphemous statements are considered apostates.<sup>278</sup> Blasphemy as apostasy is seen as a *hudud* crime, a class of crimes that stipulates fixed punishments. Since non-Muslims cannot be apostates, blasphemy is punished through *ta'zir*, a discretionary punishment.<sup>279</sup>

Article 1 of the 1976 Afghan Penal Code states that *hudud* crimes must be punished in accordance with provisions of uncodified Islamic religious law as applied by Hanafi religious jurisprudence. Similarly, article 130 of the Afghan Constitution states that while processing a case, courts must apply provisions of Hanafi jurisprudence if there is no provision in the Constitution or other laws regarding a specific case. Prevailing Hanafi jurisprudence, as applied in Afghanistan, prescribes the death penalty for the crime of apostasy. A person charged with apostasy can avoid prosecution and/or punishment if he or she recants. The US State Department's 2015 report on religious freedom in Afghanistan noted that,

[a]ccording to the Supreme Court, the Bahai Faith is distinct from Islam and is a form of blasphemy, which is also a capital offense. The law prohibits the production and publishing of works contrary to the principles of Islam or offensive to other religions. Although there were no reported prosecutions for apostasy or blasphemy during the year, individuals who converted from Islam feared repercussions.<sup>280</sup>

However, in the 2000s a number of cases involving blasphemy were brought in Afghanistan. According to the Berkeley Center for Religion, Peace, and World Affairs,

[a]cts for which individuals have been charged with blasphemy range from condemning the treatment of women in Islamic societies, to condemning crimes committed by individuals who claimed to be acting in the name of Islam, to publishing an unofficial translation of the Qur'an. Additionally, as stipulated by the Afghan Supreme Court, belonging to the Baha'í faith is an act of blasphemy.<sup>281</sup>

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<sup>278</sup> Intisar A Rabb, *Negotiating Speech in Islamic Law and Politics: Flipped Traditions of Expression*, in *ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: SEARCHING FOR COMMON GROUND?* 160–61 (Anvar M. Emon et al. eds. 2012).

<sup>279</sup> JINNAH INSTITUTE, *BLASPHEMY LAWS AND THE QURAN 5*, <http://www.jinnah-institute.org/images/b%20laws.pdf>, archived at <https://perma.cc/KY7F-WWFB>.

<sup>280</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *INTERNATIONAL RELIGIOUS FREEDOM REPORT 2015: AFGHANISTAN*, <https://www.state.gov/documents/organization/256511.pdf>, archived at <https://perma.cc/56PQ-RPDV>.

<sup>281</sup> *National Laws on Blasphemy: Afghanistan*, BERKLEY CENTER FOR RELIGION, PEACE, AND WORLD AFFAIRS, <https://berkeleycenter.georgetown.edu/essays/national-laws-on-blasphemy-afghanistan> (last visited Jan. 25, 2017), archived at <https://perma.cc/VJ8D-3H6R>.

No recent blasphemy cases where the death sentence was actually carried out were located. In one case involving a journalist, a twenty year prison sentence was imposed for “publishing a Dari translation of the Koran that hard-line clerics disputed.”<sup>282</sup> The journalist was later pardoned by the President.<sup>283</sup> In another instance, the Court of Appeals in Kabul upheld the conviction but commuted the death sentence to twenty years’ imprisonment, which was also upheld by the Supreme Court in 2009.<sup>284</sup> In the same case, the person was secretly pardoned by the President but was forced to flee the country due to fear of retribution.<sup>285</sup>

## India

Many of the countries that came out of British colonial rule, including India, inherited their substantive criminal law, including certain blasphemy provisions, from the British colonial government through the Indian Penal Code, 1860. According to Gautam Bhatia, a constitutional lawyer, although the term “blasphemy” is “unfamiliar to the Indian legal and constitutional landscape,”<sup>286</sup> the Indian Penal Code does have a provision that is a variant of blasphemy law<sup>287</sup>—namely, section 295A of Chapter XV of the Code, “Offences Relating to Religion,” which reads as follows:

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.<sup>288</sup>

Provisions also exist for “[u]tter[ing] words, etc., with deliberate intent to wound the religious feelings of any person,”<sup>289</sup> or “[i]njuring or defiling [a] place of worship with intent to insult the

<sup>282</sup> Abdul Waheed Wafa & Carlotta Gall, *Afghan Court Backs Prison Term for Blasphemy*, NEW YORK TIMES (Mar. 11, 2009), [http://www.nytimes.com/2009/03/12/world/asia/12afghan.html?\\_r=1&ref=world](http://www.nytimes.com/2009/03/12/world/asia/12afghan.html?_r=1&ref=world), archived at <https://perma.cc/PU55-6C5P>.

<sup>283</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010: AFGHANISTAN 12 (Sept. 13, 2011), <https://www.state.gov/documents/organization/171751.pdf>, archived at <https://perma.cc/CZX4-MU5V>.

<sup>284</sup> Wafa & Gall, *supra* note 282.

<sup>285</sup> Kim Sengupta, *Free at Last: Student in Hiding after Karzai's Intervention*, INDEPENDENT (Sept. 6, 2009), <http://www.independent.co.uk/news/world/asia/free-at-last-student-in-hiding-after-karzais-intervention-1782909.html>, archived at <https://perma.cc/D5ZN-QN96>.

<sup>286</sup> Gautam Bhatia, ‘Blasphemy’ Law and the Constitution, LIVE MINT (Mar. 19 2016), <http://www.livemint.com/Sundayapp/TFCMsqPVO8rK6dJj2E2kSN/Blasphemy-law-and-the-Constitution.html>, archived at <https://perma.cc/8VLT-AGYJ>.

<sup>287</sup> Gautam Bhatia, *The Constitutional Case against India’s Blasphemy Law*, THE WIRE (Jan. 18, 2016), <https://thewire.in/19508/the-constitutional-case-against-indias-blasphemy-law>, archived at <https://perma.cc/62UF-E6NE>.

<sup>288</sup> Indian Penal Code, No. 45 of 1860, § 295-A, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=201592](http://www.wipo.int/wipolex/en/text.jsp?file_id=201592), archived at <https://perma.cc/LA99-MF57>.

<sup>289</sup> *Id.* § 298.

religion of any class.”<sup>290</sup> Section 153A of the Indian Penal Code prohibits words or representations that promote “enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.”<sup>291</sup>

In *Ramji Lal Modi v. State of UP* (1957),<sup>292</sup> a five-judge bench of the Supreme Court of India upheld the constitutionality of section 295A. The Court held that the provision was a “reasonable restriction” on the freedom of speech as provided by the limitation clause under article 19(2) of the Constitution in order to maintain public order.<sup>293</sup>

According to the Berkeley Center for Religion, Peace, and World Affairs, “[m]embers of all of India’s faith groups can and do utilize anti-hate speech legislation when their religious sensibilities are hurt.”<sup>294</sup> The International Commission of Jurists notes that section 295A has been used to “arrest and charge individuals who express allegedly ‘outrageous’ opinions, even without evidence of intent” and, “while police may drop such charges at a later stage, section 295A has still damaged free expression by enabling the initial harassment.”<sup>295</sup> One high-profile case was heard in 2014, when “Penguin India decided to withdraw publication and destroy remaining copies of Wendy Doniger’s scholarly work ‘The Hindus: An Alternative History’ in response to a case filed under section 295A by a right wing religious group accusing the book of hurting Hindu sentiments.”<sup>296</sup>

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<sup>290</sup> *Id.* § 295.

<sup>291</sup> *Id.* § 153A.

<sup>292</sup> *Ramji Lal Modi v. State of UP*, 1957 AIR 620, pg. 5, 6, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=656>, archived at <https://perma.cc/NR3N-J4A9>.

<sup>293</sup> For more on how the Supreme Court jurisprudence on 295-A has evolved, see Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia, 1960 AIR 633, pg. 11, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=263>, archived at <https://perma.cc/Uyh2-ZRYA>; Sri Baragur Ramachandrappa & Ors v. State of Karnataka & Ors, Appeal (Crl.) No. 1228 of 1998, May 2, 2007, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=28963>, archived at <https://perma.cc/939K-6TJK>.

<sup>294</sup> *National Laws on Blasphemy: India*, BERKLEY CENTER FOR RELIGION, PEACE, AND WORLD AFFAIRS, <https://berkeleycenter.georgetown.edu/essays/national-laws-on-blasphemy-india> (last visited Jan. 25, 2017), archived at <https://perma.cc/VJ8D-3H6R> (“[r]ecent arrests include newspaper editors for articles criticizing the public nudity of certain Jain monks and arguing for the right to critique any religion, the latter of which angered Muslims; unprosecuted complaints have been filed by Buddhists against an actress who posed nude against a Buddha statue, and by Hindus against an athlete who ate beef during a cricket match.”).

<sup>295</sup> *Blasphemy Prosecutions Invoke Dignity of Religion to Deny Human Rights and Undermine the Rule of Law*, INTERNATIONAL COMMISSION OF JURISTS (ICJ) (July 21, 2015), <https://www.icj.org/blasphemy-prosecutions-invoke-dignity-of-religion-to-deny-human-rights-and-undermine-the-rule-of-law/>, archived at <https://perma.cc/CDJ7-Z4M2>.

<sup>296</sup> *Id.*

India’s Freedom of Religion Acts or “anticonversion” laws are state-level statutes that have been enacted to regulate religious conversions. The laws are in force in six out of twenty-nine states: Arunachal Pradesh, Orissa, Madhya Pradesh, Chhattisgarh, Gujarat, and Himachal Pradesh.<sup>297</sup>

While there are some variations between the state laws, they are very similar in their content and structure. All of these laws seek to “prevent conversions ‘carried out’ by ‘forcible or ‘fraudulent’ means or by ‘allurement’ or ‘inducement.’ ” According to the US Commission on International Religious Freedom (USCIRF), “[t]hese laws, based on concerns about unethical conversion tactics, generally require government officials to assess the legality of conversions out of Hinduism only, and provide for fines and imprisonment for anyone who uses force, fraud, or ‘inducement’ to convert another.”<sup>298</sup> Penalties for breaching the laws can range from monetary fines to imprisonment; the laws impose punishments ranging from one to three years of imprisonment and a fine from 5,000 to 50,000 Indian rupees (about US\$74 to \$735).<sup>299</sup> There have been few arrests and no convictions in the states that have adopted anticonversion laws.<sup>300</sup>

## Pakistan

Pakistan’s blasphemy laws as enacted by the British were religion-neutral. However, additional provisions in Pakistan’s Penal Code were added in the 1980s to mainly protect against insults to the religion of Islam, including defiling or desecrating the Holy Quran and using derogatory remarks in regard to Muslim holy personages. These changes also included the addition of section 295-C, made pursuant to Criminal Law (Amendment) Act, 1986, which criminalized insults to the Prophet Muhammad.<sup>301</sup>

Section 295-A prohibits deliberate and malicious acts intended to outrage the religious feelings of any class of persons by insulting its religion or religious beliefs, and makes such conduct punishable by up to ten years of imprisonment, a fine, or both.<sup>302</sup> Section 295-B punishes willful defiling, desecration, or damaging of the Holy Quran with imprisonment for life. Section 295-C is particularly controversial. It stipulates as follows:

<sup>297</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: INDIA, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256305>, archived at <https://perma.cc/VC7W-EKND>.

<sup>298</sup> USCIRF, ANNUAL REPORT 2016: INDIA 162, <http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf>, archived at <https://perma.cc/A5NM-947L>.

<sup>299</sup> INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: INDIA, *supra* note 297; see also South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43(2) ECON. & POL. WKLY. 71 (Jan. 12–18, 2008), available at <https://www.jstor.org/stable/pdf/40276904.pdf>, archived at <https://perma.cc/4HKT-85SJ>.

<sup>300</sup> Testimony of Katrina Lantos Swett, Vice Chair U.S. Commission on International Religious Freedom, Before the Lantos Human Rights Commission on the Plight of Religious Minorities in India 5 (Apr. 4, 2014), <https://www.uscirf.gov/sites/default/files/India%20testimony%20TLHRC%20%20April%202014%20FINAL.pdf>, archived at <https://perma.cc/GF6E-YCBK>.

<sup>301</sup> PAKISTAN PENAL CODE, Act No. XLV of 1860, § 295-C <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>, archived at <https://perma.cc/V9PC-JV2E>.

<sup>302</sup> *Id.* § 295-A.

Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.<sup>303</sup>

According to the Human Rights Commission of Pakistan, a majority of those charged under the blasphemy laws are Muslims, followed by members of the Ahmadiyya Muslim community.<sup>304</sup> The National Commission for Justice and Peace (NCJP) reported in 2014 that a total of 633 Muslims, 494 Ahmadis, 187 Christians, and 21 Hindus have been accused under various clauses of the blasphemy law since 1987.<sup>305</sup> According to other reports from 2014, fourteen persons were then on death row on blasphemy convictions, nineteen were serving life sentences, and hundreds had been arrested or charged with the crime.<sup>306</sup> However, as yet no death sentence has been carried out.<sup>307</sup> Perhaps the most high-profile case involves Asia Bibi, a Pakistani Christian woman, who was given a death sentence by a court in Sheikhpura, Punjab, for allegedly insulting the Prophet Muhammad. She is the first woman condemned to death in Pakistan on blasphemy charges.<sup>308</sup> Her appeal now lies before the Supreme Court of Pakistan. While the lower courts, which often face threats and intimidation, have sentenced most of the accused in blasphemy cases in Pakistan to death, many sentences have been overturned on appeal due to a lack of evidence or because charges were brought in bad faith.<sup>309</sup> Most blasphemy cases or police reports are known to be “filed on false or frivolous grounds, motivated by persecution of minority groups, rivalry between religious sects, or property or economic disputes.”<sup>310</sup>

In 1984, the military regime of General Zia-ul-Haq promulgated Ordinance XX,<sup>311</sup> which amended Pakistan’s Penal Code to restrict the ability of Ahmadis, who consider themselves

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<sup>303</sup> *Id.* § 295-C.

<sup>304</sup> *What Are Pakistan’s Blasphemy Laws?*, BBC News, (Nov. 6, 2014), <http://www.bbc.com/news/world-south-asia-12621225>, archived at <https://perma.cc/9S6B-TFG4>.

<sup>305</sup> *Id.*

<sup>306</sup> Raza Rumi, *Pakistan: At the Edge of the Abyss?*, AL-JAZEERA (May 24, 2014), <http://www.aljazeera.com/indepth/opinion/2014/05/pakistan-blasphemy-law-2014523184543404502.html>, archived at <https://perma.cc/TYX9-AK29>.

<sup>307</sup> FREEDOM HOUSE, *POLICING BELIEF: THE IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS* 69, [https://freedomhouse.org/sites/default/files/PolicingBelief\\_Pakistan.pdf](https://freedomhouse.org/sites/default/files/PolicingBelief_Pakistan.pdf) (last visited Jan. 25, 2017), archived at <https://perma.cc/LYH7-LRTJ>.

<sup>308</sup> *Pakistan Supreme Court Adjourns Death Row Appeal*, BBC News (Oct. 13, 2016), <http://www.bbc.com/news/world-asia-37641354>, archived at <https://perma.cc/Q49W-HGR9>.

<sup>309</sup> Tariq Ahmad, *FALQS: Proposals to Reform Pakistan’s Blasphemy Laws*, IN CUSTODIA LEGIS (June 30, 2015), <https://blogs.loc.gov/law/2015/06/falqs-proposals-to-reform-pakistans-blasphemy-laws>, archived at <https://perma.cc/5TEZ-SYGM>.

<sup>310</sup> *Id.*

<sup>311</sup> Tariq Ahmad, *Pakistan: Regulatory Authority Bans Two Ramadan Programs*, GLOBAL LEGAL MONITOR (June 29, 2016), <http://www.loc.gov/law/foreign-news/article/pakistan-regulatory-authority-bans-two-ramadan-programs/>, archived at <https://perma.cc/JX4K-NTYN>.

Muslims, to practice their faith openly.<sup>312</sup> Known as the “Anti-Ahmadi laws,” these restrictions include “prohibitions applied to Ahmadis on the use of Islamic epithets and honorific titles. Members of the community are also barred from ‘posing’ as Muslims or referring to their own faith as Islam.”<sup>313</sup>

On November 24, 2016, the provincial assembly of Pakistan’s Sindh Province passed a new law called the Criminal Law (Protection of Minorities) Act, 2015, which prohibits forced religious conversions, but the Law has yet to receive the Governor’s assent.<sup>314</sup>

## G. Sub-Saharan Africa

### Comoros

The Penal Code of the Comoros contains a provision prohibiting proselytizing against Islam. Any person who shows, spreads, or teaches to Muslims information about a religion other than Islam may incur up to three months of jail time and a fine of between 50,000 and 500,000 Comorian francs (approximately US\$108 and \$1,085).<sup>315</sup> No information was found as to whether blasphemy would be defined as anti-Islamic proselytizing and therefore fall under this provision.

### Ethiopia

Ethiopia criminalizes acts identified as “outrage[s] on religious peace and feeling” and “blasphemous or scandalous utterances or attitude.” The country’s Penal Code states that whoever “publicly . . . profanes a place, image or object used for religious ceremonies, is punishable with fine not exceeding one thousand Birr [about US\$44], or with simple imprisonment not exceeding two years.”<sup>316</sup> In addition, the Code states that

[w]hoever . . . in a public place or in a place open to the public or that can be viewed by the public, by gestures or words scoffs at religion or expresses himself in a manner which is blasphemous, scandalous or grossly offensive to the feelings or convictions of others or

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<sup>312</sup> Pakistan: Ordinance No. XX of 1984, Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance (Apr. 26, 1984), available at <http://www.refworld.org/docid/5485673d4.html>, archived at <https://perma.cc/LSG5-ZSSX>.

<sup>313</sup> Ahmad, *supra* note 311.

<sup>314</sup> Tariq Ahmad, *Pakistan: Sindh Provincial Assembly Passes New Law Prohibiting Forced Religious Conversion*, GLOBAL LEGAL MONITOR (Dec. 22, 2016), <http://www.loc.gov/law/foreign-news/article/pakistan-sindh-provincial-assembly-passes-new-law-prohibiting-forced-religious-conversion>, archived at <https://perma.cc/FU8D-QQ5W>.

<sup>315</sup> CODE PÉNAL [PENAL CODE] art. 229-8, available at [https://www.unodc.org/tldb/pdf/Comores\\_Code\\_Penal.pdf](https://www.unodc.org/tldb/pdf/Comores_Code_Penal.pdf), archived at <https://perma.cc/K2W9-QCEQ>.

<sup>316</sup> CRIMINAL CODE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA art. 492, Proclamation 414/2004 (May 9, 2005), available on the World Intellectual Property Organization (WIPO) website, at <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>, archived at <https://perma.cc/3FQF-6GBC>.



towards the Divine Being or the religious symbols, rites or religious personages, is punishable with fine or arrest not exceeding one month.<sup>317</sup>

No information regarding the status of enforcement of these provisions was located.

### **The Gambia**

The Gambia criminalizes insults to religion of any class and uttering words with intent to wound religious feelings. According to the country's Criminal Code,

[anyone who] destroys, damages or defiles a place of worship or any object which is held sacred by that class of persons with the intention of thereby insulting the religion of the class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to religion, commits a misdemeanour.<sup>318</sup>

A person convicted on these charges is subject to a fine and/or imprisonment not exceeding two years.<sup>319</sup> In addition,

[anyone] who, with deliberate intention to wounding the religious feelings of a person, utters or writes any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, commits a misdemeanour and is liable on conviction to imprisonment for a term of one year.<sup>320</sup>

No information regarding the status of enforcement of these provisions was located.

### **Kenya**

Under Kenyan law, writing or uttering words with intent to wound religious feelings is a misdemeanor. The country's Penal Code states that

[any] person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, is guilty of a misdemeanour and is liable to imprisonment for one year.<sup>321</sup>

No information regarding the status of enforcement of this provision was located.

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<sup>317</sup> *Id.* art. 816.

<sup>318</sup> CRIMINAL CODE OF 1934, § 117, 3 LAWS OF THE GAMBIA, Cap. 10:01 (rev. ed. 2009).

<sup>319</sup> *Id.* § 34.

<sup>320</sup> *Id.* § 120.

<sup>321</sup> PENAL CODE OF 1930, § 138 (Aug. 1, 1930), available on the Kenya Law website, at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP,%2063>, archived at <https://perma.cc/425P-V7PR>.

## Malawi

Malawi criminalizes insults to religion. The country's Penal Code states that

[anyone] who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult their religion, shall be guilty of a misdemeanour.<sup>322</sup>

A person convicted on this charge is subject to a fine and/or imprisonment of up to two years.<sup>323</sup> In addition, the Code criminalizes certain writings or speech, stating that

[anyone] who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, shall be guilty of a misdemeanour and shall be liable to imprisonment for one year.<sup>324</sup>

No information regarding the status of enforcement of these provisions was located.

## Mauritania

The Mauritanian Penal Code provides that

any person who commits a public offense to decency and to Islamic morals . . . , if this action is not included in the crimes [which are subject to financial compensation to the victim or to retaliation in kind], shall be punished by between three months and two years of imprisonment, and by a fine of between 5,000 and 60,000 MRO [approximately US\$14 to \$165].<sup>325</sup>

It appears that blasphemy could also fall under the crime of apostasy, which is punishable by death, unless the person repents within three days.<sup>326</sup>

In January 2014, a blogger and freelance journalist named Mohamed Cheikh Ould M'khaitir was arrested for having published statements deemed blasphemous against Islam and the Prophet Mohammed. He was sentenced to death, and this sentence was confirmed on appeal. His case is

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<sup>322</sup> PENAL CODE § 127 (Apr. 1, 1930), available on the United Nations Office of Drugs and Crime (UNODC) website, at [https://www.unodc.org/tldb/pdf/Malawi\\_Penal\\_Code.pdf](https://www.unodc.org/tldb/pdf/Malawi_Penal_Code.pdf), archived at <https://perma.cc/C4CF-FKAM>.

<sup>323</sup> *Id.* § 34.

<sup>324</sup> *Id.* § 131.

<sup>325</sup> CODE PÉNAL [PENAL CODE] art. 306, available at <http://www.refworld.org/pdfid/491c1ffc2.pdf> (translation by author), archived at <https://perma.cc/P98S-Y83T>.

<sup>326</sup> *Id.*

now pending before the Supreme Court of Mauritania.<sup>327</sup> In December 2014, a court in Mauritania sentenced Mohamed Cheikh Ould Mkhaitir to death for insulting the prophet of Islam in an article that he had written.<sup>328</sup>

## **Nigeria**<sup>329</sup>

Insult to a religion is classified as a misdemeanor in Nigeria. The Nigerian Criminal Code Act states that

[anyone] who does an act which any class of persons consider as a public insult to their religion, with the intention that they should consider the act such an insult, and any person who does an unlawful act with the knowledge that any class of persons will consider it such an insult, is guilty of a misdemeanor and is liable to imprisonment for two years.<sup>330</sup>

No information was located regarding the enforcement of this provision.

## **Rwanda**

The Rwandan Penal Code provides that

[a]ny person who, by acts, speeches, gestures, writing or threats, publicly humiliates rites, symbols or objects of religion either in [a] place intended for or generally used for the practice of religion shall be liable to a term of imprisonment of at least fifteen (15) days but less than six (6) months and a fine of fifty thousand (50,000) to five hundred thousand (500,000) Rwandan francs [approximately US\$59 to \$594] or one of these penalties.<sup>331</sup>

## **Somalia**

Somalia's 1962 Penal Code criminalizes blasphemy. It states that "[w]hoever publicly blasphemes, with invectives or insulting words, the Deity or the symbols or the person venerated in the religion of the State [I Const.], shall be punished with fine [99 P.C] from Sh. So. 100 to

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<sup>327</sup> *The Case of Mauritanian Blogger Mohamed Cheikh Ould M'khaitir*, GLOBAL FREEDOM OF EXPRESSION, COLUMBIA UNIVERSITY, <https://globalfreedomofexpression.columbia.edu/cases/the-case-of-mauritanian-blogger-mohamed-cheikh-ould-mkhaitir> (last visited Jan. 18, 2017), archived at <https://perma.cc/Y5LT-CZTE>.

<sup>328</sup> *Death Sentence in Mauritania for Islam "Insult,"* N.Y. TIMES (Dec. 25, 2014), <https://www.nytimes.com/2014/12/26/world/asia/death-sentence-in-mauritania-for-islam-insult.html>, archived at <https://perma.cc/D62X-A5S7>.

<sup>329</sup> Nigeria is a federation of thirty-six states. This discussion is limited to federal law.

<sup>330</sup> Criminal Code Act § 204 (June 1, 1916), available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=218191](http://www.wipo.int/wipolex/en/text.jsp?file_id=218191), archived at <https://perma.cc/B2BV-JTPA>.

<sup>331</sup> PENAL CODE art. 278, available at [https://www.unodc.org/res/cld/document/rwa/1999/penal-code-of-rwanda\\_html/Penal\\_Code\\_of\\_Rwanda.pdf](https://www.unodc.org/res/cld/document/rwa/1999/penal-code-of-rwanda_html/Penal_Code_of_Rwanda.pdf), archived at <https://perma.cc/K55C-HRSL>.

3,000 [about US\$0.17 to \$5].”<sup>332</sup> The Code also states that “[w]hoever publicly brings the religion of Islam into contempt shall be punished with imprisonment up to two years.”<sup>333</sup> The Code further states that “[w]hoever publicly insults the religion of Islam by bringing into contempt persons professing it or places or objects dedicated to worship shall be liable to the same punishment.”<sup>334</sup>

The 2012 Provisional Federal Constitution of Somalia makes Islam the state religion and bans the promotion of any religion other than Islam, stating “[n]o religion other than Islam can be propagated in the Federal Republic of Somalia.”<sup>335</sup>

While the ban on proselytization is apparently not enforced,<sup>336</sup> no information was located with regard to the enforcement status of the blasphemy provisions in the Somalia Penal Code.

## Tanzania

### *Mainland Tanzania*

Tanzania criminalizes insults to religion and acts of uttering words with intent to wound religious feelings. According to the Penal Code,

[anyone] who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of insulting the religion of any class of any class persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of an offence.<sup>337</sup>

The Code further states that

anyone who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person, or makes any

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<sup>332</sup> PENAL CODE OF 1962, art. 559 (Dec. 16, 1962), available on the Somaliland Law website, at [http://www.somalilandlaw.com/Penal\\_Code\\_English.pdf](http://www.somalilandlaw.com/Penal_Code_English.pdf), archived at <https://perma.cc/JYN5-66KU>; MARTIN R. GANZGLASS, THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC: WITH CASES, COMMENTARY, AND EXAMPLES 637 (1971).

<sup>333</sup> PENAL CODE art. 313.

<sup>334</sup> *Id.*

<sup>335</sup> PROVISIONAL CONSTITUTION OF THE REPUBLIC OF SOMALIA arts. 2 & 17 (Aug. 1, 2012), available on the United Nations Political Office for Somalia website, at <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=:>, archived at <https://perma.cc/XQ6T-9ETL>.

<sup>336</sup> U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: SOMALIA 4 (Aug. 10, 2016), <https://www.state.gov/documents/organization/256281.pdf>, archived at <https://perma.cc/MB43-6HQ3>.

<sup>337</sup> PENAL CODE § 125, 1 LAWS OF TANZANIA, Cap. 16 (rev. ed. 2010), available on the United Nations website, at [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TZA\\_penal\\_code.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TZA_penal_code.pdf), archived at <https://perma.cc/T8VP-CNNX>.

gesture in the sight of that person places any object in the sight of that person, is guilty of an offence and is liable to imprisonment for one year.<sup>338</sup>

No information was located regarding whether or to what extent this provision is enforced.

### *Zanzibar*

Zanzibar criminalizes insults to religion of any class and acts of writing or uttering words with intent to wound religious feelings. The Penal Decree Act of 2004 states that

[anyone] who destroys, damages or defiles any place of worship or any object, which is held sacred by any class of persons with the intention thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.<sup>339</sup>

A person convicted of this offense is punishable by imprisonment not exceeding two years and/or a fine.<sup>340</sup>

In addition, the Act states that

[anyone] who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, is guilty of a misdemeanour and is liable to imprisonment for a term not exceeding one year.<sup>341</sup>

No information was located regarding whether or to what extent this provision is enforced.

### **Zimbabwe**

Zimbabwe criminalizes participation in gatherings intended to promote public violence, breach of peace, or bigotry. Under the country's law,

[anyone who,] acting together with one or more other persons present with him or her in any place or at any meeting utters any words or distributes or displays any writing, sign or other visible representation—

- (i) with the intention to engender, promote or expose to hatred, contempt or ridicule any group, section or class of persons in Zimbabwe solely on account of the race, tribe, nationality, place of origin, national or ethnic origin, colour, religion or gender of such group, section or class of persons; or

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<sup>338</sup> *Id.* § 129.

<sup>339</sup> Penal Decree Act 6 of 2004, § 117 (Aug. 16, 2004), available at [https://www.unodc.org/res/cld/document/criminal-procedure-act--2004-zanzibar.html/Penal\\_Decree\\_Act.pdf](https://www.unodc.org/res/cld/document/criminal-procedure-act--2004-zanzibar.html/Penal_Decree_Act.pdf), archived at <https://perma.cc/FD69-GGTR>.

<sup>340</sup> *Id.* § 27.

<sup>341</sup> *Id.* § 121.

- (ii) realising that there is a risk or possibility that such behaviour might have an effect referred to in subparagraph (i);

shall be guilty of participating in a gathering with intent to promote public violence, a breach of the peace or bigotry, as the case may be, and be liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.<sup>342</sup>

It also criminalizes causing offense to persons of a particular religion, stating

[anyone who] publicly makes any insulting or otherwise grossly provocative statement that causes offence to persons of a particular race, tribe, place of origin, colour, creed or religion, intending to cause such offence or realising there is a real risk or possibility of doing so, shall be guilty of causing offence to persons of a particular race, tribe, place of origin, colour, creed or religion, as the case may be, and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.<sup>343</sup>

No information was located regarding whether or to what extent this provision is enforced.

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<sup>342</sup> Criminal Law (Codification and Reform) Act, § 37 (June 3, 2005), available on Refworld, at <http://www.refworld.org/docid/4c45b64c2.html>, archived at <https://perma.cc/T3LC-UMWM>.

<sup>343</sup> *Id.* § 42.