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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement* submitted by International Humanist and Ethical Union, a non-governmental organization in special consultative status, Association for World Education and Association of World Citizens, two non-governmental organizations on the Roster

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

[29 June 2005]

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

APOSTASY, ISLAMIC LAW AND HUMAN RIGHTS

Introduction

1. The very notion of apostasy has vanished from the West where one speaks of being a “lapsed Catholic” or “non-practising Christian” rather than an apostate. There are certainly no penal sanctions for converting from Christianity or Judaism to any other religion. In Islamic countries, on the other hand, the issue is far from dead.

2. The issue of Apostasy in Islam was one of the matters discussed on 18 April 2005 during the Commission on Human Rights by a number of speakers, including Ibn Warraq and Azam Kamguian,¹ at a parallel NGO event, Victims of Jihad: Muslims, Dhimmis, Apostates, and Women, organised by the International Humanist and Ethical Union, the Association of World Citizens and the Association for World Education.*

3. These speakers raised a number of important points relevant to the work of the Sub-Commission regarding the administration of justice and the universal implementation of international human rights treaties under item 3; and non-discrimination (as enshrined in article 2, §2, of the International Covenant on Economic, Social and Cultural Rights), under item 4, and demonstrated clearly the incompatibility of Sharia law and legal practise in many Islamic countries with Article 18 of the Universal Declaration of Human Rights (1948).²

“THERE IS NO COMPULSION IN RELIGION”

4. This statement from sura II:256 of the Koran is widely quoted but hardly observed in the Islamic world, and is flatly contradicted by other suras and by the hadith. It is quite clear that under Islamic law an apostate must be put to death. There is no dispute among either classical or modern Muslim scholars over this issue.

5. Even though it might be argued that in the Koran the apostate is threatened with punishment only in the next world, as for example at XVI:106,

“Whoso disbelieveth in Allah after his belief –save him who is forced thereto and whose heart is still content with the Faith but whoso findeth ease in disbelief: On them is wrath from Allah. Theirs will be an awful doom.”

Similarly in III: 90-91,

“Lo! those who disbelieve after their (profession of) belief, and afterward grow violent in disbelief, their repentance will not be accepted. And such are those who are astray. Lo! those who disbelieve, and die in disbelief, the (whole) earth full of gold would not be accepted from such an one if it were offered as a ransom (for his soul).Theirs will be a painful doom and they will have no helpers.”

This is interpreted by al-Shafi'i (d. 820 C.E.), the founder of one of the four orthodox schools of law of Sunni Islam, to mean that the death penalty should be prescribed for apostates. Al-Thalabi and al-Khazan concur. Al-Razi in his commentary on II: 217 says the

apostate should be killed.³ Similarly, Baydawi (d. c.1315-16), in his commentary on the Koran, interprets IV.89 to mean:

“Whosoever turns back from his belief (irtada), openly or secretly, take him and kill him wheresoever ye find him, like any other infidel. Separate yourself from him altogether. Do not accept intercession in his regard”.⁴

Ibn Kathir in his commentary on this passage quoting Al Suddi (d. 745) says that since the unbelievers had manifested their unbelief they should be killed.⁵

6. Abul Ala Mawdudi (1903-1979), the founder of the Jamat-i Islami, is perhaps the most influential Muslim thinker of the 20th century, being responsible for the Islamic resurgence in modern times. He called for a return to the Koran and a purified *sunna* as a way to revive and revitalise Islam. In his book on apostasy in Islam, Mawdudi argued that even the Koran prescribes the death penalty for all apostates.⁶

7. The Hadith contain many traditions demanding the death penalty for apostasy. According to Ibn Abbas the Prophet said, “Kill him who changes his religion,” or “behead him.”⁷ The only argument has been over how the apostate should be killed. Abu Dawud has collected the following saying of the Prophet:

“ ‘Ikrimah said: Ali burned some people who retreated from Islam. When Ibn Abbas was informed of it he said, ‘If it had been I, I would not have them burned, for the apostle of Allah said: ‘Do not inflict Allah’s punishment on anyone.’ But would have killed them on account of the statement of the Apostle of Allah, ‘Kill those who change their religion.’ ”⁸

In other words, kill the apostates (with the sword) but certainly not by burning them, that is Allah’s way of punishing transgressors in the next world. According to a tradition of Aisha’s, apostates are to be slain, crucified or banished.⁹

8. Should the apostate be given a chance to repent? Traditions differ. Under Islamic law, the male apostate must be put to death, as long as he is an adult, and in full possession of his faculties. If a pubescent boy apostatises, he is imprisoned until he comes of age, when if he persists in rejecting Islam he must be put to death. Drunkards and the mentally disturbed are not held responsible for their apostasy. If a person has acted under compulsion he is not considered an apostate, his wife is not divorced and his lands are not forfeit. According to Hanafis and Shi’a, a woman apostate should be imprisoned until she repents and adopts Islam once more, but according to the influential Ibn Hanbal (d. 855), and the Malikis and Shafi’ites, women apostates should also be put to death. In general, execution must be by the sword, though there are examples of apostates tortured to death, or strangled, burnt, drowned, impaled or flayed.

Islamic views on Human Rights

9. Article 18 of the Universal Declaration of Human Rights states:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

General comment No 22, adopted by the UN Human Rights Commission at its 48th session (1993) (HRI/GEN/1/Rev.6 of 22 May 2003 , pp.155-56) declares:

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The term “belief” and “religion” are to be broadly construed.”

10. Various attempts have been made to reinterpret human rights to more closely conform to Islamic law. But the various Islamic human rights schemes or declarations – such as the Universal Islamic Declaration of Human Rights¹⁰ (1981) – are understandably vague or evasive on the issue of the freedom to change one’s religion, since Islam itself clearly forbids apostasy and punishes it with death. As Elisabeth Mayer says in her book, *Islam and Human Rights*:

“The lack of support for the principle of freedom of religion in the Islamic human rights schemes is one of the factors that most sharply distinguishes them from the International Bill of Human Rights, which treats freedom of religion as an unqualified right. The [Muslim] authors’ unwillingness to repudiate the rule that a person should be executed over a question of religious belief reveals the enormous gap that exists between their mentalities and the modern philosophy of human rights.”¹¹

11. Islamic Human Rights Schemes are clearly not universal since they introduce a specifically Islamic religious criterion into the political sphere, whereas the UDHR of 1948 places human rights in an entirely secular and universal framework. The Islamic human rights schemes severely restrict and qualify the rights of individuals, particularly women, non-Muslims and those, such as apostates, who do not accept Islamic religious orthodoxy.

Legal systems and practice

12. The constitutions of many Muslim countries guarantee freedom of belief (Egypt, 1971; Syria, 1973; Jordan, 1952), whilst some talk of freedom of conscience (Algeria, 1989), and some of freedom of thought and opinion (Mauritania, 1991). In general, Islamic countries do not address the issue of apostasy in their penal codes; the two exceptions being the Sudan and Mauritania. Under the Sudanese Penal Code of 1991, a persistent apostate will be put to death. Under the Penal Code of Mauritania, an apostate, man or woman, is given three days to repent, after which they are to be put to death.

13. But as Ibn Warraq noted:¹²

“The absence of any mention of apostasy in the penal codes of some Islamic countries in no way implies that a Muslim in that country is free to leave his religion. In reality, the lacunae in the penal codes are filled by Islamic Law. Mahmud Muhammad Taha was hanged for apostasy in 1985, even though at the time the Sudanese Penal Code of 1983 did not mention such a crime.”

14. In her personal testimony to the parallel conference, Azam Kamguian told how she was imprisoned and tortured in Iran (as a suspected apostate):

“I, along with thousands of non-believers and political prisoners, was tortured by order of the representative of Allah and the Shari’a; tortured, while verses of the Koran about non-believers were played in the torture chambers. The voice

reading the Koran was mixed with our cries of pain from lashes and other brutal forms of torture.”¹³

15. And Ibn Warraq again:

“In some countries, the term apostate is applied to some who were born non-Muslim but whose ancestors had the good sense to convert from Islam. The Baha’is in Iran in recent years have been persecuted for just such a reason. Similarly, in Pakistan the Ahmadiya community were classed as non-Muslims, and are subjected to all sorts of persecution.”

The persecution of Ahmadiyas is also a growing problem in Bangladesh. ¹⁴

16. Finally, newspaper reports from a number of countries tell of religious leaders issuing fatwas or preaching against those deemed to be apostates leading others to take the law into their own hands, and to kill in the name of God.

Conclusion

17. We have shown that punishment for apostasy as specified in the Shari’a and as practiced in many Islamic states is incompatible with the Article 18 of the Universal Declaration of Human Rights of 1948, and the legally binding International Covenant on Civil and Political Rights (ICCPR) of 1966 to which 147 states are signatories.

18. We urge the Commission, through the Sub-Commission, to call on all governments:

- a) To recognise that strict adherence to the Shari’a is incompatible with the UDHR and ICCPR
- b) To take appropriate measures to bring their laws into conformity with their obligations under the human rights instruments to which they are party, and
- c) To forbid fatwas and sermons preaching violence in the name of God against those holding unorthodox opinions or who have left Islam.

Notes

¹ The full texts of their presentations can be found at: www.iheu.org/unchr2005

² Available online at the United Nations website: www.un.org/rights/50/decla.htm

³ S. Zwemer, *The Law of Apostasy in Islam* (New York, 1924), pp.34-35. See also al-Razi, *al-Tafsir al-Kabir* (Cairo ,1308 A.H.), Vol.2, lines 17-20.

⁴ Zwemer, op. cit. pp.33-34.

⁵ Ibn Kathir, *L’Interpretation du Coran* , trans.Fawzi Chaaban (Beirut, 1998),Vol.2 , p.128.

⁶ Abul Ala Mawdudi , *The Punishment of the Apostate according to Islamic Law* , trans. Syed Silas Husain and Ernest Hahn (1994) , available at www.answering-islam.org .

⁷ Ibn Maja , *Hudud* , bab 2 ; al-Nisai , *Tahrim al-Dam*, bab 14 ; al-Tayalisi , no. 2689 ; Malik, *Aqdiya* tr.15;al-Bukhari , *Institabat al-murtadin* , bab 2; al-Tirmidhi , *Hudud* , bab 25 ; Abu Dawud , *Hudud* ,Bab 1; Ibn Hanbal i. 217, 282, 322.

⁸ Abu Dawud , *Sunan* , Trans.Ahmad Hasan , Vol.3 , *Kitab al-Hudud* , chap.1605, Punishment of an Apostate, Hadith No. 4337 (Delhi 1990), p.1212.

⁹ al-Nisai , *Tahrim al-Dam* , bab 11; Qasama , Bab 13 ; Abu Dawud , *Hudud* , bab 1.

¹⁰ <http://www.alhewar.com/ISLAMDECL.html>

¹¹ A.E.Mayer , *Islam and Human Rights: Tradition and Politics* (Westview Press, Boulder, CO / Pinter Publisher, London, 1991, p. 187.

¹² www.iheu.org/unchr2005 "Apostasy and Human Rights"

¹³ www.iheu.org/unchr2005 "The Fate of Infidels and Apostates under Islam"

¹⁴ "European Human Rights Conference on Bangladesh ," School of Oriental and African Studies (SOAS), London University, 17 June 2005.

* Ibn Warraq is the author of Why I am not a Muslim (1996), and Editor of The Origins of the Qur'an (1999), The Quest for the Historical Mohammed (2000), What the Qur'an Really Says (200), Leaving Islami: Apostates Speak Out (2003).

Azam Kamguin is an Iranian writer and women's rights activist.

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