

## Research Article

## THE CRIMINAL CONFRONTATION FOR CRIMES OF DISCRIMINATION AND HATE SPEECH: A COMPARATIVE STUDY

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### ABSTRACT

**Background:** The crime of disseminating hate speech is considered amongst the most prominent crimes in this era, particularly with the rapid technological advancements witnessed globally, which have contributed to its emergence across all communities. Given its seriousness, this crime threatens societal stability and security. In a bid to foster a culture of global tolerance and encounter the various manifestations of discrimination and racism, the Emirati legislator enshrined criminal protection for individuals against discrimination and hate speech based on ethnicity, race and religion. This legal safeguard is articulated in Federal Law No. 34 of 2023 concerning Combating Discrimination, Hatred and Extremism. Moreover, the Federal Decree-Law No. 34 of 2021, which addresses Combating Rumors and Cybercrimes, further reinforces this legal framework, specifically targeting the spread of such offences through digital channels. This addition underscores the UAE's comprehensive approach to addressing hate speech and discrimination, acknowledging the evolving nature of these crimes in an increasingly connected world.

**Methods:** The research aims to explore the effectiveness of Emirati law in combating discrimination and hate speech crimes through a multi-method approach, which includes a comparative dimension. Firstly, we conducted a comprehensive literature review of existing legal texts and scholarly articles to understand the broader legal context and historical perspectives on these crimes. This review extended beyond Emirati legal sources to encompass international legal standards and comparative legal analyses, allowing us to contextualise the Emirati legal framework within a global perspective.

**Results and Conclusions:** Our study has provided a detailed examination of the complexities and challenges in addressing the crimes of disseminating and promoting discrimination and hate speech within the UAE legal framework. We have identified that these crimes are

*inherently complex, requiring a specific intent to provoke violence and discrimination. Our analysis reveals a gap in the current legal approach, particularly in addressing the full scope of hate crimes and the nuances of criminal intent.*

*In light of these findings, we have proposed several critical amendments to the UAE law combating discrimination and hate speech. These include refining the definitions and scope of discrimination in Article 1, incorporating "motive for hate" as a key element in Article 4, revising Article 10 to focus on general criminal intention, and enhancing penalties in Article 16 when foreign financial support is involved. These recommendations aim to strengthen the legal framework, making it more comprehensive and effective in combating discrimination and hate speech, thereby safeguarding social security and human rights.*

*This research contributes significantly to understanding hate speech and discrimination crimes in the UAE and offers practical solutions for legal reform. It underscores the need for continuous evaluation and adaptation of laws to address evolving social challenges effectively.*

## 1 INTRODUCTION

The crimes of infringement of doctrines and religions, as well as evoking sectarian strife, are amongst the most important crimes that are currently directed to violate the stability and security of communities.<sup>1</sup>

Given the seriousness of disseminating and promoting discrimination and hate speech crimes, as well as their prevalence worldwide, particularly after the current technological advancement, several terrorist organisations exploited these crimes to incite strife and discrimination among the followers of some religions, which resulted in murder crimes and coercive migration in some regions.

Since people are the basic element in internal and external law, international law has been interested in ensuring dignity and a good life for human beings, regardless of their race, religion, or colour. Indeed, International law sought to prevent all forms of discrimination and hate speech in many conventions and treaties, including the Universal Declaration of Human Rights, the Charter of the United Nations, the Convention Relating to the Status of Refugees of 1954, the Convention Relating to the Status of Stateless Persons of 1951, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the International Covenant on Civil and Political Rights of 1966, and the two International Covenants for human rights. The international law included articles which criminalise any action that targets national unity and international tolerance.<sup>2</sup>

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1 Hanan Rayhan Mubarak Al-Mudhakhi, *Information Crimes: A Comparative Study* (Halabi Human Rights Publications 2014) 226.

2 Deri Al-Arabi, 'The Privacy of Judicial Control Procedures for Discrimination Crimes and Hate Speech According to Law 2005' (2021) 6(2) *Journal of Human Rights and Public Liberties* 216.

The Emirati legislator took the same steps by passing Federal Law No. 2 of 2015 for Combating Discrimination and Hate and setting control procedures relating to those crimes in accordance with the nature of the criminal conduct, which is usually committed by means of modern communication and information technology methods. It is important to note that this law was subsequently repealed by the Federal Law by Decree No. 34 of 2023 Concerning Combating Discrimination, Hatred, and Extremism.<sup>3</sup>

### 1.1. Importance of the Study

This study is important because it addresses Federal Law No. (34) of 2023 concerning Combating Discrimination, Hatred, and Extremism. This law is considered one of the most important laws enshrined at a time when the whole world suffered from the crimes of terrorism, discrimination, hatred, blasphemy, and insult to sacred sites, as well as the role of social media sites in spreading those crimes.

### 1.2. Challenges

The challenge of such a study is centred around the extent to which the Emirati legislator succeeded in citing legal provisions that are sufficient for combating the activities of disseminating and promoting discrimination and hate speech crimes while, at the same time, maintaining people's personal freedom as well as the freedom of speech and expression guaranteed by the constitution.

### 1.3. Objectives

The study aimed to demonstrate the extent to which the Emirati legal provisions are effective in combating the activities of disseminating and promoting discrimination and hate speech crimes in the light of the escalating debate resulting from the various forms of such conduct and their interference with the freedom of speech and expression that is guaranteed by the constitution.

### 1.4. Approach

The study employed a multifaceted approach to comprehensively examine the crimes of disseminating and promoting discrimination and hate speech within Emirati law. A descriptive approach was utilised to clearly depict these crimes as defined by Emirati legal statutes. An analytical approach was employed to delve into the diverse jurisprudential and legal texts related to these crimes, shedding light on their historical development and theoretical underpinnings.

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3 Federal Decree Law of the United Arab Emirates no 34 of 2023 'Concerning Combating Discrimination, Hatred and Extremism' <<https://uaelegislation.gov.ae/en/legislations/2131>> accessed 22 December 2023.

Furthermore, the study adopted a comparative perspective to enrich the analysis. By comparing Emirati law with international legal standards and practices in combatting discrimination and hate speech, we aimed to contextualise the Emirati legal framework from a global perspective. This approach allowed us to assess the effectiveness of Emirati law in addressing these crimes while considering international best practices and legal approaches adopted by other nations. To achieve the study objectives it was divided into two parts: firstly, elucidating the definitions of disseminating and promoting discrimination and hate speech and secondly, demonstrating the elements of these offences along with the corresponding sanctions.

## 2 THE MEANING OF THE CRIMES OF DISSEMINATING AND PROMOTING DISCRIMINATION AND HATE SPEECH

The international community has taken an active interest in establishing the conventions that combat discrimination and racism to achieve equity and justice among people. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination defined discrimination as "any distinction, exclusion, restriction, or preference that is based on race, colour, descent, religion, nationality or ethnic origin, or any other reasons with the purpose or effect of impairing the enjoyment on equal human rights and freedom, either in the political, economic, social or cultural domains, or any other public life domains."<sup>4</sup>

Article 7 of the Universal Declaration of Human Rights states, "All people are equal before the law and are entitled, without any discrimination, to equal law protection. They also have equal protection against any discrimination in violation of this Declaration and against incitement to such discrimination."<sup>5</sup>

Article 26 of the International Convention on Civil and Political Rights states, "All people are equal before law and are entitled without any discrimination to the equal protection of the law. In this vein, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or non-political opinion, national or social origin, property, birth or any other causes."<sup>6</sup>

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4 International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965 UNGA Res 2106 (XX)) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>> accessed 22 December 2023.

5 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 22 December 2023.

6 International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXI) A) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 22 December 2023.

To comprehend the intricate dimensions of discrimination and hate within a legal context, we embark on a journey through jurisprudential insights. This section aims to untangle the intricate web of laws and interpretations that define our perception of discrimination and hate, particularly in their propagation. We begin by delving into the theoretical foundations of these concepts, exploring their evolution under the influence of various legal philosophies and doctrines. From theory, we transition to practice, scrutinising how discrimination and hate are codified in statutory law. This involves an examination of specific legal provisions that classify certain behaviours as discriminatory or hateful, resulting in legal consequences. Our exploration culminates in the complex realm of disseminating and promoting discrimination and hate speech. Here, we dissect the defining characteristics of these actions and examine how they are treated within the legal framework, addressing the inherent challenges in enforcing legislation in this domain.

### 2.1. The definition of discrimination and hate in jurisprudential terms

Discrimination is defined as "a system that gives more superiority to a certain gender or human race over other genders or human races."<sup>7</sup> Others defined it as "every insulting behaviour performed by certain people due to believing that they are better than others, based on any causes related to distinction and preference with the aim of achieving certain objectives to satisfy their needs over others. Such a conduct violates the principle of equal opportunities that governs people and protects their rights and freedom."<sup>8</sup>

We criminalise discrimination, which refers to each verbal or non-verbal speech that evokes spreading discrimination values, as stated in the International Declaration of Human Rights, as well as the different international covenants and local legislations of countries that criminalise all the forms of discrimination based on gender, race, ethnicity, religion, belief, or affiliation.

Hate speech is defined as any form of verbal, written or behavioural communication that offends or uses discriminative language directed towards a person or a group of people based on their religion, ethnic origin, nationality, race, colour, gender, or any of the other factors related to identity. This speech originates from intolerance and hate, where such hate may entail humiliation and lead to divisions.<sup>9</sup>

According to the Federal Investigations Office in the US, hate crimes are "the crimes committed against people, where these crimes are partially or totally driven by biases

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7 Mohammad Dhiyab Sattam Al-Jubouri, 'Racial Discrimination from the Perspective of Criminal Law: Comparative Analytical Study' (2018) 2(3/1) Tikrit University Journal of Law 358.

8 Khan Mohammad Adil, 'The Crime of Racial Discrimination in Algerian Law' (master thesis, Mohammad Kheidar University 2015) 11.

9 United Nations Strategy and Action Plan on Hate Speech (18 June 2019) 2 <<https://www.un.org/en/genocideprevention/hate-speech-strategy.shtml>> accessed 22 December 2023.

against race, religion, disability, sexual orientation, ethnic origin or gender."<sup>10</sup> Furthermore, this definition is supplemented by a psychological perspective, describing it as "a natural status resulting from not accepting- by the brain's part relating to feelings and sensations- some of the elements inserted to it through neurons due to the effects of the external world on the individual."<sup>11</sup>

The International Criminal Tribunal for Rwanda stated that "hate speech is a form of discriminative hostility that aims to devastate the human dignity and offend groups."<sup>12</sup>

Furthermore, the European Union's conduct blog defined online hate speech as "each conduct that publicly incites violence or hatred against a group of people or a certain individual based on race, colour, religion, lineage, nationality, or ethnic origin."<sup>13</sup>

Based on the above mentioned, we define hate speech as any form of communication that degrades, denigrates, or incites violence or prejudicial action against individuals or groups based on specific characteristics such as race, religion, ethnicity, gender, sexual orientation, or disability. This definition is rooted in the legal framework, where hate speech is often identified by its intent to promote animosity, hostility, or violence against a protected group. It encompasses both verbal and non-verbal forms of expression that can have far-reaching impacts on individuals and society.

## 2.2. The definition of discrimination and hate crimes in law

Article 1 in the decree of Federal Law No. 34 of 2023 concerning Combating Discrimination, Hatred, and Extremism in the United Arab Emirates defines hate speech as "each statement or action that incites discord, strife or discrimination between individuals and groups."

The same article defines discrimination as "each distinction, exclusion, restriction, or preference between individuals that is based on religion, doctrine, nationality, ethnic origin, race, colour, or gender, in compliance with the applicable laws in the country."<sup>14</sup>

Also, the amended Jordanian Cybercrimes Law No. 17 of 2023 defines hate speech in Article 1 as "each statement or action that incites religious, racist or ethnic strife or discrimination between individuals and groups."<sup>15</sup>

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10 Walid Hosni Zahra, "*I Hate You...*": *Hate Speech and Sectarianism in the Arab Spring Media* (Center for the Protection and Freedom of Journalists 2014).

11 *ibid.*

12 Wafi Al-Haja, 'Hate Speech between Freedom of Expression and Criminalization: A Study in Light of the Provisions of International Law' (2020) 4(1) *International Journal of Legal and Policy Research* 70.

13 Alia'a Ali Zakaria, 'The New Legal Mechanisms to Refute Hatred and Discrimination and Its Contemporize Applications' (2017) *Spec (2/1) Kuwait International Law School Journal* 543.

14 Federal Decree Law no 34 of 2023 (n 3) art 1.

15 Law of the Hashemite Kingdom of Jordan no 17 of 2023 'Law on Cybercrimes' <<https://perma.cc/7RSM-6S4K>> accessed 22 December 2023.

Algerian criminal law, in paragraph 1 of Article 295, defines discrimination as "each distinction, exclusion, or preference that is based on gender, race, colour, lineage, nationality, ethnic origin, or disability to hinder the recognition of human rights and basic freedom or practice and enjoying those rights and freedoms equally in political, social, economic and cultural domains, or any other public life domains."<sup>16</sup>

Also, the Algerian legislator enshrined the Law of Preventing and Combating Discrimination and Hatred in 2020, where Article 2 defines hate speech as "all the forms of expression that disseminate, encourage or justify discrimination, and the speech forms that include using insult, contempt or violence directed towards an individual or a group of people based on their gender, race, colour, lineage, nationality, ethnic origin, language, geographical location, disability or health status."<sup>17</sup>

The European legal framework regarding hate speech and discrimination, particularly in the context of religious defamation, involves various national laws and broader EU policies. These legal frameworks seek to strike a balance between protecting freedom of expression and curbing hate speech and discrimination.

For example, the French Press Freedom Law of 1881, recently amended on 27 January 2017 under law No. 86, included several texts prohibiting incitement to hatred and discrimination. Article 29/9 of the same law states, "each statement that implies insult and contempt without the existence of a real event is considered humiliation."

Similarly, the Netherlands has laws that prohibit public insults and incitement to hatred based on race, religion, sexual orientation, or personal convictions.

The United Kingdom's Public Order Act of 1986 criminalises the use of threatening, abusive, or insulting words or behaviour to stir up racial hatred. This Act encompasses a broad range of potential offences related to hate speech.

At the EU level, efforts to combat hate speech are advanced through policies and communications, exemplified by initiatives such as the "No place for hate: a Europe united against hatred" initiative.<sup>18</sup> This initiative aims to bolster action across various policies, including online hate speech. Additionally, the High-Level Group on combating hate speech and hate crime, established in 2016, works to develop practical guidance, standards, and tools to improve responses to hate speech and hate crime at national and local levels.

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16 Penal Code of 1966 as amended by Law no 14-01 of 4 February 2014 <<https://www.joradp.dz/HEN/Index.htm>> accessed 22 December 2023.

17 *ibid*, art 2.

18 'No Place for Hate: A Europe United Against Hatred' (*European Commission*, 6 December 2023) <[https://commission.europa.eu/news/no-place-hate-europe-united-against-hatred-2023-12-06\\_en](https://commission.europa.eu/news/no-place-hate-europe-united-against-hatred-2023-12-06_en)> accessed 22 December 2023.

These laws and policies reflect the EU's commitment to combating hate speech while respecting fundamental rights like freedom of expression. However, It is important to recognise that the implementation and interpretation of these laws can vary significantly between countries.<sup>19</sup>

### 2.3. Characteristics of disseminating and promoting discrimination and hate speech

In this critical section, we delve into the multifaceted legal elements that constitute the crimes of disseminating and promoting discrimination and hate speech, as well as the sanctions imposed for these offences. Our exploration is twofold: first, we dissect the legal architecture that shapes these crimes, breaking down their components to understand what precisely classifies certain actions or expressions as criminal under this category. This includes examining the intent, the nature of the act, and its impact on targeted individuals or groups.

Secondly, we consider the punitive measures and sanctions imposed in response to these crimes. The sanctions reflect the severity with which society and legal systems view such offences, and their analysis offers insight into the broader societal and legal stance on discrimination and hate speech.

#### A) The Physical Element

The physical element of disseminating and promoting discrimination and hate speech involves racially offensive actions or insults towards religious beliefs and symbols through public expression.<sup>20</sup> In legal terms, this "physical element", known as "Actus Reus," a Latin term meaning "guilty act," constitutes physical or outward actions of a crime. It encompasses specific actions, conduct, or behaviour that constitutes a violation of the law. In the case of disseminating and promoting discrimination and hate speech, the Actus Reus would include the actual acts of speech or expression – whether verbal, written, or via digital media – that

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19 For more detailed information on European hate speech laws, you can refer to the following sources: 'Combating Hate Speech and Hate Crime' (*European Commission*, 2023) <[https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-hate-speech-and-hate-crime\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-hate-speech-and-hate-crime_en)> accessed 22 December 2023; 'European Commission against Racism and Intolerance (ECRI)' (*Council of Europe*, 2023) <<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/home>> accessed 22 December 2023; 'The European Legal Framework on Hate Speech, Blasphemy and its Interaction with Freedom of Expression' (*European Parliament*, 15 September 2015) <[https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU%282015%29536460](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU%282015%29536460)> accessed 22 December 2023; 'Hate Speech' (*European Court of Human Rights*, November 2023) <[https://www.echr.coe.int/documents/d/echr/fs\\_hate\\_speech\\_eng](https://www.echr.coe.int/documents/d/echr/fs_hate_speech_eng)> accessed 22 December 2023; 'The Legal Project' (*Middle East Forum*, 2023) <<https://www.legal-project.org>> accessed 22 December 2023.

20 Ali Mohammad Ali Hammouda, *Explaining the General Provisions of the UAE Federal Penal Code: General Section* / Explanation of the general provisions of the Federal Penal Code of the United Arab Emirates: General Section (Dubai Police Academy 2014) 279.



disseminate or promote discriminatory or hateful content. This aspect is essential in defining the tangible actions the law deems criminal.

Moreover, the physical element refers to the tangible objects integral to the crime, which can be sensed by the senses. These objects play a crucial role in obtaining evidence that confirms its occurrence and attributes it to the offender who committed it.<sup>21</sup>

Recently, there has been an increased spread in the methods of expressing opinions, driven by the modern technological revolution in communication. These advancements have greatly facilitated the dissemination of ideas and opinions to others, posing challenges to the stability of governments and groups. Indeed, these methods have contributed to generating an intellectual mutation and forming intellectual perspectives conflicting with the public thoughts prevalent among people, particularly those ideas related to the Islamic religion. The methods of expression include:

- 1- Printed materials, such as books and brochures, which serve as platforms for authors to convey their ideas; however, this method has been restricted by the law of publications and printed materials.
- 2- Satellite and radio channels by broadcasting television and radio programs. In this vein, more global restrictions reject ethnicity, discrimination and extremist ideas that encourage starting wars.
- 3- Seminars and conferences, where a group of people gather to exchange certain opinions and ideas or introduce a particular opinion to a group of people and encourage them to adopt this opinion.<sup>22</sup>
- 4- The World Wide Web, arguably the most dangerous method, is capable of undermining political systems and distorting religious principles. Its pervasive influence has turned it into a nightmare capable of spreading, reshaping minds, and altering opinions worldwide.

Therefore, we will address the interest relating to criminal protection in the crime of disseminating and promoting discrimination and hate speech, as follows:

- 1) The interest relating to criminal protection in the crime of disseminating and promoting discrimination and hate speech:

Undoubtedly, respecting heavenly religions, prophets, or religious symbols is among the basic interests of the community structure. Violating the sacredness of these religions and their symbols will inevitably cause harm to their followers and thus threaten and undermine the social structure. In this vein, the legislator imposed sanctions on committing the crimes violating that sacredness to protect the interests and freedoms worthy of criminal protection

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21 Mahmoud Naguib Housni, *An Explanation of the Penal Code: General Section* (Dar Al-Nahda Al-Arabiya 2019).

22 H Richard Uviller, 'Making it Worse: "Hate" as an Aggravating Factor in Criminal Conduct' (2000) 23 (4) *Ethnic and Racial Studies* 761, doi:10.1080/01419870050033711.

since public interest is the cause of criminalisation and penalty. Indeed, the criminal law takes drastic measures against those who attempt to use the freedom of expression to incite hate speech or insult one of the heavenly religions to protect these religions and people's dignity against humiliation and abuse.<sup>23</sup>

Therefore, the main objective of criminalising some behaviours is to protect the basic interests of the community and prevent offence.

The harm caused in the domain of the crimes of disseminating and promoting discrimination and hate speech has several forms, including<sup>24</sup>

- 1) **Individual harm:** the most common type of harm resulting from such crimes. For example, hate speech may be directed towards a certain religion, ethnic group or leading figures belonging to it. This targeting can lead to physical harm, ranging from injuries to murder or damaging property. Also, disseminating discrimination and hate speech can inflict moral harm that violates the dignity of the offended person. For example, insulting clergy members or ascribing negative images and events to them can adversely damage their social prestige and encourage other people to exclude them.
- 2) **Collective harm:** this type of harm extends beyond individual targets and affects entire communities, transcending clergy members. Indeed, the crimes of disseminating discrimination and hate speech have led to tremendous human and financial loss, stemming from ethnic strife that adversely undermines national unity and social security. In this vein, contempt and discrimination against a certain religion, doctrine, or religious symbol result in moral harm among the followers, amplifying their grief and pain due to ridiculing the sacredness of their religion or doctrine.

As for risk crimes, there should be a risk related to the potential of causing harm - this type of crime occurs when individuals commit behaviour that threatens people's interests or causes real harm or risk to them. The risk caused in the domain of disseminating and promoting discrimination and hate speech has several forms, including<sup>25</sup>

- 1) **Individual risk:** a risk that threatens the individual interests of a particular person who believes in a certain religion or doctrine, such as a clergy member who belongs to a certain religious organisation, where the source of risk could be a person who holds hostile feelings towards a certain targeted group or individuals. The offender may claim that they defend certain religious facts, practices, or identities; therefore, they make various types of threats, including the perceived threats of using violence against a person or robbing his money without a legal provision.

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23 Housni (n 21).

24 Yasser Ahmed Badr, *Contempt of Religions between Freedom, Protection and Responsibility* (House of Thought and Law 2017).

25 *ibid.*

2) **Public risk:** a risk that threatens the security and interests of people in the same community and destabilises families and children. The spread of public risk threatens peaceful living among the community individuals, creating a state of horror among citizens. This type of risk includes the risks resulting from the manifestations of collective hate that incite strife and ethnicity, and that represents a source for many cases of human rights violations by governmental or non-governmental agencies; this results in imposing more restrictions on the freedom of practising religious rituals among those believing in them.

2) The criminal behaviour for the crimes of disseminating and promoting discrimination and hate speech:

Disseminating and promoting discrimination and hate speech occurs the moment illegitimate behaviour is committed, where such behaviour is represented by violating the sacredness of a certain religion by spreading images and drawings that demean and undermine the religious feelings of its followers. This includes making fun of religious rituals and symbols, as well as shaming or ostracising religious symbols by ascribing them with insulting and harmful events and images that adversely affect their appreciated character in front of their followers.

Indeed, all types of discrimination and hate speech are criminalised regardless of religion or the religious symbols that are targeted, as violation acts are not limited to a certain prophet or religion but extend to include all religious symbols across different religions.

In their legal articles, most Arabic legislations included various images of criminal behaviour that represent a crime of discrimination and hate against a certain religion. The most common causes of such crimes are:<sup>26</sup>

- Insulting the divinity or challenging God by verbal abuse, writing, drawings, gestures, or any other methods.
- Insulting the prophet Mohammad (peace be upon him) or the other prophets, or ridiculing the religious rituals of Islam, either by writing, drawing, verbal statement, or any other methods.
- Insulting the Holy Quran, distorting It, or ridiculing It.
- Disseminating opinions that include ridicule or contempt of a certain religious doctrine by challenging its rules, rituals, or instructions.
- Printing or publishing a heavenly-sacred book in a distorted manner that affects its content and meaning.
- Producing, selling, trading, or possessing products that include drawings, slogans, words or symbols, or any other things that abuse the Islamic religion or other heavenly religions according to the provisions of the Islamic Sharia, or advertising such products.

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26 *ibid* 71.

- Using compact discs, computer programs or magnetic cards in abusing the Islamic religion, or any other heavenly religions, in accordance with the provisions of Islamic Sharia.

Within the context of European law, common forms of criminal behaviour related to religious discrimination and hate crimes often include<sup>27</sup>

- 1) Incitement to Hatred and Violence.
- 2) Defamation of Religious Symbols and Figures.
- 3) Disturbance of Religious Worship: In certain European jurisdictions, disrupting religious services or practices is considered a criminal offence.
- 4) Discrimination in Various Sectors: EU laws, guided by directives like the Racial Equality Directive, prohibit discrimination based on religion in employment, education, and service provision.

Based on the above-mentioned concerning the forms of illegitimate conduct relating to the crime of disseminating and promoting discrimination and hate speech, we can see that most crimes require the offender to perform a certain (positive) intended behaviour for it to be considered a legally banned contempt. However, the crime of disseminating and promoting discrimination and hate speech may take place through negative behaviour, represented by refraining from doing a certain behaviour that the legislator requires that person to do in certain circumstances.

The negative behaviour (refraining), in this case, is represented by the individual's tendency to refrain from performing the positive action that they are entitled to do by means of law, such as intervening to prevent contemptuous or ridiculing activities directed at heavenly religions and religious symbols or neglecting to prevent the risks resulting from discrimination and hate speech. In this vein, negative behaviour is equivalent to positive behaviour since the criminalisation of any behaviour is related to the interest that the legislator considers worthy of protection, i.e., protecting the sacredness of the heavenly religions and respecting human dignity.<sup>28</sup>

The forms of criminal behaviour related to religious discrimination and hate crimes in European law, as described, can be compared and contrasted with the approach in UAE law:

#### 1. **Incitement to Hatred and Violence:**

- **European Law:** This typically includes speech or actions that promote hatred or violence against individuals based on their religious beliefs. European countries have laws that criminalise such incitement, often balancing these with freedom of expression rights.

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27 Floris De Witte, 'EU Law and the Question of Justice' (doctoral thesis, London School of Economics and Political Science 2012).

28 Ahmed Abdullah Al-Maraghi, 'The Role of Criminal Law in Protecting Freedom of Religion' (Respect for Religions and Freedom of Expression of Opinion: annual scientific conference, May 3-4, 2015, Faculty of Law, Helwan University) 315.

- **UAE Law:** The focus is more specific to protecting the sanctity of Islam, as well as other recognised religions, against defamation and actions that could incite religious discord.

## 2. Defamation of Religious Symbols and Figures:

- **European Law:** Some European countries have laws against the defamation of religious symbols and figures, but these are often balanced with the right to freedom of expression. The enforcement of such laws varies significantly across Europe.
- **UAE Law:** There is a strong emphasis on protecting Islamic symbols and figures from defamation, with strict penalties for violations.

## 3. Disturbance of Religious Worship:

- **European Law:** Disturbing religious services or practices can be considered a criminal offence, respecting the right to practice religion freely.
- **UAE Law:** Similarly, any disturbance to religious worship is taken seriously and subject to legal penalties.

## 4. Discrimination in Various Sectors:

- **European Law:** Guided by directives like the Racial Equality Directive, European laws prohibit discrimination based on religion in employment, education, and service provision. This reflects a comprehensive approach to preventing discrimination in various public sectors.
- **UAE Law:** While there is an emphasis on preventing religious discrimination, the scope and application might differ, with a strong focus on protecting the Islamic faith and ensuring societal harmony.

In summary, both European and UAE laws aim to combat religious discrimination and hate crimes, but they do so within their respective cultural and legal frameworks. European laws generally cover a broader range of discrimination grounds and seek a balance between protecting against hate speech and upholding freedom of expression. In contrast, UAE laws strongly protect Islamic religious sanctity and societal harmony, reflecting the country's cultural and religious context.<sup>29</sup>

### B) The Moral Element:

The moral element refers to the willingness with which the action is paired, whether the willingness is criminal intention (an intentional crime) or a mistake (non-criminal

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29 ECRI Report on the Netherlands (fifth monitoring cycle) (adopted on 2 April 2019) Appendix: Government's Viewpoint <<https://rm.coe.int/government-comments-on-the-fifth-report-on-the-netherlands/168094c565>> accessed 22 December 2023.

intention).<sup>30</sup> In this context, "the moral element" can be interpreted as "mens rea" or the "guilty mind". In legal terminology, *mens rea* refers to the mental state or intent behind an action, particularly in committing a crime. This concept is crucial for establishing criminal liability, as it involves determining whether the perpetrator had the necessary intent or knowledge that their actions were wrong or would result in a prohibited outcome.

In the context of the crimes of disseminating and promoting discrimination and hate speech, the *mens rea* pertains to the perpetrator's intention to spread discriminatory ideas or to incite hate. It is about understanding the mindset and purpose behind their actions, whether they acted knowingly, recklessly, or with the specific intent to cause harm or incite unlawful behaviour. Recognising and proving this mental element is essential for categorising an action as a criminal offence in this realm.

To establish criminal liability for individuals who disseminate or promote discrimination and hate speech, punishable by law, a moral element (criminal intention) should be present. This means that the intended behaviour is committed based on the offender's knowledge and willingness to disseminate and promote discrimination and hate speech while being knowledgeable about the risks of committing such a crime. The offender's statement should be explicit, demonstrating an intent to disseminate and promote discrimination and hate speech among members of the community.

To establish criminal intention in disseminating and promoting discrimination and hate speech, the offender must be informed that their actions offend others through discrimination based on religion, gender, colour, ethnicity, or religious symbols, whether through writing, drawing, gestures, statements, or any other forms. Failure to grasp the reality of these facts indicates a lack of intention.

Furthermore, the legislator requires the existence of certain traits in the offended party, and the offender should be knowledgeable of those traits to establish the intention in the crime of disseminating and promoting discrimination and hate speech. These traits relate to insulting the Divinity (God), the prophet Mohammad (peace be upon him), other prophets, or clergy members.

The person who performs activities related to discrimination and hate speech aims to achieve a certain intended purpose. For instance, someone who has the willingness to publish drawings and printed materials containing abusive or insulting content directed towards a prophet in newspapers, satellite channels or social media sites despite being informed that such conduct would offend the religious sentiments of followers of the targeted religion, would be committing an intentional crime. This conduct cannot be justified by freedom of expression since performing such behaviour violates the dignity and freedom of others. In fact, the penal code protects people from mistaken practices performed against them due to the freedom of speech and expression.

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30 Housni (n 21).

Beyond merely being informed about the act's violative nature, there must be a willingness to commit such conduct. The offender must be willing to insult and abuse others, either by drawing, writing, verbal statements, or other methods. In this case, the offender would be committing a crime against a legally protected interest by disseminating and promoting discrimination and hate speech against certain doctrines or religions. Therefore, if the committed insulting activities against the religious symbols were free from the element of willingness, they would be negligible, even if they caused severe harm to the community.<sup>31</sup>

By engaging in the act of disseminating and promoting discrimination and hate speech while fully understanding its elements, the offender seeks to achieve a certain objective; in achieving the targeted objective, the crime occurs, and the public criminal intention is established. For example, in the crime of broadcasting slogans, hymns or propaganda that includes ridicule against a certain religion, the offender would intend to disdain that religion and its followers.

The overarching intention is limited to achieving the objective of the crime of disseminating and promoting discrimination and hate speech. In the eyes of the law, the criminal intention is tied to the offender's objective of committing discrimination and hate speech crimes regardless of the motives. Therefore, achieving the targeted purpose or attempting to achieve it is viewed as the most important element in the establishment of the general criminal intention for the crime of disseminating and promoting discrimination and hate speech. This objective is regarded as the immediate and direct objective of the criminal behaviour.<sup>32</sup>

The crime of disseminating and promoting discrimination and hate speech requires the offender to have a specific intention. The offender's willingness should be directed toward disseminating and promoting discrimination and hate speech, and the offender should be well-informed that his speech will result in undesired outcomes that disseminate hatred and discrimination.

In the context of hate speech and discrimination, multiple causes go beyond religion, recognised in UAE law and broader international frameworks. These can include, but are not limited to, the following:

1. **Ethnicity and Race:** Discrimination and hate speech often target individuals based on their ethnic background or race. This can manifest in various forms, from derogatory comments to systemic biases in policies or practices.
2. **Nationality:** Prejudice or hostility against people because of their nationality.
3. **Gender and Sexual Orientation:** Discriminatory practices or speech against individuals based on their gender or sexual orientation are prevalent issues.

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31 Nizam Tawfiq Al-Majali, *An Explanation of the Penal Code: General Section* (Dar Al-Thaqafa Publishing and Distribution Library 1998) 260.

32 Badr (n 24).

Each of these areas represents a potential ground for discrimination and hate speech, and laws in many jurisdictions, including the UAE, seek to address these issues to varying extents. In the context of the UAE, while there is a strong emphasis on religious tolerance and harmony, other forms of discrimination and hate speech are also pertinent. They are addressed within the broader legal framework. The approach to these issues is guided by cultural values, social policies, and international human rights standards.

### 3 THE PENALTY FOR THE CRIME OF DISSEMINATING AND PROMOTING DISCRIMINATION AND HATE SPEECH IN THE EMIRATI LAW

#### 3.1. Lenient sentencing

Undoubtedly, the federal legislator – since the establishment of the United Arab Emirates – has paid more attention to enhancing national unity and peaceful living. This includes actively refuting the manifestations of ethnicity, discrimination and racism and combating all the negative behaviours and activities that may affect the structure of the Emirati community, which thrives on peaceful living and harmonious interaction among its various elements. This protective stance is exemplified by the legislator's interest in instilling the principles of social justice. Indeed, the Emirati legislator viewed social justice and the provision of tranquillity and equal opportunities as basic elements in the community.<sup>33</sup>

The legislator also confirmed that all individuals are equal before the law, where there is no distinction between individuals based on origin, nationality, ethnic origin, or social prestige (Article 25 of the Constitution of the United Arab Emirates).<sup>34</sup>

"The UAE legislator has affirmed the freedom of opinion and expression under Article 30 of the Constitution, which guarantees the freedom of expressing one's opinions in speech and writing and through all other means of expression. However, it is important to note that this freedom is not absolute and is subject to the limits of the law<sup>35</sup>.

In accordance with the UAE's legal framework, it is not permissible to invoke the freedom of opinion and expression to engage in any speech or action that incites disrespect for religions or undermines them, contravening the provisions of Decree-Law No. 34 of 2023 Concerning Combating Discrimination, Hatred, and Extremism. This demonstrates that this freedom always ceases when it conflicts with the freedom and dignity of others."

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33 Constitution of the United Arab Emirates (permanently adopted in July 1996) art 12 <<https://u.ae/en/about-the-uae/the-constitution-of-the-uae>> accessed 22 December 2023.

34 *ibid*, art 25.

35 *ibid*, art 30.



Also, this protection is manifested in the penal code and other codes, which we will address as follows:

1) *The Federal Decree-Law No. 31 of 2021 Promulgating the Crimes and Penalties Law*<sup>36</sup>

Article 362 states that "the punishments of incarceration and a fine, or any one of them, shall be imposed on a person who commits one of the following crimes:

- 1- Insulting one of the Islamic rituals or sacred sites.
- 2- Insulting one of the recognised heavenly religions.
- 3- Condoning, provoking, or promoting sin, or performing any action that seduces others to commit that sin."

If any of these crimes occur publicly, the person shall be punished by incarceration for a minimum of one year and a fine of no less than 100,000 AED, or both.

Article 364 states that the individual "shall be sentenced to detention and a fine, or one of them whoever offends the sacred beliefs or rituals prescribed by the other religions whenever these beliefs and rates are protected according to the rules of the Islamic Sharia."

Article 370 states that "whoever opposes or vilifies the foundations or teachings on which the Muslim religion is based or whatever he essentially knows of it, or preaches another religion, or advocates for a doctrine or ideology that embraces any of the matters mentioned above, or propagates any of these, shall be sentenced to imprisonment for a term not exceeding (5) years."

Article 372 states that "it is prohibited to hold any conference or meeting, in any place in the State, by a group, organisation or society in case any of them aims, directly or indirectly from such a meeting to oppose or vilify the foundations or teachings on which the Muslim religion is based or whatever he essentially knows of it or to preach another religion. The public authority has the right to disband such a conference or meeting, and whoever takes part in such a conference shall be sentenced to imprisonment for a minimum term of (5) years but does not exceed (10) years."

Article 373 states that "whoever possesses written instruments, printings or recordings that include a commend or propagation of any of the things stipulated in Article 371 and where these writings, printings or recordings are meant for distribution or perusal by others, shall be sentenced to detention for a minimum period of one year and a fine of no more than (5000) dirham or both penalties. Shall be sentenced to the same penalty provided for in the preceding paragraph, whoever possesses any means of printing or recording or publicity that has been used to print, record or diffuse slogans, hymns or propaganda for a doctrine, association, organisation or society that aims at achieving one of the objectives provided for in Article 371."

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36 Federal Decree Law of the United Arab Emirates no 31 of 2021 'Promulgating the Crimes and Penalties Law' <<https://uaelegislation.gov.ae/en/legislations/1529>> accessed 22 December 2023.

These articles collectively form a legal framework that prioritises the protection of Islamic values and teachings while also respecting other recognised religions within certain boundaries. The emphasis is on maintaining public religious respect and preventing discord, aligning with the UAE's cultural and religious context. The laws balance religious freedom, protect religious sentiments, and maintain societal harmony.

2) *The Federal Decree-Law No. 34 of 2021, related to Combating Rumours and Cybercrimes*<sup>37</sup>

Article 24 in the law of information technology in the United Arab Emirates under the Federal Decree-Law No. 34 of 2021 about Combating Rumors and Cybercrimes states, "shall be punished by temporary imprisonment and a fine not less than (200.000) dirham and not more than (1.000.000) dirham whoever establishes or administer a website or publishes on a computer network or any information technology means any information or ideas that imply incitement to riot, hatred, racism, sectarianism, in case such ideas damage the national unity or social peace or prejudice the public order and public morals, or exposed the State's interests to risk."

Article 37 of the Federal Decree-Law No. 34 of 2021 states, "shall be punished by imprisonment and by a fine not less than (250.000) dirham and not more than (1.000.000) dirham, or by any of them, whoever deliberately commits through the computer network, or any information technology means or a website any of the following crimes:

1. Insulting one of the Islamic rituals or sacred sites.
2. Insulting one of the Islamic rituals or sacred sites mentioned in the other religions as long as these rituals and sacred sites are protected according to the provisions of the Islamic Sharia.
3. Insulting one of the recognised heavenly religions.
4. Condoning, provoking, or promoting sin.

If the crime includes any insult to the Divinity (Allah, God) or to the messengers and prophets, or it is against the religion of Islam or insults the bases and principles which constitute its foundation, or if a person opposes the well-known teachings and rituals of Islamic religion or prejudices the religion of Islam or preaches another religion, or promotes a doctrine or a notion which involves any of the aforementioned, then the offender shall be punished by imprisonment for a maximum term of (7) years."

These articles demonstrate the UAE's approach to regulating the digital space, particularly in relation to religious respect and national unity. The laws balance preserving freedom of expression and preventing the misuse of digital platforms to propagate content that could harm religious sentiments or social peace. The stringent penalties associated with these laws

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37 Federal Decree Law of the United Arab Emirates no 34 of 2021 'On Countering Rumors and Cybercrimes' <<https://uaelegislation.gov.ae/en/legislations/1526>> accessed 22 December 2023.

underscore the seriousness with which the UAE views these offences in the context of its cultural and religious values.

3) *The Federal Decree-Law No. 7 of 2014, related to Combating Terrorist Crimes*<sup>38</sup>

Article 14 of the law states, "Shall be punished by imprisonment whoever commits an action intended to threaten the State's stability, safety, unity, sovereignty or security, or an action that contradicts the basic principles underlying the ruling system of the State, with the purpose of prejudicing the national unity or the social security." Paragraph 1 of Article 14 refers to the interest intended by the Emirati legislator, which is maintaining the State's security and national unity.

### 3.2. Penalty with its severe image (severe conditions)<sup>39</sup>

Article 9 of the Federal Law by Decree No. 34 of 2023 Concerning Combating Discrimination, Hatred and Extremism states, "1. If the crimes stipulated in Articles 5, 6, and 7 of this Decree by Law are committed by a public employee during, because of, or on the occasion of performing his work, or by a person with a religious capacity or in charge of it, or if the act occurs in House of Worship, this shall be deemed an aggravating circumstance. 2. The penalty shall be temporary imprisonment for a period not exceeding (5) five years and a fine not less than (AED 500,000) five hundred thousand UAE Dirhams if the acts stipulated in Clause (1) of this Article lead to a breach of public peace."

Also, Article 10 stipulates, "shall be sentenced to temporary imprisonment, any person who misuses religion to call individuals or groups as infidels either by statement, writings, or any other means. The sentence shall be the death penalty if the call of infidelity was associated with death and where the murder crime was committed as a result of that."

Article 9 and Article 10 clearly delineate the following points:

1. Enhanced penalties for public officers and religious figures: The law specifies harsher penalties for hate crimes committed by public officers or religious figures. This underscores the heightened responsibility of these individuals in society, recognising that their actions can have a more significant impact due to their positions of trust and authority.
2. Misuse of religion for discrimination: The article criminalises the misuse of religion for labelling individuals or groups as infidels. This provision aims to prevent religious figures from abusing their influence to incite hatred or discrimination.
3. Severe penalties for grave consequences: The law imposes the most severe penalty – the death penalty – in cases where such labelling leads to murder. This reflects the

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38 Federal Law of the United Arab Emirates no 7 of 2014 'Combating Terrorist Crimes' <<https://uaelegislation.gov.ae/en/legislations/1018>> accessed 22 December 2023.

39 Federal Decree Law no 34 of 2023 (n 3).

seriousness with which the UAE regards the incitement of violence, especially when it is cloaked in religious rhetoric.

Article 13 of the Law of Combating Discrimination, Hatred, and Extremism states, "shall be sentenced to imprisonment for a period not less than (10) years any person, who establishes, sets up, organises or manages an association, centre, entity, organisation, league or group or any branch thereof, or uses any other means with the purpose of offending religions, or encouraging the incitement of hate speech and discrimination."

Article 13 is considered a decisive measure to prevent the establishment and operation of organisations that aim to incite hatred and religious discrimination.

Article 14 states, "Any person who joins, participates in or assists any of the parties referred to in the previous article, while knowing its objectives, shall be sentenced to imprisonment for a period not exceeding (7) years."

Article 15 states, "Any person who holds or organises a conference or a meeting in the State with the intention of offending religions, or provoking discrimination or hate speech shall be sentenced to imprisonment for a period not less than (5) years, and any person, who participates in the conference or the meeting, while knowing its objectives, shall be sentenced to the same punishment. The public authority has the right to stop the conference or the meeting with the use of force if necessary."

Article 15 specifically targets the organisation of events such as conferences or meetings that aim to incite religious insult, discrimination or hate speech. It imposes a minimum prison sentence of five years, not only for organisers but also for participants who realise the objectives of the event, with an emphasis on individual responsibility. The law enables public authorities to stop such conferences or meetings, using force if necessary, demonstrating the government's commitment to effectively preventing hate speech and maintaining public order. Essentially, the offender of the crime bears criminal responsibility and receives the due penalty for that crime, and his act entails a criminal responsibility attached to the legal person. Therefore, if one of the employees of a company engages in behaviour constituting the crime of discrimination stipulated in Article 6 of the Law of Combating Discrimination and Hatred – such as firing an employee who belongs to a particular religious group – criminal responsibility for the crime is not limited to the offender but rather extends to include the representative, manager or agent of the legal person if it is proven that they are aware of that act. This, indeed, represents an extension in the framework of penal responsibility and punishment and a departure from the principle of personal penal liability.

Article 17 states that "the representative, director or agent of a legal entity- in case any of the crimes set forth in the present decree-law is committed, with his knowledge, by any employee acting in his name or to his interest- shall be sentenced to the same penalties prescribed for the committed crime. The legal person shall be held jointly liable to settle any pecuniary penalties or compensation as ruled."

Article 22 states that "any offender of any of the crimes set forth in the present decree law, who reports the judicial or administrative authorities before the discovery of such crime shall be exempted from penalty. In case such reporting is carried out after the discovery of such crime, the court may decide to exempt such offender from the punishment when the report has resulted in the detention of other offenders. Also, discrimination may not apply regarding any advantage or benefit conferred upon women, children, disabled individuals, elderly or others."

Upon analysing the first part of Article 22, it becomes clear that several conditions must be met to avail oneself of the exempting excuse provided in the Law of Combating Discrimination and Hate Speech.<sup>40</sup> Once such a condition involves reporting a crime as delineated in the law, wherein the reporter must be one of the offenders. Notably, the legislator did not specify the nature of the reporting party – whether they are an original partner or a subordinate – nor did they specify whether the reporting should be to judicial or administrative authorities. However, the disclosed information should be effective and enable the administrative or judicial authorities to uncover the crime. Additionally, the legislator specified a certain time when the person is exempted from penalty if they report the criminal activity before uncovering it by the authorised agencies. For example, if a group of people organises a meeting with the purpose of provoking hate speech, but one member withdraws and informs the authorised agencies, that reporting member is exempted from penalty since they facilitated the uncovering of the crime.

In the second part, Article 19 grants the court the right to exempt the offender from penalty if they reported the crime after its occurrence, where such a reporting contributed to arresting the other offenders. In this case, we propose that the legislator should consider imposing a penalty on the reporting offender instead of a complete exemption, with the final decision resting on the court's discretion.

## 4 RESULTS AND CONCLUSIONS

The crimes of disseminating and promoting discrimination and hate speech are composite crimes which aim to provoke more violence and discrimination. They necessitate the offender to have a specific intention and willingness to provoke and incite discrimination and hate speech while being well-informed about the outcomes of their speech in terms of fostering hatred and discrimination.

In the Law of Combating Discrimination, Hatred, and Extremism in the UAE, the legislator has imposed sanctions for committing the crime of provoking hate speech but has not addressed hate crimes in a broader sense. Therefore, we suggest the necessity

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40 Manal Marwan Monjid, 'Legislative Policy in Confronting Discrimination and Hate Crimes in Federal Law: Analytical Study' (2019) 43(3) Law Journal 297, doi:10.34120/0318-043-003-007.

of imposing sanctions against crimes independently, particularly in cases where the motive is rooted in envy and hate.

## 5 RECOMMENDATIONS

The study recommends an addition to Article 1 of the Law of Combating Discrimination, Hatred, and Extremism in the UAE, suggesting the inclusion of the following text: "a discrimination that could underestimate or restrict the basic freedom and rights of people." The finalised context could read as follows: "Discrimination: any distinction, exclusion, restriction, or preference that is based on race, colour, descent, religion, nationality or ethnic origin, or any other reasons with the purpose or effect of impairing the enjoyment of equal human rights and freedom, either in the political, economic, social or cultural domains, or any other public life domains."

The legislator should reconsider Article 10 of the Law of Combating Discrimination, Hatred, and Extremism in the UAE. The phrase "(to achieve special interests or illegitimate affairs)" should potentially be omitted and instead rely on the presence of general criminal intention. This is because blasphemy is considered a dangerous threat to the community and should be combated to maintain social security.

As for Article 16 of the Law of Combating Discrimination, Hatred, and Extremism in the UAE, the legislator should consider imposing harsher penalties on offenders who receive financial support from a foreign party due to the potential risk this poses to the State's security.

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