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ARTICLE 19

23 September 2009

STATEMENT

UN Human Rights Council: Beginning of the End for Defamation of Religions?

ARTICLE 19 welcomes the draft Resolution on the Right to Freedom of Expression proposed by Egypt and the United States at the twelfth session of the UN Human Rights Council (HRC), and calls for its adoption following some amendments.

ARTICLE 19 has consistently condemned the concept of “*combating defamation of religions*”, including at the United Nations, where resolutions which argue that religion should not be criticised have been passed for several years now.

The issue has dominated national and international debates on freedom of expression for many years. It was and still is at the source of violent clashes in the streets of many cities across the world. It was also at the centre of the negotiations around the ‘Durban Review Conference’ in April 2009, and was (wrongly) used by some states to justify their non-participation in the conference. It has been a great source of tensions within the United Nations, in particular between the Western bloc and the OIC member states, and has become increasingly linked with, and representative of, a so-called “clash of civilisations”.

This is the context within which this latest draft resolution on freedom of expression, submitted by Egypt and the USA, has to be seen. From this standpoint, the resolution is a breakthrough. In particular:

- A number of provisions of the draft resolution make reference to the “international obligations” of states on freedom of expression and several provisions recall the specific wording of Articles 19 and 20 of the International Covenant on Civil and Political Rights (the “ICCPR”)
- It insists on the importance of freedom of expression, dialogues and debates, and the role of the media in combating racism, xenophobia and related intolerance
- It includes specific paragraphs on media and armed conflicts and protection of journalists
- Most importantly, the draft resolution omits reference to defamation of religion.

The current draft resolution follows thus on the spirit of the Durban Review Conference when delegates – ironically enough, without the USA, which had withdrawn – adopted a final Outcome Document which reaffirmed the importance of freedom of expression in the fight against racism, omitted the concept of defamation of religion, and sought to protect the rights of individual believers, rather than belief systems.

In many respects, the draft resolution is also in accordance with *The Camden Principles on Freedom of Expression and Equality* which ARTICLE 19 produced early this year, on the

basis of discussions and debates with high level experts on racism and freedom of expression from around the world.

Unfortunately, the draft resolution presents two main weaknesses:

- First, it includes a reference in Paragraph 3 bis on “*negative stereotyping of religions*”, a vague and difficult concept which seems to suggest that belief systems (rather than believers) ought to be protected. The context of the paragraph also seems to infer that negative stereotyping of religions may constitute a form of hate speech, an unlikely scenario as Article 20 of the ICCPR is meant to protect individuals or groups.
- Second, the current draft text makes specific reference to a resolution against which human rights advocates around the world have advocated: HRC Resolution 7/36, which unnecessarily diluted the mandate of the UN Special Rapporteur on Freedom of Expression when it requested that the Rapporteur “*report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination.*” As ARTICLE 19 argued when resolution 7/36 was first passed, it goes against the spirit of the freedom of expression mandate, it lacks balance, is unnecessary and could be misinterpreted. Following its adoption, it was used as a threat against the Special Rapporteur in the June 2009 session of the HRC when he was accused of failing to meet the terms of the resolution.

In view of the above, ARTICLE 19 recommends further revising of the draft resolution.

The text is a sound basis to seek greater protection for freedom of expression, within the terms of international human rights law. However, it needs amendments if it is to fulfil its potential to strengthen protection and respect for both the right to freedom of expression and the right for equality. In particular:

- ARTICLE 19 recommends that the text of the resolution be amended so that the reference in paragraph 3(bis) “negative stereotyping of religion” be omitted, because it weakens the resolution, both in its spirit and letter. Religious believers have a right not to be discriminated against on the basis of their beliefs. They also have the right to be protected against violence and hostility. The current wording of paragraph 3(bis), however, does not afford this level of protection to those that are in greater need of it
- Instead, the text of the draft resolution should borrow from the language agreed at the Durban Review Conference, or that proposed by the *Camden Principles* of “*negative stereotyping of individuals or groups on the basis of their religion or race*”. Such new language will in no way impact negatively on the right of believers to be protected against abuses. On the contrary, it will re-enforce it
- ARTICLE 19 also recommends that specific references to HRC Resolution 7/36 in the draft resolution – in particular those in PP1 and paragraphs 7, 8 and 12 – should be omitted.
- In the Comment ARTICLE 19 has made additional recommendations that will strengthen the text of the resolution.

The draft resolution does manage to move the terms of the debate around religious defamation, both nationally and internationally. The above proposed amendments will further consolidate these efforts and in particular ensure that both the right of freedom of expression and that of equality are mutually reinforced.

FURTHER INFORMATION:

- To view ARTICLE 19’s Comment on the Draft Resolution go to:
<http://www.article19.org/pdfs/analysis/comment-on-the-draft-text-of-the-resolution-on-freedom-of-expression-propose.pdf>

- To view the draft resolution go to: <http://www.article19.org/pdfs/laws/draft-resolution-on-freedom-of-expression.pdf>
- To view *The Camden Principles on Freedom of Expression and Equality* go to: <http://www.article19.org/advocacy/campaigns/camden-principles/index.html>
- For more information, please contact Dr Agnes Callamard, Executive Director, +44 20 7324 2500
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.