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ARTICLE 19

For immediate release – 22 March 2010

STATEMENT

UN Human Rights Council: ARTICLE 19 Calls On HRC Members to Vote Against Proposed Resolution On “Combating Defamation of Religions”

ARTICLE 19 is deeply concerned by a draft resolution on “combating defamation of religions” which has been circulated by the Organisation of Islamic Conference (OIC) at the current, 13th session of the UN Human Rights Council. ARTICLE 19 urges member states of the Human Rights Council to vote against the draft resolution or at least abstain in a vote on its adoption.

I Introduction

1. A draft resolution on “combating defamation of religions” (the “draft resolution”) has been tabled by Pakistan, on behalf of the Organisation of Islamic States, for consideration by the UN Human Rights Council (“the HRC”), which is currently being held in Geneva. The forty-seven member states of the Council are due to consider the draft resolution before the end of this session on 26 March 2010. The subject of the draft resolution is not new within UN human rights bodies. Since 1999, a series of resolutions on combating defamation of religions have been adopted by the UN Human Rights Council and its predecessor, the UN Human Rights Commission,¹ and the UN General Assembly.² Indeed, the draft resolution expressly draws influence from earlier resolutions and also makes some changes to the resolution which was adopted by the HRC at its tenth session.³
2. These changes are, however, minor in their nature and do not, in any way, diminish the criticisms which ARTICLE 19 and other groups have made against UN resolutions on “combating defamation of religions”. The purpose of this statement is to note the new features that distinguish this draft resolution from previously adopted resolutions of the HRC on the subject and to summarise ARTICLE 19’s ongoing concerns with the adoption of any UN resolution on “combating defamation of religions”.

¹ Commission on Human Rights Res. 1999/82 of 30 April 1999, 2000/84 of 26 April 2000, 2001/4 of 18 April 2001, 2002/9 of 15 April 2002, 2003/4 of 14 April 2003, 2004/6 of 13 April 2004, 2005/3 of 12 April 2005; Human Rights Council Res. 4/9 of 20 April 2007, 7/19 of 27 March 2008, 7/19 of 27 March 2008, 10/22 of 26 March 2009.

² General Assembly Res. 60/150 of 16 December 2005, 61/164 of 19 December 2006, 62/171 of 18 December 2007, 63/171 of 18 December 2008, 64/156 of 18 December 2009.

³ Human Rights Council resolution 10/22 of 26 March 2009.

II New features of the draft resolution

3. A number of new features distinguish the draft resolution from previously adopted resolutions on “combating defamation of religions” of the HRC. It is assumed these changes are supposed to assist in legitimising the concept of “defamation of religions” and to persuade states to adopt the draft resolution. These changes do not improve the draft resolution from an international human rights perspective or make it compatible with international human rights law. For that to happen, at the bare minimum, the very concept of “defamation of religions” itself would need to be eliminated altogether. The new features do demonstrate the clear will of the drafters to situate the draft resolution more directly within the framework of established international human rights law and UN human rights initiatives, and, in so doing, to legitimise and entrench the concept of “defamation of religions”.
4. *First*, the draft resolution recalls the Durban Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, as well as the Outcome Document of the Durban Review Conference held in Geneva in April 2009 (paragraph 6 of the preamble). Yet the Outcome Document of the Durban Review Conference omitted any reference at all to the notion of “defamation of religions”.
5. *Second*, the draft resolution indicates that the HRC “takes note of the report of the United Nations High Commissioner for Human Rights on possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world (A/HRC/13/57) and the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/12/38) presented to the Council at its twelfth session” (paragraph 1).
6. The reliance on both reports for this draft resolution is misleading. Neither of these reports suggests that the notion of “defamation of religions” forms an accepted part of the discourse of international human rights bodies. Indeed, the report of the High Commissioner for Human Rights refrains from making any conclusions which refer to “defamation of religions” and instead makes specific reference to a joint statement by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which states that “difficulties in providing an objective definition of the term ‘defamation of religions’ at the international level make the whole concept open to abuse”.⁴ Moreover, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in his above-mentioned report reiterates the recommendation of his predecessor to “encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred”.⁵

⁴ Joint Statement at side event during the Durban Review Conference, Geneva 22 April 2009 <http://www2.ohchr.org/english/issues/opinion/docs/SRJointstatement22April09New.pdf>

⁵ See paragraph 43 of the Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance A/HRC/12/38 1 July 2009.

7. *Fourth*, the draft resolution “[s]trongly condemns ... the ban on construction of minarets of mosques ... that stand in sharp contradiction to international human rights obligations concerning freedom of religion, belief, conscience and expression” (paragraph 8). State bans on the construction of minarets and mosques may violate the rights of observant Muslims to manifest their religion in public and are contrary to the international (and regional) human rights obligations of states. However, the prohibition and punishment of forms of expression and activities which fall within the notion of “defamation of religions”, such as criticism of religious doctrine, will not assist in responding to such bans on the construction of minarets and mosques which ought to be challenged in courts on the basis of existing human rights protections.
8. *Fifth*, the draft resolution “[r]ecognizes that the open, constructive and respectful debate of ideas as well as interfaith and intercultural dialogue at the local, national and international levels can play a positive role in combating religious hatred, incitement and violence” (paragraph 17). We are concerned about the use of the word “respectful” in this paragraph: its meaning highly subjective and open to interpretation by state authorities who may seek to inappropriately confine the nature of debates concerning the combating of religious hatred, incitement and violence. ARTICLE 19 suggests that this paragraph should reflect the UN HRC Resolution on freedom of opinion and expression adopted on 12 October 2009 which avoids such language.⁶
9. *Sixth*, the draft resolution “[t]akes note with appreciation of the High Commissioner to provide further support for the progressive development of international human rights law in respect of freedom of expression and incitement to hatred, discrimination and violence” (paragraph 19). It then “welcomes the OHCHR plans to hold a series of expert workshops to examine legislation, judicial practices and national policies in different regions, in order to assess different approaches to prohibiting incitement to hatred, as stipulated in article 20 of the ICCPR, without prejudice to the mandate of the Ad Hoc Committee on Complementary Standards” (paragraph 20). Both provisions refer to the High Commissioner’s Strategic Management Plan 2010-2011. However, this plan does not anywhere refer to “defamation of religions” and it is clear that the OHCHR’s work shall be based on existing provisions of international law, Articles 19 and 20 of the ICCPR.
10. *Seventh*, the draft resolution requests the High Commissioner to “continue to build on such initiatives, with a view to contributing concretely to the prevention and elimination of all forms of incitement and its consequences of negative stereotyping of religions and beliefs and their adherents that affects the enjoyment of human rights of concerned individuals and communities” (paragraph 20). International human rights law protects individuals and groups, but not religions or beliefs. The draft resolution’s reference to “negative stereotyping of religions and beliefs” is therefore unacceptable from an international human rights law perspective.

⁶ Paragraph 11 states: “Recognizes that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national, and international levels, can be among the best protections against racism, racial discrimination, xenophobia and related intolerance, and can play a positive role in strengthening democracy and combating national, racial or religious hatred” A/HRC/RES/12/16.

11. *Eighth*, “[r]equests the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to report on all manifestations of “defamation of religions”, and in particular on the ongoing serious implications of Islamophobia, on the enjoyment of all rights by their followers, to the Council at its fifteenth session” (paragraph 21). The Special Rapporteur should be requested to report on best practices to address advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

III Continuing challenges of “defamation of religions”

12. ARTICLE 19 recalls arguments it has already made against the concept of “combating defamation of religions” in previous statements.⁷
13. The concept of “defamation of religions” is **contrary to international human rights law on the right to freedom of expression, in particular**. Neither provisions of international human rights treaties (including Articles 19 and 20 ICCPR) nor the UN human rights treaty-based bodies tasked with their interpretation have acknowledged or elaborated upon the meaning of “defamation of religions”. Religions and religious beliefs, ideas, ideologies and institutions do not attract protection under the provisions of international human rights law, as recognised by the Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁸ Finally, the term “defamation”, however understood, encompasses expression which falls short of constituting incitement to discrimination, hostility or violence which should be prohibited under Article 20 of the ICCPR. The draft resolution uses a variety of other terms which also fall short of that standard, such as “negative” or “deliberate” stereotyping and the “[frequent and wrong association] of Islam with human rights violations and terrorism”.⁹
14. The protection of religions, religious ideas, symbols and personalities through the **application of the concept of “defamation of religions” is counterproductive to the objective of promoting equality**. Intercultural understanding can only be properly addressed through open debate and dialogue involving state actors, politicians and public figures, the media and civil society organisations.
15. Furthermore, **the concept of “defamation of religions” has been abusively relied upon to stifle religious dissent and criticism of religious adherents and non-believers in a number of countries around the world.**¹⁰

⁷ See the problems of previously adopted resolutions highlighted in ARTICLE 19, Statement of 25 March 2009 <http://www.article19.org/pdfs/press/human-rights-council-article-19-calls-on-hrc-members-to-vote-against-propose.pdf>; ARTICLE 19, Joint Written Statement submitted by ARTICLE 19 and the Cairo Institute for Human Rights Studies to the ninth session of the Human Rights Council, 11 September 2008 available at <http://www.article19.org/pdfs/press/un-resolutions-on-combating-defamation-of-religions.pdf>

⁸ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, Second Session of the HRC, A/HRC/2/3, 20 September 2006, para 38.

⁹ Paragraphs 2, 4 and 7.

¹⁰ In relation to Indonesia, for example, it is noted that at least eight people may be currently in jail having been sentenced to terms of imprisonment of between two and eight years for, in whole or in part, violating provisions in the Criminal Code pertaining to blasphemy (Article 156). See Alfitri, “Religious Liberty in Indonesia and the Rights of ‘Deviant’ Sects”, *Asia Journal of Comparative Law*, Volume 3, Issue 1, 2008.

IV Conclusion

16. ARTICLE 19 supports initiatives to combat discrimination, hostility and violence perpetrated on religious grounds. However, the draft resolution is contrary to international human rights law on the right to freedom of expression and freedom of religion and will not be effective in promoting equality in practice. The draft resolution also misleadingly relies upon established international human rights law, in particular Articles 19 and 20, as well as the recent initiatives of the OHCHR and the Outcome Document of the Durban Review Conference. If adopted, this draft resolution will add to the series of previously adopted resolutions on combating “defamation of religions” adopted by UN human rights bodies – an alarming trend which should be halted immediately. We therefore urge member states of the Human Rights Council to vote against the draft resolution or at least abstain in a vote on its adoption.

NOTES TO EDITORS

- For more information, please contact Sejal Parmar, Senior Legal Officer +44 20 734 2500 sejal@article19.org
- See letter written by 47 civil society organisations to state representatives: <http://www.article19.org/pdfs/letters/letter-from-civil-society-organizations-to-state-representatives-defamation-pdf>
- 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 freedom of expression.