



Fighting racism through freedom of expression
Dr. Agnes Callamard, Executive Director, ARTICLE 19

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Combating racism while respecting freedom of expression
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Ladies and Gentlemen, Members of Parliament, Colleagues

It is with great honor that I am addressing you this morning on the occasion of the ECRI expert seminar on “*combating racism “while” respecting freedom of expression*”. I am very grateful to ECRI for this invitation and for giving me the opportunity to present ARTICLE 19 position on an issue of immense importance to human rights.

My task is to set the frame and in the few minutes allocated, I will seek to re-frame the terms of the debate, by moving away from the “while” in the title of the seminar – Combating racism while respecting freedom of expression – and recommending instead that we combat racism **through** respecting freedom of expression.

I - The terms of our discussion today have already been profoundly shaped, if not determined, by the security agenda defined through the lenses and experiences of terrorism and counter-terrorism. It will be naïve and counter-productive to ignore this fact and deny the continued influence that the politics of security, indeed, the politics of fear, impose on our discussion. These are politics stripped of complexity and nuance, reduced to the bare bones of fear and violence. Legitimate security concerns have resulted in measures that have threatened or

undermined human rights, including freedom of expression, and created an atmosphere where differences and diversity have been under attack.

Take for instance the constant debates over Islam and Muslims throughout the Western world, although mass-obsession may be a better qualifier. Take also the call for racial profiling which is becoming increasingly legitimate across the political spectrum and across the world. The general public have been seen to take the matters in their own hands, as two young men of Asian descent recently experienced as they were boarding a plane from Spain to Great Britain.

So the first thing I want to do this morning, when framing the terms of the debate on racism and freedom of expression, is to suggest that we recognize this security context, and that we place it squarely and centrally within the frame of our discussion. And that we then seek to challenge the hegemonic notion of security that has invaded all aspects of public and private life and of the public discourse. The frame I would like to propose instead is that of **human security**, one that places **human rights** at the heart of our quest for security and insists for a definition of security predicated on freedom from fear in all its dimensions.

II - Secondly, the framing or re-framing of today's debate also requires recognizing that developments have not been linear: we have all **shared** experience of insecurity, even if varied and multi-dimensional, which has resulted in a blurring of what may have been perceived or constructed at some point as the contrasts or oppositions between respecting freedom of expression and protecting the right to be free from racism. For instance, speech restrictions that are meant, directly or not, to protect minorities against hatred, have more often than not resulted in their imprisonment or silencing, or at least in the imprisonment or silencing of the most controversial voices within these communities.

Let me give you a recent example: on November 10, in the UK, a leader of the British National Party (BNP) was cleared of charges of incitement to racial hatred¹. A day earlier, a young Muslim man, Mizanur Rahman, was convicted for incitement to race hatred at a demonstration in London after a Danish newspaper published cartoons depicting the Prophet Mohammed as a terrorist. He had carried a placard urging 'beheading those who insult Islam' and called for the deaths of British soldiers in Iraq². The two cases were very different, in terms of their context – for instance, private vs. public gatherings - and the nature of the speeches that were being delivered. But it does remain that a well-established powerful institution – a political party - whose main ideology is that of racial superiority was cleared of charges of incitement to racial hatred, while a lone individual, marching in a public demonstration, was found guilty under these same charges. The overwhelming reaction in the aftermath of the BNP verdict was that the law must be changed, on the grounds that it is clearly not strong enough if a right-wing party could be cleared of such charges. No politicians, to the best of my knowledge, question this same law two days earlier, when Mizanur Rahman was found guilty. Restrictions and repression have become the sole policy model, tacitly endorsed by all.

As a freedom of expression organization, ARTICLE 19 recognises that freedom of expression is not absolute and that some speeches are not protected under article 19 of the Universal Declaration of Human Rights (UDHR) and the international Convention on Civil and Political Rights (ICCPR). Indeed, states are under an international obligation to take actions against incitement to racial, and religious hatred, as per article 20 of the ICCPR. Hate speech laws, at least in theory, seek to meet essential human rights objectives: protecting the right to

¹ The case stemmed from speeches at private BNP meetings in West Yorkshire which were secretly filmed by the BBC. Although Mr Griffin was shown denouncing Islam as "a wicked, vicious faith" and Mr Collett repeatedly called asylum seekers "cockroaches", their defence asserted they were not speaking in public but to like-minded partisans. The speeches also contained long passages of relatively uncontentious material. This was the second time Mr. Griffith was acquitted of these charges.

² In February, the radical cleric Abu Hamza was jailed for seven years in February after prosecutors argued he had preached "terrorism, homicidal violence and hatred" during sermons he gave at the Finsbury Park mosque, in north London, and elsewhere.

equality, the right to mental and physical integrity, the right to be free from discrimination, and ultimately the right to life, as hate speeches have also been associated with ethnic cleansing, wars, and genocide. From this standpoint, hate speech regulations may constitute a legitimate and potentially necessary restriction to freedom of expression, provided they meet a number of standards highlighted by several court cases³.

Yet, as the overwhelming number of cases across the continent all too well illustrates, the relationship between protecting the right to equality and resorting to hate speech laws has become very weak, if not non-existent.

ARTICLE 19 20 years experience shows that restrictions on freedom of expression, including hate-speech legislations, rarely protect us against abuses, extremism, or racism. In fact, they are usually and effectively used to muzzle opposition and dissenting voices, silence minorities, and reinforce the dominant political, social and moral discourse and ideology. This is especially true in period of high stress level and duress, as currently and globally experienced.

In other words, these laws are not, never, the alternative to an actual commitment and policies to protect and fulfill the right to equality. The appropriate answer to hate speech is not just more anti-hate speech regulations and restrictions – but first and foremost policies and actions to tackle the causes of inequality in all its forms and colors and to empower those whose right to equality and to be free from racism is attacked or undermined.

The power of freedom of expression in the fight against racism has still to be unleashed. Instead of exploring those, we have locked ourselves in debates and policies increasingly extreme in tones, and repressive in focus. Indeed, the media itself has a fair share of responsibilities in this evolution.

³ See for instance, ARTICLE 19, *Striking a balance: Hate Speech, Freedom of Expression and Non-Discrimination*, 1992

III - For extremism sells... This is the third frame I would like to raise this morning. Let me illustrate it with a recent experience. Last week, I got a call from a journalist working for one of the best British radio programs. She was looking for some feedback on the BNP court decision I have mentioned earlier – the no guilty verdict on the charges of incitement to racial hatred. This was a judgement that needed a lot of explanation, especially as it occurred two days after a so-called “Muslim Extremist” had been found guilty of the same charges.

Having provided the journalist with an explanation and elaboration on article 20 of the ICCPR and especially incitement to hatred, and how its implementation must and can be balanced with article 19 regarding freedom of expression, she then asked whether I knew of another organisation in the UK, which after further discussion, turned out to be one that could put forward a more “absolutist” position on freedom of expression! I guess this was her understanding of a “balanced” approach to reporting: presenting not simply opposite viewpoints, but also two extremes viewpoints on some sort of imaginary scale. Strident positions and pictures too often steal the headlines. And this is not only the problem of sensationalist press or tabloid.

As I pointed out to the journalist (with little impact), the media can and should make a positive contribution to the fight against racism, discrimination, and xenophobia, to combat intolerance and to ensure open public debate about matters of public concern. The implementation of this principle does not involve putting forward **solely** extremist or absolutist images or view points, how important these may be nevertheless. Balanced reporting requires also putting forward balanced viewpoints.

There are many instruments at our disposal already to strengthen balanced and sensitive reporting, including codes of ethics, self-regulatory bodies responsible for enforcing these codes, training and capacity building, including on reporting diversity, as our colleague from the Media Diversity Institute (MDI) will well explain tomorrow, assisting minority media in finding a niche and a market for themselves, upholding and strengthening the diversity principle within Public Service Broadcasting, etc.

IV – So the last frame I would like to raise this morning is that of the positive power of free speech to promote equality, tolerance of difference and anti-racism. Let me further illustrate this point by turning to two events that occurred simultaneously on 12 October of this year, both related to violent events that took place in the early part of the twentieth century: the Armenian genocide.

On 12 October, the Nobel Prize for literature was awarded to the Turkish author Orhan Pamuk. On that day, the French National Assembly passed, by a vote of 106-19, a draft law that would make it an offence to deny the existence of the 1915 Armenian genocide. The proposal, which was put forward by the Socialist Party, is not supported by the government and the vast majority of the 557 legislators in the National Assembly walked out, in protest.

By awarding the Nobel Prize for Literature to Pamuk, the Nobel Committee not only celebrated his literary work and skills, and his explorations of East-West relations and cultures. It also ended up honouring a staunch defender of freedom of expression⁴, and by extension all voices, in Turkey and elsewhere, that are speaking out against government repression, confronting repressive laws, and talking against the predominant public consciousness and hegemonic discourse, including that which may be discriminatory, racist, etc. The 2006 Nobel decision ended up creating a space for safer, more open and transparent debates, by releasing dissent under the global limelight, and thus favoring far greater scrutiny of those that seek to keep it locked in and invisible.

The opposite outcome was reached by the French Parliament. Where the Nobel Committee opened debates and celebrated dissent, including on controversial and taboo topics, the French draft Bill sought to close and punish. As highlighted earlier, as a human rights organization, ARTICLE 19 believes that States have an international obligation to prohibit hate

⁴ Earlier this year, Mr. Pamuk was on trial for insulting “Turkishness” under article 301 of the Turkish penal code which prohibits a range of criticisms. Although the charges were eventually dropped there are still many writers and journalists facing similar charges in Turkey.

speech under Article 20 of the *International Covenant on Civil and Political Rights* (ICCPR). However, we also believe that a very careful balance between the right to freedom of expression and protection against hate speech must be sought by limiting the latter to cases of incitement to hatred, discrimination or violence. The French draft bill may only meet these strict criteria in very specific circumstances, such as when speeches denying the Armenian genocide are motivated by, and result, in hatred. Where denials of the Armenian genocide do not actually promote hatred against Armenians, they are protected speech. The French Bill is too broad in its application, and the scope for abuses of protected speeches far too great, to constitute a balanced and legitimate response. It effectively elevates history to dogma, thus preventing and punishing research and debates. It legally muzzles potentially dissenting or controversial research and publications, creates taboos, and creates or reinforces an overall atmosphere that effectively chills controversial research undertaking.

Of the two 12 October approaches, there is no doubt that one celebrated freedom of expression while bringing us closer to debates and possible reconciliations over our past. The other locked us in dogmatic interpretations that tore us further away from appeasement and common understanding.

Freedom of expression must be one of those freedoms most celebrated, especially in the face of hegemonic discourse that are upheld by fear and the threat of violence. For freedom of expression is not about protecting the voices of the powerful, the voices of the hegemonic or the voices of the consensus. Freedom of expression is concerned with protecting and defending diversity – of interpretations, of opinions, of researches. There are already many tools at our disposal – too often ignored or neglected, to uphold these key principles and objectives. We ought to explore and strengthen each one of them to build a more tolerant society. **Let's protect the right to be free from racism through freedom of expression...**