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ARTICLE 19

25 March 2009

STATEMENT

Human Rights Council: ARTICLE 19 Calls on HRC Members to Vote Against Proposed Resolution on “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 at the 10th 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. On Wednesday 11 March 2009, Pakistan, on behalf of the Organisation of Islamic States, released a draft resolution on “combating defamation of religions” for consideration by the tenth session of the UN Human Rights Council (“the Council”), currently being held in Geneva.¹ The forty-seven member states of the Council are due to consider the draft resolution before the end of the tenth session on 27 March 2009. The subject of the draft resolution is not new within UN human rights bodies. Over the past decade 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,² and the UN General Assembly.³ Indeed, the draft resolution expressly draws influence from the last of those adopted resolutions, while making some modifications to the substance of them.
2. The purpose of this statement is to provide a legal analysis of the draft resolution and, in so doing, to highlight the problems posed by it. In our view, from a human rights perspective, the draft resolution does not address the shortfalls of previously adopted resolutions on combating defamations of religions, but rather entrenches them.

¹ A/HRC/10/L.2, 11 March 2009.

² 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.

³ 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.

II Modifications

3. The draft resolution builds on and develops previously adopted Human Rights Council resolutions on combating defamation of religions in numerous ways.
4. The modifications suggest that the draft resolution has been drafted in anticipation of criticisms that may be made against it, such as those levelled at previously adopted resolutions on the subject of defamation of religions.⁴ The modifications, which are discussed below, demonstrate the clear will of the drafters to situate the draft resolution more directly within the framework of established international human rights law on freedom of expression and to legitimise and develop the concept of defamation of religions.

a. References to international law and authorities

5. *First*, and most notably, unlike previously adopted resolutions, the draft resolution contains express references to Articles 19 and 29 of the Universal Declaration of Human Rights (UDHR) as well as Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) (paragraph 9). This specific affirmation of the key international human rights provisions on the right to freedom of opinion and expression and on the obligation of states to prohibit the “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Articles 19 and 20 ICCPR) may be viewed as a positive development. By drawing a link to such international human rights provisions, however, the draft resolution appears to legitimise the concept of defamation of religions from an international law perspective, which is somewhat misleading. The notion of defamation of religions cannot find any basis in international human rights law, as indicated below.
6. The *way* in which international human rights provisions are relied upon is also misleading. Paragraph 9 of the draft resolution encapsulates Article 19(1), (2) and (3) ICCPR, but adds “general welfare”, derived from Article 29 of the UDHR, as grounds for a permissible restriction on freedom of expression. Yet “general welfare” is not included alongside “the protection of national security or of public order, or of public health or morals” as a permissible restriction on freedom of expression in Article 19 of the ICCPR. In this way the term appears as a further basis for this draft resolution on combating defamation of religion. In contrast, despite reference to Article 20 as a relevant source for the draft resolution, there is no actual reflection of the precise standard that that provision sets for restricting freedom of expression in order to protect against religious hatred – “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” – in paragraph 9 or anywhere else in the draft resolution.
7. *Second*, the draft resolution makes express references to recent initiatives of the Office of the High Commissioner on Human Rights (OHCHR), namely the report on the compilation of existing legislation and jurisprudence concerning defamation of and contempt of religions (paragraph 1) and the seminar on

⁴ See the problems of previously adopted resolutions highlighted in 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>

freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence which was held in October 2008 (paragraph 16).⁵ These references positively recall the particular attention paid by the OHCHR in the past year. However, the reliance on both the report and the seminar as support for this draft resolution is misleading; the notion of defamation of religions does not form an accepted part of the discourse of international human rights bodies. The OHCHR report concluded that across “the countries that reported on such laws, there does not appear to be a common understanding of what is considered defamation of religion”.⁶ Moreover, the OHCHR expert seminar was *not* on the subject of defamation of religions at all, but on the links between Articles 19 and 20 of the International Covenant on Civil and Political Rights.⁷

8. *Third*, there is a reference to “various regional and national initiatives to combat religious and racial intolerance against specific groups and communities” (paragraph 14, preamble). Such a vague reference to regional and national initiatives does not give weight to the argument for the adoption of a Council resolution on the particular and problematic concept of combating defamation of religions.

b. Absence of reference to OIC

9. *Fourth*, there is a marked absence of references to documents adopted by the Organisation of the Islamic Conference in the preamble of the draft resolution, unlike its adopted predecessors.⁸ This suggests that the draft resolution is intended to have a broader appeal even further beyond the membership of the organisation than previously adopted resolutions which made such references.

c. References to previously adopted resolutions

10. *Fifth*, the draft resolution makes express references to previously adopted resolutions of both the Council and the General Assembly on the issue of combating defamation of religions, specifically General Assembly resolution 63/171 of 18 December 2008 and Human Rights Council resolution 7/19 of 27 March 2008, and indications that most of the provisions of the draft resolution are grounded in them both (paragraph 15, preamble).⁹ Such references suggest that the draft resolution is intended to be part of a growing body of General Assembly and Human Rights Council resolutions on combating defamation of religions.
11. The cumulative effect of UN human rights bodies’ resolutions on the subject of defamation of religions is a worrying development.¹⁰ It is clear that the adoption of the draft resolution will lend further credence to the flawed concept of

⁵ See Report of the High Commissioner for Human Rights, Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility”, A/HRC/10/31/Add.3, 16 January 2009.

⁶ Report of the High Commissioner for Human Rights, Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility”, A/HRC/10/31/Add.3, 16 January 2009 at para 67.

⁷ http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/

⁸ See in contrast paragraphs 5, 6 and 7 of Resolution 7/19.

⁹ Paragraph 15, Preamble of the draft resolution. General Assembly Res. 63/171 of 18 December 2008; Human Rights Council Res. 7/19 of 27 March 2008.

¹⁰ <http://www.un.org/durbanreview2009/>

defamation of religions and, in so doing, undermine of the established framework of international law on human rights, on the right to freedom of expression in particular. The principle of the interdependence of human rights, which is referred to paragraph 2 of the preamble of the draft resolution, demands that the concept of defamation of religions is not given greater legitimacy through the adoption of another resolution on the subject.

d. The development of the “defamation of religions concept”

12. *Sixth*, the draft resolution appears to extend the scope of “defamation of religions” by encompassing, notably, the “targeting of ... venerated personalities of all religions” (paragraph 3) and the targeting of “religious symbols and venerated persons” through the media and internet (paragraph 8), which should be deplored. Furthermore, paragraph 4 refers to “deliberate stereotyping of religions, their adherents and sacred persons” and paragraph 14 calls upon States to “exert the utmost efforts ... to ensure that religious ... symbols are fully respected and protected”. Yet, the term “symbol” is not defined and has a potentially broad scope to cover, for example, not only the Muslim headscarf or Jewish yarmulke, but also satirical images of religious figures. The scope of the term “venerated personalities of all religions” is also impossible to determine; any limits on the individuals possibly encompassed by the term would be deeply contested by individuals and groups within a religion.

e. The linking of incitement to hatred to the flawed concept of defamation of religion

13. *Seventh*, the draft resolution draws closer links between the concepts of defamation of religions, on the one hand, and the incitement to religious hatred, on the other, than previously adopted resolutions. The way in which the term is used throughout the text suggests that defamation of religions is a clearly identifiable and distinct phenomenon that is *in itself* a “serious affront to human dignity” leading to restrictions on “the freedom of religion of their adherents and incitement to religious hatred and violence”, “social disharmony and violations of human rights” and “intolerance against the followers of religions”.¹¹ The text also refers to the “intensification of the overall campaign of defamation of religions”, as if such a campaign was similarly distinguishable, and connects defamation of religions with economic and social exclusion.¹² Yet the draft resolution, as those previously adopted before it, fails to offer any definition of the concept. In any event, the concept is inconsistent with international human rights law, as indicated below.

III Continuing conceptual challenges

14. In opposing the draft resolution, ARTICLE 19 emphasises arguments it has made previously against the concept of “combating defamation of religions”.¹³

¹¹ Paragraphs 10 and 11 of the Preamble and paragraph 2.

¹² Paragraphs 5 and 6.

¹³ See the problems of previously adopted resolutions highlighted in 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>

a. Undermining freedom of expression

15. 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. If any definition is to be inferred, it must be through the word “defamation”. Defamation, in its ordinary meaning, refers to unwarranted attacks on one’s reputation. Religions – like beliefs, ideas and ideologies – and religious institutions cannot be said to have a “reputation” of their own and do not attract protection under the provisions of international human rights law. Furthermore, the application of the concept of defamation of religion is extremely problematical as one religion or belief may easily be construed as the “defamation” of another. Finally, the term “defamation”, however understood, encompasses expression which falls short of constituting incitement to discrimination, hostility or violence. 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”.¹⁴
16. Also, the draft resolution, as previously adopted ones before it, seeks to protect not only individuals or communities which adhere to a given religion, but also the religion itself. For example, paragraph 14 of the preamble notes “the need to adopt a comprehensive and non-discriminatory approach to ensure respect for all races and religions”.¹⁵ The Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have noted: “[t]he right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs per se.”¹⁶ More recently, the Working Group on Arbitrary Detention has stated that “[d]efamation of religions may offend people and hurt their feelings but it does not directly result in a violation of their rights to freedom of religion. International law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the population or from the State prescribed one”.¹⁷

b. Failing purported objective

17. The principles of the indivisibility, interdependence and interrelatedness of human rights are reaffirmed in the second paragraph of the preamble of the draft resolution. The draft resolution goes on to note “with deep concern the instances of intolerance discrimination and acts of violence against followers of certain faiths” and that “respect for cultural, ethnic, religious and ethnic diversity, as well as dialogue among and within civilisations is essential for global peace and understanding ...” The promotion of equality and diversity as an objective is laudable. Discrimination based on religion or belief in relation to the enjoyment of civil and political rights as well as economic, social and cultural rights by both

¹⁴ Paragraphs 2, 4 and 16, and paragraph 7.

¹⁵ This paragraph is a new addition to earlier resolutions on the subject.

¹⁶ 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.

¹⁷ Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2007 at paragraph 38.

state and non-state actors occurs worldwide on a daily basis, as indicated by recent reports by the Special Rapporteur on freedom of religion or belief.¹⁸

18. Despite such assertions, the draft resolution is not well tailored to promoting equality and may actually undermine efforts in this regard because it focuses on the idea of respect for religion itself, rather than on how to promote equality in practice. It is noted that the Special Rapporteur on freedom of religion or belief has noted that penalizing defamation of religions can “be counterproductive, since it may create an atmosphere of intolerance and fear and may even increase the chances of a backlash.”¹⁹ The problems of discrimination, hostility and violence on the grounds of religion are deeply-rooted socio-economic and political phenomena, the resolution of which requires sustained and wide-ranging efforts, including in the areas of education, social dialogue and awareness-raising. While it is appropriate to sanction certain forms of hate speech, attempts to limit debate about religion will not address the underlying prejudicial attitudes that undermine equality. Instead, open debate and intercultural dialogue about such issues is needed to expose the harm created by prejudice and to combat negative stereotypes. As the Special Rapporteur on freedom of religion or belief has recently stated: “[i]nterreligious dialogue constitutes one of the principal means of countering sectarian attitudes and enhancing religious tolerance worldwide. It is a precious tool for preventing misunderstanding and violations in the area of freedom of religion or belief ...”²⁰ This statement supports international standards on minority rights requiring states to “take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs.”²¹
19. Notwithstanding references to dialogue in the preamble, the draft resolution does not positively reinforce the Special Rapporteur’s message that interreligious dialogue is one of the main tools to promote human rights, including the right to freedom of religion. Instead, the emphasis is upon sanctioning speech about religious ideas, institutions and persons.

c. Likelihood of abuse

20. It is likely that the draft resolution, if adopted, will not only fail in achieving its purported objectives, but is also likely to be abused by states seeking to stifle religious dissent and criticism. There is a real danger that, if adopted, the draft resolution would be used to support moves by states to prevent critical evaluation and debate about religions and religious institutions. Some states are already using the concept of the defamation of religions to silence dissenting voices. In this respect, we point out that this trend has been recently condemned by an expert body of the Human Rights Council, the UN Working Group on Arbitrary Detention, in the case of the Egyptian blogger, Kareem Amer. Amer was convicted of insulting the religious Al Azhar Institute and the Head of State. In its

¹⁸ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Sixth Session of the Human Rights Council, A/HRC/6/5, 20 July 2007, para 35; Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Tenth Session of the Human Rights Council, A/HRC/10/8, 6 January 2009.

¹⁹ Interim Report of the Special Rapporteur on freedom of religion or belief, A/62/280 20 August 2007 para 77.

²⁰ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Tenth Session of the Human Rights Council, A/HRC/10/8, 6 January 2009 para 18.

²¹ UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, para 4 (2).

expert opinion, the Working Group declared Amer's detention for exercising his freedom of expression arbitrary and in contravention of Article 19 of the ICCPR, among other rights.²²

21. Furthermore, states may draw upon the draft resolution as support for domestic blasphemy laws. It is recalled that such laws have been applied more widely in a discriminatory manner and to disproportionately punish members of religious minorities, dissenting believers and non-theists or atheists, in clear violation of Article 19 of the ICCPR.²³

IV Conclusion

22. ARTICLE 19 supports initiatives to combat discrimination, hostility and violence perpetrated on religious grounds. However, the draft resolution is not in accordance with international human rights law on the right to freedom of expression and freedom of religion, will not be effective in promoting equality in practice and has not been carefully tailored so as to limit the possibility of abuse. It also misleadingly relies upon established international human rights law, in particular Articles 19 and 20, as well as the recent initiatives of the OHCHR. 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

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- See Joint Written Statement submitted by ARTICLE 19, the Cairo Institute for Human Rights (CIHR) and the Egyptian Initiative for Personal Rights (EIPR) to the 9th session of the UN Human Rights Council at [LINK]
- 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.

²² Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2007 at paragraph 38.

²³ Interim Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Sixty Second Session of the General Assembly, A/62/280, 20 August 2007, para 76.