



11 September 2008

STATEMENT

NGOs: ARTICLE 19 and The Cairo Institute for Human Rights Studies (CIHRS)

Contact Person: Toby Mendel

Phone number: +1 902 431-3688

Email: a19law@hfx.eastlink.ca

Language: English

Human Rights Council

Ninth Session

Joint Written Statement submitted by ARTICLE 19, a non-governmental organisation on the Roster, and the Cairo Institute for Human Rights Studies (CIHRS), a non-governmental organisation in special consultative status

UN Resolutions on “Combating Defamation of Religions”¹

1. On the occasion of the 9th session of the UN Human Rights Council, ARTICLE 19 and the Cairo Institute for Human Rights Studies (CIHRS) would like to express serious concern about the resolutions adopted in recent years by the Human Rights Council and the General Assembly on “combating defamation of religions”.² We support the purported goals of these resolutions – namely to promote equality, understanding and dialogue. Discrimination on the basis of religion, particularly against minority religious groups, is a very serious problem and more effective measures are required to address it. At the same time, we believe that these UN resolutions are unduly restrictive of freedom of expression, are often not effective in protecting religious adherents against discrimination or in promoting understanding and tolerance, and are vaguely worded in a manner that could allow governments to use them to justify policies/actions that are in conflict with international human rights standards.

¹ The Egyptian Initiative for Personal Rights (EIPR) also shares the views expressed in this intervention.

² General Assembly Res. 60/150, 61/164, 62/154; Commission on Human Rights Res. 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, 2005/3; Human Rights Council Res. 4/9, 7/19.

2. We note that the very concept of defaming religion is unclear and lacks a sufficient basis in international law. This concept is not defined in the resolutions, which variously link it to a wide range of very different social problems ranging from stereotyping to ethnic profiling to respect for religion to hate speech. Defamation, in its ordinary meaning, refers to unwarranted attacks on one's reputation. Religions, like other beliefs, cannot be said to have a reputation of their own. The Special Rapporteur on freedom of opinion and expression has noted that "the provisions on protection of reputation contained in international human rights law are designed to protect individuals, not abstract values or institutions".³

Undermining Freedom of Expression

3. The resolutions on combating defamation of religions, although they purport to foster "dialogue and understanding among civilizations",⁴ in fact seek to impose limitations on freedom of expression which go beyond what is permitted under international law.

4. A key problem with the resolutions is that they seek to protect not only individuals or communities which adhere to a given religion but also the religion itself, as such. Thus para. 10 of the most recent resolution refers to protection of religion from contempt, while para. 11 calls for officials to respect all religions (and also not to discriminate against persons).⁵ As the Special Rapporteurs on freedom of religion or belief (Asma Jahangir) and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Doudou Diène) have noted: "The 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."⁶

5. International law recognises that the right to freedom of expression may be limited, including to protect both reputations and equality. As noted, beliefs do not have reputations, and it is not legitimate to restrict freedom of expression on this ground. Article 20 of the International Covenant on Civil and Political Rights (ICCPR) strikes an appropriate balance between freedom of expression and protection of equality by calling on States to prohibit "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

6. The resolutions go well beyond these standards. The term "defamation", however it is understood, encompasses expression which falls short of constituting incitement to discrimination, hostility or violence. The resolutions use a variety of other terms which go beyond incitement to hatred, such as 'negative' or 'deliberate' stereotyping, 'attempts to identify Islam with terrorism', and 'intolerance'. Furthermore, the resolutions suggest that the appropriate standard is respect for religions. Para. 10 of the most recent

³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, Seventh Session of the HRC, A/HRC/7/14, 7 March 2008, para. 40.

⁴ HRC Resolution 7/19, 27 March 2008, preamble.

⁵ *Ibid.*

⁶ 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.

resolution, for example, claims that respect for religions is essential for the exercise of the right to freedom of religion. It is perfectly possible to disagree, even vehemently, with a particular religious tenet, while respecting the right of others to believe it. Indeed, such disagreement is inherent in the conflicting beliefs of different religions.

7. Equally seriously, as noted above, the resolutions aim at protecting religion as such, while international law envisages hate speech rules as protecting individuals and minorities. Thus, para. 4 of the most recent resolution refers to “deliberate stereotyping of religions”, as well as of adherents and sacred persons. While these may amount to the same thing in some cases, this is not always the case and it is not appropriate to restrict freedom of expression to protect religions.

Failure to Resolve the Problem

8. The resolutions are not well tailored to promoting equality and may actually undermine efforts in this regard, in particular because they focus on the idea of respect for religion, rather than on how to effect social change in practice. The problems of discrimination and intolerance 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.

9. While it is appropriate to sanction certain forms of hate speech, limiting debate about contentious issues, including religion, will not address the underlying social problems of prejudice that undermine equality. Instead, open debate about these issues is needed to expose the harm created by prejudice and to combat negative stereotypes.

10. Discrimination and hostility against adherents of minority religions by both State and non-State actors is an extremely serious problem, as recent reports by the Special Rapporteur on freedom of religion or belief have disclosed.⁷ Moreover, international standards require 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.”⁸ The resolutions do little to address this problem and, in particular, fail to address situations where different religions hold strong contrasting views on a particular matter. In such situations, the resolutions may be used to justify the stifling of religious dissent and the oppression of minority religions.

11. The Special Rapporteur for freedom of religion has expressed concern about this problem, stating that “there are worrying trends towards applying [domestic blasphemy laws] in a discriminatory manner and they often disproportionately punish members of religious minorities, dissenting believers and non-theists or atheists”.⁹ The Human Rights Committee has also noted that restrictions on freedom of expression should not be

⁷ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Sixth Session of the HRC, A/HRC/6/5, 20 July 2007, para. 35.

⁸ UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, para. 4 (2).

⁹ 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.

applied in a manner so as “to perpetuate prejudice or promote intolerance. It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority”.¹⁰

The Possibility of Abuse

12. The language and tenor of the resolutions is such that they are open to abuse to prevent critical evaluation and debate about religions and religious institutions. This has even been a problem at the Human Rights Council. In June 2008, Egypt’s delegate to the Council repeatedly interrupted an NGO statement on violence against women in Muslim countries which was critical of the failure of Islamic leaders to condemn such violence and which linked Sharia to the stoning of adulteresses and child marriages. The delegate insisted that discussion of Sharia “will not happen” and that Islam “will not be crucified in this council”, leading the President of the Council to suspend the session and to instruct the NGO speaker not to mention Sharia. Louise Arbour, former UN High Commissioner for Human Rights, noted in respect of this incident: “It is very concerning in a council which should be . . . the guardian of freedom of expression, to see constraints or taboos, or subjects that become taboo for discussion”.

13. The vague nature of the concept of defamation of religion contributes to the possibility of abuse of these resolutions, for example to justify overly broad blasphemy laws. Blasphemy laws in many countries are used to prevent any criticism of religions, religious leaders and religious institutions, in clear breach of international guarantees of freedom of expression. It may be noted that, in many societies, religious leaders and institutions wield significant power, so that open debate about them is very much in the public interest. Furthermore, as noted above, the right to freedom of expression protects views which the majority finds offensive, shocking or disturbing. It is only where an expression would cause harm that it may be restricted.

14. ARTICLE 19 and CIHRS support initiatives to combat prejudice, discrimination and intolerance. However, such initiatives are legitimate only where they respect established international human rights guarantees, including of freedom of expression, where they are effective in promoting equality and where they are carefully designed so as to limit the possibility of abuse. The resolutions on combating defamation of religions fail to meet all three of these conditions and they should not be supported by members of the United Nations.

MORE INFORMATION:

- For more information: please contact Toby Mendel, Senior Director for Law, ARTICLE 19, tel: +1 902 431-3688, toby@article19.org, Moataz El Fegeiry, Executive Director of CIHRS, moataz@cihrs.org or Hossam Bahgat, Director, EIPR, Hossam@eipr.org
- 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.

¹⁰ *Leo Hertzberg et al. v. Finland*, Communication No. 61/1979, 2 April 1982 (individual opinion by Committee members Opsahl, Lallah and Tarnopolsky).