



Focus Paper on Defamation of Religions

March 2010

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Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, and violence.

Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others. These groups are often the first victims of societal instability and breakdown; their treatment is a harbinger of wider-scale repression. Human Rights First works to prevent violations against these groups and to seek justice and accountability for violations against them.

Human Rights First is practical and effective. We advocate for change at the highest levels of national and international policymaking. We seek justice through the courts. We raise awareness and understanding through the media. We build coalitions among those with divergent views. And we mobilize people to act.

Human Rights First is a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

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Introduction

Human Rights First has long opposed international recognition of the concept of defamation of religions, as well as efforts to create internationally binding obligations to guarantee against defamation of religions.¹ The “defamation of religions” concept is inconsistent with universal human rights standards that protect individuals rather than abstract ideas or religions.

The organization warns that the “defamation of religions” concept risks promoting an atmosphere of intolerance by providing for a context in which governments can restrict freedom of expression, thought and religion, actions that prevent the peaceful expression of political or religious views. By restricting these essential freedoms in the name of protecting religion from defamation, governments are able to stifle debate and dissent. By purporting to prohibit controversial discussion of religious beliefs, the concept permits states to determine which ideas are acceptable.

The “defamation of religions” concept creates particular problems for adherents to minority faiths that may be deemed heretical or blasphemous by a nation’s majority or state-backed religious establishments. The loose and unclear language of defamation empowers majorities against dissenters and the state against individuals; focuses too narrowly on Islam; and provides international cover for existing restrictive anti-blasphemy and religious defamation laws.

While decrying efforts to restrict freedom of expression in the name of protecting against defamation of religion, Human Rights First has done extensive work to combat violence motivated by bias on the basis of religion, as well as race, ethnicity, national origin, sexual orientation and other factors.² The organization has focused on Europe, North America and the Russian Federation, monitoring the rising incidence of violent hate crime and assessing the often inadequate response by governments. Human Rights First has promoted a 10-point plan of specific recommendations for governments to combat hate crime.³ It has not promoted laws restricting speech, but has sought to identify and advance steps that governments can take to confront hate speech and the climate of hostility that may accompany violence without prohibiting free expression.

Since 1999, Human Rights First has closely followed United Nations member states consideration of

defamation of religions in a number of different forums. This focus paper examines U.N. consideration of this concept and provides current information about the status of these discussions. It also highlights upcoming events during which defamation of religions discussions will take center stage.

“Defamation of Religions” and the OIC

Since 1999, the Organization of Islamic Countries (OIC), comprised of 57 nations, promotes Islamic values and interests and has sponsored resolutions at the United Nations (U.N.) endorsing the concept that nations have an obligation to implement laws against the “defamation of religions.” These OIC resolutions often gain the support of regional voting blocs from Africa and Asia. Such laws, supporters argue, are necessary in order to protect freedom of religion and to combat incitement to violence and discrimination.

The OIC’s efforts to adopt new “defamation of religions” standards intensified after the terrorist attacks of September 11, 2001 and other recent events that have resulted in increased tensions between Muslims and others. Though the resolutions have passed for many years, there has been significant opposition by the United States, the European Union and a growing list of other nations. In recent years, opposition to the resolution has strengthened in part because the OIC has indicated that its goal is to establish an internationally binding standard to render defamation of religions unlawful.⁴

Action at the General Assembly

On December 18, 2009, the General Assembly approved a Resolution entitled “Combating Defamation of Religions,” a measure introduced by Belarus, the Syrian Arab Republic (on behalf of OIC) and Venezuela.⁵ The resolution gained less support than in the previous year, but still passed by a vote of 81 in favor to 55 against, with 43 abstentions. The combination of delegations that opposed or abstained continues to rise from previous years, shrinking the plurality currently voting in favor of the concept.

The General Assembly resolution stresses “that the defamation of religions is a serious affront to human

dignity leading to the illicit restriction of the freedom of religion of their adherents and incitement to religious hatred and violence”⁶ and expresses “concern that the defamation of religions, and incitement to religious hatred in general, could lead to social disharmony and violations of human rights.”⁷ In addition, it notes deep concern for “the intensification of the overall campaign of defamation of religions, and incitement to religious hatred in general, including the ethnic and religious profiling of Muslim minorities in the aftermath of the tragic events of 11 September 2001.”⁸ The measure also welcomes steps taken “to protect freedom of religion through the enactment or strengthening of domestic frameworks and legislations to prevent the defamation of religions and the negative stereotyping of religious groups.”⁹

The United States voted against the General Assembly resolution because “it would not agree that prohibiting speech was the way to promote tolerance.”¹⁰ The United States urged the United Nations to “remain faithful to the central tenet of human rights law, which said that human rights were held by individuals not nations or religions.”¹¹

Sweden, on behalf of the European Union, shared the OIC’s concern that more should be done “to deal with persons who incited violence or hatred through legal means,”¹² but it “could not agree with the OIC on the concept of defamation of religion as a response to such discrimination, because it would limit freedom of expression and might endanger the atmosphere of tolerance that would enable people of different religions or beliefs to coexist without fear.”¹³ Sweden, like the United States, believes that the concept of “defamation of religion” is inconsistent with international human rights law.

Brazil abstained from the vote, stating that the resolution was not in line with international law and that the concept of defamation of religion needed to be addressed in a way that was not detrimental to other rights. India abstained due to the narrow focus on Islam and the conflation of race and religion.¹⁴ Columbia abstained out of concern that “definitions contained in the draft could give rise to diverse interpretations and might limit freedom of expression.” Among the other countries that abstained were Albania, Argentina, Ecuador, Guatemala, Japan and Kenya.

Beyond the General Assembly resolution, on July 31, 2009, the Secretary General submitted a report noting the “possible correlation between defamation of religions

and the upsurge in incitement, intolerance and hatred in many parts of the world.”¹⁵

Three months later in October 2009, the Third Committee met to hear from six U.N. human rights experts, including the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir. She addressed the issue of religious freedom,¹⁶ warning that “States must be wary of over-legislation, including the adoption of blasphemy laws.” She also said that “education and dialogue among religious leaders and youth of different faiths was more effective at reducing religious tensions than such laws.”¹⁷ Jahangir expressed concern that the incorporation of “defamation of religion” into human rights terminology, “would serve to undermine human rights.”¹⁸ She stressed that the debate about limitations to freedom of expression should be anchored in the relevant existing international framework.

Next Steps: The next session of the General Assembly will be held from September to December 2010.

Action at the Human Rights Council

At the Human Rights Council, a resolution on Freedom of Opinion and Expression proposed by Egypt and the United States (and forty-eight others) was adopted by consensus on October 2, 2009.¹⁹ This was the first session of the Human Rights Council since the United States had become a member. Though elements of the resolution were criticized, its adopted version did signify a substantial departure from a draft originally under consideration because it did not contain any reference to “defamation of religions.”

P.J. Crowley of the U.S. State Department said the resolution’s adoption was “a breakthrough precisely because it offers a vehicle for promoting responsibility without limiting free speech. The resolution recognizes freedom of expression as one of the ‘essential foundations of democracy’ and urges all nations to respect the right. It also calls for effective remedies for people, including journalists, who are persecuted for exercising free speech.”²⁰

Despite that praise, the advocacy group Article 19 criticized certain elements of the resolution, particularly language that condemns “negative stereotyping of

religious and racial groups.” The organization stated that “this language does not resolve the problems inherent in the earlier draft resolution: it is ambiguous as to what “stereotyping” refers to and it may be easily interpreted to encompass religions, religious ideas and religious symbols, none of which are protected by international law.”²¹ Furthermore, the group noted that the consensus HRC resolution did not put an end to efforts to advance the concept of defamation of religions.

Prior to the resolution’s passage, on July 1, 2009, Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted a report entitled “Combating defamation of religions.” Muigai encourages “a shift away from the sociological concept of defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred” to combat incitement to racial or religious hatred.²²

The U.N. Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, presented his first annual report to the eleventh session of the Human Rights Council on June 2, 2009.²³ La Rue came under attack for his conclusion that “the concept of “defamation of religion does not accord with international standards on freedom of expression,” as well as his reference to a joint declaration of the holders of similar mandates of other regional human rights bodies which expresses the same conclusion.”²⁴ His comments drew responses from Egypt (on behalf of the Africa Group), Pakistan (on behalf of the OIC), and individual delegations such as Algeria, Malaysia, Sudan and Yemen. Some of these states threatened to have La Rue stripped of his position as Special Rapporteur, claiming that he deviated from his mandate.²⁵ In addition, a resolution was proposed by the Non-Aligned Movement (NAM) to “limit the independence and freedom of expression of the entire independent expert system at the HRC.”²⁶

Earlier in the year, on March 26, 2009, “Combating Defamation of Religions”—a resolution proposed by Belarus, Pakistan (on behalf of the OIC), and Venezuela—was adopted in the Human Rights Council by a vote of 23 in favor to 11 against, with 13 abstentions.²⁷ This resolution was a departure from previous years because, for the first time, it specifically linked defamation of religions and incitement to religious hatred, the latter a concept recognized in international human rights law.²⁸ The resolution notes with deep concern “the intensification of the overall campaign of

defamation of religions and incitement to religious hatred in general, including the ethnic and religious profiling of Muslim minorities in the aftermath of September 11.”²⁹ It also stated that “the fight against terrorism, defamation and incitement have become aggravating factors that contribute to the denial of fundamental rights and freedoms”³⁰ and underscored “the need to combat defamation of religions and incitement to religious hatred by strategizing and harmonizing actions at the local, national, regional and international levels through education and awareness-building.”³¹

Article 19 suggests that the “Combating Defamation of Religions” resolution was drafted to gain broader support and deflect criticism by attempting to connect the resolution to established international human rights law by referencing incitement to religious hatred. Article 19 also expressed concerns about the impact the passage of the resolution would have on providing further legitimacy to the concept of “defamation of religions.”³²

Next Steps: Defamation of religion will be considered again at the 13th session of the Human Rights Council in March 2010.

Durban Review Conference

In April 2009, the Durban Review Conference was held in Geneva. Its purpose was to evaluate the progress made towards goals set by the controversial 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa. The United States, Canada, and several western European countries refused to participate in the review conference, citing concerns about repeating the antisemitism and other abuses that marred the 2001 conference. Furthermore, some countries believed that their attendance to the 2009 conference could serve to legitimize the controversial conference held in Durban in 2001.

In the new Durban Review Outcome Document, there were attempts to restrict international norms on freedom of expression although these efforts were countered. The Durban Outcome Document³³ is intended to provide the international community with a comprehensive plan of action encompassing legislative, political, and awareness raising measures to combat racism. Defamation of religion was one of several hotly contested issues that arose during the negotiation of the

draft outcome document for the conference. In the end, a compromise was reached and any reference to “defamation of religions” was omitted. Moreover, the document offered a broad reaffirmation of the right to freedom of expression and other existing international human rights laws.

During the Durban Review Conference, a joint statement was released by Githu Muigai, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Asma Jahangir, Special Rapporteur on Freedom of Religion and Belief; and Frank La Rue, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.³⁴ Together they asserted that “providing an objective definition of the term “defamation of religions” at the international level make the whole concept open to abuse”³⁵ and that “while the exercise of freedom of expression could in some extreme cases affect the right to manifest the religion or belief of certain identified individuals, it is conceptually inaccurate to present “defamation of religion” *in abstracto* as a conflict between the right to freedom of religion or belief and the right to freedom of opinion or expression.”³⁶ They welcome the fact that the debate seems to be shifting to the concept of “incitement to racial or religious hatred,” sometimes also referred to as “hate speech” and urged that the debate on these issues be framed within the provisions of the ICCPR.³⁷ They concluded that “legal responses, such as restrictions on freedom of expression alone, are far from being sufficient to bring about real changes in mindsets, perceptions and discourse” and that “the strategic response to hate speech is more speech.” The Special Rapporteurs expressed concern about the potential for arbitrary application of national legal standards pertaining to incitement to racial or religious hatred and encouraged speech that educates on cultural differences, promotes diversity, and empowers minorities.

Human Rights First actively engaged in the Durbin Review Conference to try to ensure that the failings of the 2001 conference were not repeated and to affirm the importance of freedom of expression in combating racism and intolerance. To that end, Human Rights First worked to ensure that language calling for internationally binding standards to guarantee against defamation of religions was not included. It also discouraged proposals intended to expand existing international norms on incitement to racial and religious hatred. To help States avoid the high risk that incitement laws and religious

defamation laws will unnecessarily trample upon the right to freedom of expression, Human Rights First prepared a working paper that provides a set of guidelines for states to follow.³⁸

Although the Outcome Document did not mention defamation of religions, paragraph 134 welcomed a proposal by the U.N. High Commissioner for Human Rights to hold a series of “expert workshops to attain a better understanding of the legislative patterns, judicial practices and national policies in the different regions of the world with regard to the concept of incitement to hatred, in order to assess the level of implementation of the prohibition of incitement.” Human Rights First encourages the workshops to focus on concrete steps that governments can take to combat incitement and hate speech that do not involve prohibitions of speech, as well as implementation of international legal standards rather than promoting regional approaches to the question of incitement. Human Rights First also suggests that these discussions not be aimed at redefining international laws or creating new concepts that would be inconsistent with universal human rights standards, and opposes any expansion of articles 19 and 20 of the International Covenant on Civil and Political Rights.

Ad Hoc Committee’s Work on Complementary Standards

In October 2009, the Ad Hoc Committee, created by the Commission on Human Rights as a result of the 2001 Durban Declaration, met in Geneva to consider new normative standards to combat contemporary racism, including a prohibition of incitement to racial and religious hatred.

On October 23, 2009, Pakistan, on behalf of the OIC, submitted a proposal calling for international laws criminalizing “Islamophobia” and “defamation of religions” in a new optional protocol to the International Covenant on the Elimination of all Forms of Racial Discrimination (CERD).³⁹ This proposal was similar to the resolution submitted by Syria at the General Assembly the same week.⁴⁰ Pakistan incorporated Part 5, Section 36(2) of Ireland’s Defamation Act of 2009 which was passed in July 2009.⁴¹ This raised concerns by advocacy groups that the Irish legislation was being used to legitimize the proposals of Pakistan and the OIC

to establish defamation of religion as a principle of international law.

On the same day, a proposal was also submitted by Nigeria on behalf of The Group of African States. That document, “Incitement to racial, ethnic, national and religious hatred,”⁴² mirrored the Pakistani proposal.

In response, an Open Letter to the Ad Hoc Committee was submitted by a coalition of 25 international human rights organizations. The letter expressed concern about both the Pakistani and Nigerian proposals, stating that “the concept of “defamation of religions” is contrary to freedom of expression but also the international human rights law framework more generally” and that it 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.”⁴³

As a participant in the Ad Hoc meetings, the United States government pushed back on the Pakistani and Nigerian proposals and presented an *Action Plan to Combat Racial and Religious Discrimination and Intolerance* to the Committee. The United States maintains the position that existing international laws provide effective measures to combat racial and religious intolerance and that amendments to the international human rights legal framework are not necessary. To address the “evident gaps in effective implementation by governments of their existing obligations under international human rights law,” the U.S. plan provides a “roadmap for practical action....to strengthen compliance” with existing international laws. “It is our firm belief that concrete actions to better address racial and religious discrimination and intolerance will do more to combat these scourges than years spent negotiating unnecessary legal instruments.”⁴⁴ The action plan includes several steps to combat violent hate crime and mirrors recommendations from Human Rights First.

In response to criticism of its proposal, Pakistani Ambassador Zamir Akram wrote to Idriss Jazairy, Chairperson Rapporteur of the Ad Hoc Committee, in defense of the idea of defamation of religions.⁴⁵ Akram acknowledged new trends of intolerance in the international community and stated that “the nature of international human rights law is not static but evolutionary, which provides for addressing these concerns and contemporary manifestations of racism through elaboration of new normative standards.”⁴⁶ Akram describes the proposals put forward by the OIC

as “improved versions of existing language in different U.N. resolutions, national legislations and reports of Venice Commission.”⁴⁷ Citing the recent opposition to the construction of minarets in Switzerland and the cartoon incident in Denmark, he states that “the contention that human rights standards should apply only to individuals is not credible.”⁴⁸ Akram concludes that defamation and other forms of intolerance “need to be checked by introducing a single universal international human rights framework.”⁴⁹

Next Steps: The work of the Ad Hoc Committee will be considered at the next session of the Human Rights Council in March 2010. The next session of the Ad Hoc Committee has been scheduled for October 2010.

Preparations at the Human Rights Committee

The Human Rights Committee, the body that reviews state compliance with the International Covenant on Civil and Political Rights (ICCPR), is preparing a draft General Comment to guide States Parties in the implementation of the right of freedom of expression, enshrined in article 19 of the ICCPR. This General Comment may touch on the issues of defamation of religions, laws prohibiting blasphemy, and incitement to hatred, discrimination and violence.

Next Steps: The draft will be considered when the Committee meets in March 2010 in New York.

Stay Informed

To continue to monitor “defamation of religions” developments, please visit Human Rights First’s website (www.humanrightfirst.org).

Endnotes

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