



**Tom Lantos
Human Rights Commission (TLHRC):
Hearing on:
Implications of the Promotion of “Defamation of Religions”
Wednesday, October 21, 2009
11 a.m.-2 p.m.
Rayburn B-318**

Testimony of Tad Stahnke, Human Rights First

Mr. Chairman, thank you for the opportunity to testify at this timely hearing.

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. The concept of defamation relates to religions as a whole rather than the rights of individuals to be protected from racism, racial and religious discrimination, xenophobia and related intolerance. Efforts at the United Nations to prohibit defamation threaten protections for the universal rights to freedom of expression and freedom of thought, conscience and religion. At the national level, UN experts and other human rights monitors have found that laws prohibiting blasphemy, religious defamation, injury to religious feelings and incitement to hatred can be abused by governments and others to target individuals for the peaceful expression of political or religious views, thus stifling debate and dissent. These abuses exist in some of the same countries whose governments are the strongest proponents of the defamation concept.

At the same time, Human Rights First, through its Fighting Discrimination Program works to combat bias motivated violence, in particular racist, antisemitic, xenophobic, anti-Muslim, homophobic and related violence in Europe, North America and the former Soviet Union. We have developed a set of concrete recommendations for governments to confront such violence. We have also proposed steps that can be taken by international institutions and the U.S. government, as part of its foreign policy, to promote a stronger response by governments. Human Rights First does not advocate restrictions on speech as part of this program.

Our research shows that violence targeting members of ethnic and religious minorities is a serious and growing problem in Europe, where most governments have been slow to respond. Muslims are one group among many who have been targeted for violence. While attacks on Muslims may often be motivated by racist or ethnic bias, intolerance is increasingly directed at Muslims expressly because of their religion. Muslim places of worship and women wearing the hijab are particularly vulnerable targets. These violent attacks are taking place in the context of a climate of hostility towards Muslims and those perceived to be Muslim. There is a longstanding strain of political discourse in Europe – worsened in recent years – that has projected immigrants in general and Muslims in particular as a threat not only to security but also to European homogeneity and culture.

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For many years, the United States and European countries have generally failed in their efforts to defeat proposals promoting the defamation of religions concept at the UN. Now is a good time to take a fresh look at the strategy to achieve that goal.

In that regard, I would like to make three points and then offer some recommendations:

1. The next six months provide a unique window of opportunity for the U.S. government to begin to turn the tide against defamation of religions at the UN; the failure to do so could result in a major setback.

There is a glimmer of positive momentum. Provisions on defamation of religion were dropped from the draft outcome document of the Durban Review Conference. The United States is now on the Human Rights Council, and this seems to have had, at least for now, a positive impact on the environment there. Also, at the Council session earlier this month, the United States worked with Egypt to pass by consensus a resolution on freedom of expression that – although it has one or two problematic elements – is nevertheless an improvement from the resolution passed in 2008, as the latter recognized “abuses of the right to freedom of expression that constitute acts of racial or religious discrimination.”

Despite this small measure of momentum, it is very clear that the issue is not going to go away. Defamation remains a priority for the Organization of the Islamic Conference (OIC). Defamation proponents remain a formidable force, with well-resourced and experienced diplomats focused on advancing their cause wherever they can. Indeed, the defamation issue will come up in one guise or another at numerous UN venues over the next several months, including:

The **Ad hoc Committee on the Elaboration of Complimentary Standards**, meeting now through October 30 in Geneva, where there is a serious proposal on the table to draft an international convention on the prohibition of incitement to racial and religious hatred.

The current session of the **UN General Assembly**, where we expect the OIC to introduce, as they do each year, a **Resolution on the Defamation of Religions**; under current conditions, the United States probably does not have the votes to defeat the resolution.

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 to freedom of expression; the draft may be released at the session meeting this month, or the Committee’s next session in March.

The **Human Rights Council**, where Defamation of Religions will be considered again in March.

A proposal by the **High Commissioner for Human Rights** to hold **regional seminars on incitement** to violence, discrimination and hatred; this proposal was endorsed by the outcome document of the Durban Review Conference.

Thus, the battle in opposition to the defamation of religion concept will need to be waged vigorously on several fronts simultaneously.

2. The U.S. government must become more central to the debate in order to successfully oppose threats to free expression under the guise of prohibitions on defamation of religions or of expansive interpretations of the obligation to prohibit incitement.

Virtually all other countries – both allies on the defamation issue and opponents – have viewed the United States as marginal to the defamation of religions debate. The United States is considered an outlier because of its robust First Amendment protections against restrictions on speech; most other countries allow restrictions on speech as a matter of law that are not permitted in the United States. The United States has also entered a reservation to article 20 of the ICCPR, which requires states to prohibit advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility and violence. Under U.S. law, incitement to violence can be prohibited only under certain very narrow circumstances.

Opposition to defamation of religions on the basis of its incompatibility with the First Amendment or even with existing international human rights norms has not carried the day. Continuing with this approach will likely not yield better results. Although the United States should not abandon these principles, and should not under any circumstances accept language that violates them, additional approaches should be tried.

3. The United States should promote recognition of the problem of hostility and intolerance faced by members of ethnic, religious and other groups, as well as the experience gained in this country from confronting it without restricting freedom of expression; doing so can help to reframe the debate on defamation of religions and undercut support for limitations on free speech.

As noted above, members of several minority communities in Europe face a climate of hostility and intolerance. This problem exists in many other parts of the globe as well. At the international level, the U.S. government should be promoting stronger responses by all governments to serious manifestations of hostility and intolerance, which occur in numerous countries, including the United States.

All governments can do more to respond to bias motivated violence, including by working with affected communities to investigate and prosecute those responsible for such violence as well as by ensuring that police and prosecutors have the tools and the training to do the job. Laws and policies to combat discrimination should be adopted and enforced. In addition, responses to other acts of hatred and intolerance – responses that do not involve restrictions on speech – should be identified and promoted. The rich experience of civil society groups in the United States in working together across racial, ethnic and religious lines, as well as working with law enforcement and political leaders at all levels of government can provide examples of best practices. Government officials and political leaders should be pressed to speak out more often and more forcefully to condemn acts of hatred and intolerance, especially when committed by their colleagues.

These efforts should encompass all forms of bias, and not only religious intolerance. While promoting best practices, the U.S. government should continue to highlight the human rights violations that occur as a result of abuses of laws prohibiting blasphemy, religious defamation, injury to religious feelings and incitement to racial and religious hatred.

Recommendations

To advance respect for freedom of expression while combating racial and religious discrimination and intolerance, we make the following recommendations:

- The State Department should be encouraged to deploy the resources necessary across the relevant UN bodies to confront efforts to advance the defamation of religion concept and expansive interpretations of the obligation to prohibit incitement. The goal should be to develop and deploy an experienced cadre of diplomats at both the political and working levels that can focus and operate effectively in different UN venues on these issues.
- Senior U.S. officials should raise these issues not only at the UN, but also in capitals in the course of bilateral relationships with key countries.
- The U.S. government should promote internationally an active program to combat all forms of bias-motivated violence, as specified in the attached recommendations.
- The U.S. government should also develop and advance a set of best practices on combating acts of hostility and intolerance without restricting freedom of speech, and should invite American civil society groups, Members of Congress and state and local officials to share their experiences in this regard.
- The State Department should continue to support the efforts of the UN Special Rapporteurs on Freedom of Religion or Belief, on Freedom of Expression, and on Combating Racism to document human rights violations by states in the enforcement of national laws to prohibit blasphemy, religious defamation, injury to religious feelings and incitement to racial and religious hatred, discrimination and violence.

a. *Ten-Point Plan for Combating Hate Crimes*

1. **Acknowledge and condemn violent hate crimes whenever they occur.** Senior government leaders should send immediate, strong, public, and consistent messages that violent crimes which appear to be motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law.
2. **Enact laws that expressly address hate crimes.** Recognizing the particular harm caused by violent hate crimes, governments should enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
3. **Strengthen enforcement and prosecute offenders.** Governments should ensure that those responsible for hate crimes are held accountable under the law, that the enforcement of hate crime laws is a priority for the criminal justice system, and that the record of their enforcement is well documented and publicized.
4. **Provide adequate instructions and resources to law enforcement bodies.** Governments should ensure that police and investigators—as the first responders in cases of violent crime—are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.
5. **Undertake parliamentary, inter-agency or other special inquiries into the problem of hate crimes.** Such public, official inquiries should encourage public debate, investigate ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.
6. **Monitor and report on hate crimes.** Governments should maintain official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should monitor incidents and offenses, as well as prosecutions. Governments should consider establishing third party complaint procedures to encourage greater reporting of hate crimes and conducting periodic hate crime victimization surveys to monitor underreporting by victims and underrecording by police.
7. **Create and strengthen antidiscrimination bodies.** Official antidiscrimination and human rights bodies should have the authority to address hate crimes through monitoring, reporting, and assistance to victims.
8. **Reach out to community groups.** Governments should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.

9. **Speak out against official intolerance and bigotry.** Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government leaders should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for minorities.

10. **Encourage international cooperation on hate crimes.** Governments should support and strengthen the mandates of intergovernmental organizations that are addressing discrimination—like the Organization for Security and Cooperation in Europe, the European Commission against Racism and Intolerance, and the Fundamental Rights Agency—including by encouraging such organizations to raise the capacity of and train police, prosecutors, and judges, as well as other official bodies and civil society groups to combat violent hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to these bodies in accordance with relevant commitments.