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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED FORMS OF INTOLERANCE, FOLLOW-UP AND IMPLEMENTATION OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION

**Joint written statement* submitted by Freedom House and the Becket Fund for Religious
Liberty, non-governmental organizations in special consultative status**

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[13 February 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Concern over UN Resolutions on “Combating Defamation of Religions”

1. On the occasion of the 10th Session of the Human Rights Council, Freedom House and the Becket Fund for Religious Liberty express concern over the resolutions on “combating defamation of religions” adopted by the Human Rights Council and the General Assembly since 1999¹. We urge members of the Council to reject such resolutions in the future and further urge them to reject attempts to create international instruments or mechanisms that would prohibit “defamation of religions.”
2. Although we are sympathetic to the stated goals of the resolutions of combating intolerance, racism, and religious hatred, we believe that such resolutions do not serve to achieve these goals but rather limit the ability of individuals to raise questions, concerns, and even criticisms at a time when people of all faiths need to engage in more, not less, dialogue. Moreover, we believe these resolutions directly violate existing international law regarding the fundamental freedoms of expression, thought, conscience and religion.
3. In particular, the resolutions should be rejected on the grounds that 1) the term “defamation of religions” is overly vague, open to abuse, and inconsistent with traditional defamation legislation; 2) the resolutions attempt to provide rights to a belief or idea rather than an individual or group of individuals in contradiction of existing international law; 3) the concept of “defamation of religions” restricts freedom of expression beyond accepted limitations defined in the International Covenant on Civil and Political Rights; 4) the concept of “defamation of religions” violates the universal right to freedom of thought, conscience, and religion; and 5) the concept of “defamation of religions” falsely equates religious belief with race.

Problems with the definition of “defamation of religions”

4. The term “defamation of religions” has not been clearly defined and is therefore subject to misuse and abuse. The legal term “defamation” is typically defined as the spreading of mistruths intended to harm an individual’s reputation and livelihood. However, by attempting to apply such a definition to ideas or religious beliefs, which by their very nature conflict with opposing ideas or religious beliefs, it is impossible to evaluate whether ideas or religious beliefs represent truths or mistruths. As was noted in the Becket Fund’s “Issues Brief for the OHCHR” of June 2008, “religions make conflicting truth claims and indeed the diversity of truth claims is something that religious freedom as a concept is designed to protect.”² Thus, the concept of “defamation of religions” can be defined as the expression of ideas or beliefs that simply conflict with or offend the ideas of others.
5. Further, because the resolutions call on States to enact necessary legislation to prohibit the advocacy of national, racial or religious hatred, it would be left up to governments to define whether ideas expressed are offensive or, in the language of the resolution, “defame” a religious belief. Governments would thus be forced to pick and choose among competing faith claims.
6. In countries with domestic laws that use equally vague or poorly defined language to restrict individuals from “defaming” or “defiling” religions, the government often “picks” the majority religion over minority religions. These laws are frequently applied to punish individuals from

¹ 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; General Assembly Res. 60/150, 61/164, 62/154, 63/3.

² “Combating Defamation of Religions,” Becket Fund for Religious Liberty Issues Brief, p. 5 (submitted June 2, 2008).

expressing questions, concerns and criticisms of the majority religion.³ The application of similar legal mechanisms at the international level would not only legitimate such existing problematic domestic legislation, but would result in a greater proliferation of such legislation to other countries.

Problems with providing rights to a belief or idea rather than individuals

7. International law regarding freedom of religion and expression, as defined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), has been established to protect individuals and in some case groups of individuals from the violation of their rights. Thus, Articles 18 of both the UDHR and the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion.” (Emphasis added.) Articles 19 of both documents define the right of “*everyone*” to freedom of opinion and expression free from interference. (Emphasis added.)

8. These documents lay out the right of individuals to hold and express beliefs and ideas and are designed to protect them from discrimination based on their beliefs. However, these documents are not intended to protect the beliefs themselves from criticism or even attack.

9. As the UN Special Rapporteur on freedom of religion or belief together with the Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance wrote in a joint report presented at a special seminar on this topic held by the OHCHR in October, 2008,

“Defamation of religions may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”⁴

Violations of freedom of expression

10. Article 19 of the ICCPR states that, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

11. The right to free expression and the right to impart information and ideas of all kinds is not intended to be absolute, but rather is restricted by Article 20 of the ICCPR, which calls on signatories to create law prohibiting the “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” While this language of the

³ In Egypt, bloggers, such as Abdel Kareem Nabil Suleiman, have been arrested for posting criticisms of Islam. In Pakistan, defiling Islam is punishable by death and insulting another's religious feelings can result in a ten-year prison sentence. In Saudi Arabia, all Saudis are required by law to be Muslim. Source: *Freedom in the World 2008*, Freedom House (2008).

In Russia, television stations of have been sued for blasphemous content in the popular television show “South Park.” Source: “Russian prosecutors in bid to ban South Park” *The Times*, September 8, 2008. Available at <http://www.timesonline.co.uk/tol/news/world/europe/article4704089.ece> (February 1, 2009).

⁴ Asma Jahangir, Special Rapporteur on freedom of religion and belief and Doudou Diene, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, “Conference Room Paper #4,” presented at the Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR): Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, Office of the High Commissioner for Human Rights (October 2-3, 2008).

ICCPR is itself overly vague and could be better defined, it is our belief that the term “defamation”—because it can be interpreted so broadly—does not necessarily cross the line of inciting discrimination, hostility or violence.

12. In other words, because the definition of “defamation” can be interpreted to include ideas or beliefs that simply conflict with or offend the ideas of others, the term oversteps the restrictions on free expression laid out in international law and places unnecessary and dangerous restrictions on the ability of individuals to freely express conflicting beliefs or to address disagreements through peaceful public debate. Such restrictions will have the opposite effect of increasing religious intolerance and hatred than what the resolutions on “combating defamation of religions” are purportedly designed to combat.

Violations of freedom of thought, conscience, and religion

13. Article 18 of the ICCPR protects not only the freedom to have or adopt a particular religion or belief, but also protects an individual’s freedom to manifest his religion or belief.⁵ As stated in General Comment No. 22, the freedom to manifest religion includes the sharing of beliefs, thoughts, and ideas.⁶ It is this right to manifest belief that allows for inter-religious dialogue efforts to occur within the walls of the UN and around the world. Initiatives like the UN’s Alliance of Civilizations⁷ and the Saudi Culture of Peace initiative rely upon the free exchange of ideas and beliefs. Yet such initiatives are in direct contradiction to the concept of “defamation of religions.”

CONFLATION OF RACE AND RELIGION

14. The conflation of race and religion diminishes the uniqueness of both race and religion. Unlike immutable race, religion involves the freedom to follow one’s conscience, and implies dialogue and debate with others about the truth claims involved. Treating racial and religious discrimination as the same thing thus confuses racist hate speech with debate about (sometimes controversial) competing truth claims. Whereas one can easily identify and narrowly define racist hate speech, it is not nearly so simple to define what falls into the category of “defamation of religion,” which as currently characterized can include any controversial truth claim about someone’s religion. Race-based speech restrictions have never been used to cut off discussion about racial identity, whereas the “defamation of religion” measures by definition prohibit controversial discussion of religious belief.

⁵ ICCPR Article 18: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

⁶ CCPR General Comment 22: 30/07/93 on ICCPR Article 18: “The freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private’. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts.”

⁷ <http://www.unaoc.org/content/view/63/79/lang.english/>