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## STATEMENT

### **Kenya: Timely National Conference on Freedom of Expression and Regulations against Harmful Speech**

**On 17-18 June, over 25 experts and 150 stakeholders from key national reform agencies, the United Nations, and civil society organisations including ARTICLE 19 debated the values and limits of freedom of expression and regulations against harmful speech in Nairobi, Kenya. Kenya has witnessed repeated ethnic violence during general elections and national referenda from 1992 to the present.**

The conference was organised by ARTICLE 19 Kenya & Eastern Africa together with the National Cohesion and Integration Commission. It came on the heels of recent prosecutions against political leaders charged with hate speech and incitement to violence in the conduct of their campaigns against the proposed Constitution of Kenya. The new draft constitution will be the object of a national referendum on 4 August 2010.

The Conference sought to move the acrimonious debates to a sounder international human rights basis, through a focus on Article 19 and Article 20 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the African Charter on Human and Peoples' Rights. The conference created a platform for technical readings and debates on freedom of expression and its permissible restrictions under the international human rights law. It also offered an opportunity to assess whether Kenyan hate speech regulations – particularly the National Cohesion and Integration Act, Section 13, Penal Code, Media Act, Kenya Communications Act and the Broadcasting Regulations – meet international standards.

The meeting was opened by Michael Hasenau, Deputy Head of Mission, German Embassy; Dr Mzalendo Kibunjia, Chairperson of the National Cohesion and Integration Commission in Kenya; and Dr Agnes Callamard, Executive Director, ARTICLE 19.

*“The rights to freedom of expression, equality and freedom from discrimination are universal and mutually reinforcing. They transcend ethnic, racial and cultural specificities. It does mean that censorship is not only a violation to freedom of expression. It also violates the right to equality and to be free from discrimination. Hate speech and incitement to violence strives on censorship,”* says Callamard.

Some of the key points highlighted by the experts included:

- A recognition that incitement and advocacy to hatred on the basis of sex, ethnicity, race, disability, age or religion must be prohibited (it is an obligation placed on states under international human rights law). However such restrictions must be provided in law, meet a legitimate aim, such as to protect the rights and reputations of others, and be necessary to a democratic society
- There is convergence between freedom of expression (as provided for by Article 19 of ICCPR) and the restrictions imposed by Article 20. Hate speech is “valueless speech and therefore not protected in international law”
- Restrictions of freedom of expression should be clearly and narrowly defined to ensure that they are not overbroad, and do not restrict legitimate speech or go beyond the scope of harmful speech
- Kenya has adopted a number of legislations prohibiting any advocacy of national racial, ethnic or religious hatred that constitutes incitement to discrimination, hostility or violence. However, there is still need for the state authorities to review and harmonise laws on hate speech to ensure they conform to acceptable international standards
- There was general agreement that there was no need for an additional legislation on hate speech in Kenya, but the need for testing the effectiveness of current legislation through litigation and norm-setting, including by the National Cohesion and Integration Commission
- There were debates as to the role played by the criminalisation of hate speech; for some it sets a society’s normative standards and may have an educational function. But we need to consider a range of sanctions against hate speech, not only those resulting in a restriction of freedom of expression. We need to take into account possible misuse of criminalisation, including against minorities, marginalised groups and those expressing political dissent
- A series of other mechanisms and options should be considered, such as those aiming at strengthening the participation of all minorities to the public and political life of Kenya; strengthening human rights education and knowledge, for example on religion; protecting minority and community media; ethical journalism and particularly reporting in a multi-ethnic, and multi-cultural society; intra-ethnic and intra-religious dialogue; meaningful and enforceable code of conduct for MPs and political leaders
- The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the 2001 UNESCO Declaration on Cultural Diversity and the African Commission on Human and Peoples’ Rights’ Declaration of Principles on Freedom of Expression in Africa should be promoted.

*“Hate speech regulations are required under international law. But we must be aware that this is a blunt instrument, which must be implemented carefully and wisely. In too many places around the world, hate speech regulations are used to prohibit legitimate speeches and political dissent. We must allow for a range of policies and best practices to guide interventions in Kenya,”* says Callamard.

*“We admit that the National Cohesion and Integration Commission Act was quickly assembled and some aspects of it may have been left out as has been pointed by the various speakers during the conference, especially that fact that the borderline between freedom of speech and hate speech is very thin and care must be taken to balance the two issues,”* Dr Mzalendo Kibunjia, the Chairman of the NCIC notes.

*“I appreciate that such discussions are essential because, talking about the hate speech is an important step towards solving the issue of hate speech in this country. The debates during the conference therefore produce an introductory and broad framework to facilitate future interventions on the issue without necessarily infringing on other freedoms”* he adds.

All participants to the conference emphasised the need for a continued dialogue and exchange on the issues of freedom of expression, equality and non-discrimination to build on the Conference key findings.

**FURTHER INFORMATION:**

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- 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.