



Freedom of Expression and Defamation of Religion: A Critical Juncture

**Speaking Notes, Dr Agnes Callamard, Executive Director, ARTICLE 19
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Many thanks to International Pen and to its President John Ralson Saul for inviting ARTICLE 19 and me to this very important event on the relationship between faith and free speech.

In this presentation, I would like to make two principal points: first, I will stress the importance of positive measures and obligations in addressing the tensions and conflicts between faith and freedom of expression, and second, I will highlight the need to look for different spaces and processes through which to debate the relationships between freedom of expression and the right to equality.

The international community is on the verge of a critical moment for defamation of religions. On the one hand, there has been a progressive *decrease* in support for the concept of defamation of religion. This was particularly highlighted during the March session of the Human Rights Council, where fewer states than previously voted in favour of a resolution on defamation of religion. On the other hand, the fall-out from the recent threat of a Florida pastor to burn the Koran on 9/11, bans in Europe on the wearing of the veil and the ban on the construction of minarets in Switzerland, among other things, are evidence that there is pressure for the concept to remain active and to entrench itself in international law. These dynamics are occurring alongside persistent or recurring incidents of religious-based violence and discrimination against religious minorities or women, including in Nigeria, Pakistan, Iran, or Egypt. It means the international community is at a critical juncture: it must find far more effective mechanisms for dealing with manifestations of religious intolerance and discrimination and it must, in this process, reject the concept of defamation of religions as inadequate for the purpose of addressing religious intolerance.

Blasphemy laws and the concept of defamation of religion do not protect individuals against harm. They serve instead to insulate the sensitivities of religious adherents by protecting religious ideas, symbols or objects from attack or insult. Historically and contemporarily, blasphemy laws have been used to stifle legitimate political and religious expression, imprison people belonging to minority religions or legitimate acts of violence, including killings. The Special Rapporteur on Freedom of Religion or Belief has expressed concern about blasphemy laws and suggested that a useful alternative to blasphemy laws would instead be proper implementation of Article 20 of the ICCPR, providing for prohibition of incitement to hatred, including on the basis

of religion. ARTICLE 19 has argued along the same lines since 2005, in our various expert opinions and campaigning materials.

Alternative spaces for debates

I am not convinced that the HRC currently is the right location to debate and explore further the relationship between freedom of expression and equality, between free speech and religions. In fact, I believe that such discussions are best transferred elsewhere – into safe spaces, nationally or regionally, where diverse members of our societies can debate, critique, disagree with one another without fear or favour.

The Office of the High Commissioner for Human Rights (OHCHR) is organizing a series of expert workshops on the prohibition of incitement to national, racial or religious hatred as contained in international human rights law. The value of this OHCHR process is in its possibility of genuine international dialogue. If civil society is invited to participate and its contribution taken seriously then the legitimacy of the OHCHR process outcomes will only be enhanced. In short this process must be supported to ensure broad and diverse participation, debates and perspectives.

The OHCHR consultation should not be an isolated process. The consultation should be geared for impact at a national level. Policy makers, including members of parliament (MPs), civil society groups and the media have a crucial part to play in these debates. The consultation should also feed into other fora (e.g. the Ad Hoc Committee on Complementary Standards) where there are discussions taking place that may threaten Freedom of Expression and be counterproductive to the realisation of intercultural/interreligious understanding.

In June of this year whilst in Kenya, I was able to see how such a process can work in practice and particularly how it can allow participants to identify policies and practical measures which societies and governments should adopt to address religious (or other forms of) intolerance. ARTICLE 19 supported the Kenyan National Cohesion and Integration Commission in their organization of 2 days of debate on incitement to hatred, including religious hatred. This took place in the difficult context of the pre-referendum period, and the fear to see a repeat of the mass killings and violence which had characterized the 2007 elections. The event 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 constitution was adopted in a national referendum on 4 August 2010). This conference sought to move an otherwise acrimonious debate onto the sounder ground of international human rights, doing so through a focus on Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the African Charter on Human and Peoples' Rights and Kenyan national laws. This created a platform for more practical and contextual readings of international standards and situated debates on freedom of expression and its permissible restrictions in Kenya within the framework of international human rights law. It also offered an opportunity to assess whether Kenya's hate speech regulations – particularly its National Cohesion and Integration Act, Section 13, Penal Code, Media Act, Communications Act and its Broadcasting Regulations – meet critical international standards.

Some of the key points that I extracted from this significant event which are relevant more broadly too include:

- *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 for in law. They must also meet a legitimate aim, such as to protect the rights and reputations of others, and they must be necessary to the underpinning of democratic society.
- *That such prohibition does not always or necessarily require the addition of legislation.* In Kenya we found general agreement that there is no need for a further legislation on hate speech in Kenya itself, but rather a need to test the effectiveness of existing legislation through litigation and by norm-setting, including through the work of the National Cohesion and Integration Commission.
- *That there is a need to consider a range of sanctions against hate speech and not only those that result in restrictions on freedom of expression.* In our Kenya conference we debated the role to be played by the criminalization of hate speech: for some it sets a society's normative standards and may have an educational function. However, there is a clear need to consider, as well, the possible misuse of criminalization measures, including against minorities, those expressing political dissent and other marginalized groups. Kenyan participants discussed at great length as well the role of the police and its legitimacy in addressing hate speech and intolerance.
- *A series of other mechanisms and options than criminal sanction against hate speech should also be considered:* for example, policy measures aimed at strengthening the participation of all minorities in public and political life; the strengthening of human rights education and knowledge inclusive of human rights in respect to religion and belief; protection of minority and community media; the promotion of ethical journalism, particularly for reporting in the context of a multi-ethnic and multi-cultural society; the assurance of intra-ethnic and intra-religious dialogue; and the introduction of meaningful and enforceable codes of conduct governing MPs and political leaders.

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The importance of positive obligations

Throughout our Kenya conference, speakers and other participants raised a number of issues rarely discussed here at the HRC during “defamation of religion” debates and yet these are essential to effective handling of the associated tensions and conflicts of opinion, including over the place of religion in contemporary societies. A number of these issues relate to the state's responsibilities to respect human rights but many concern governments' responsibilities to also protect and fulfill human rights.

In 2008, ARTICLE 19 brought together a panel of some 20 eminent experts who, over the course of several months, debated possible approaches to ensuring the protection and strengthening of both freedom of expression and equality. The result of these deliberations is the Camden Principles.

¹ <http://www.article19.org/advocacy/campaigns/camden-principles/index.html>

This set of principles is founded on the understanding that equality and freedom of expression are foundational rights, whose realization, jointly and severally, is essential for the enjoyment and protection of all human rights. The Camden Principles provide an interpretation of the ICCPR's Article 20(2) on hate speech regulation but they argue that protection against harmful speech, including against religious hatred, and their impacts must be achieved through a combination of measures, many of which are positive in nature.

It is interesting however that the aspect of the Camden Principles that tends to attract the greatest attention is its section on hate speech regulation. Little is made however of the Principles' critical sections on, for example, the right to be heard and the right to speak. Arguably these constitute a very demanding framework.

As ARTICLE 19 has denounced on many occasions, there has been disproportionate focus placed on restriction, including on defamation or hate speech, with far too little attention given to the positive measures that should be taken to ensure that freedom of expression and the right to equality are realized for all. Positive measures aim at, amongst other things, addressing and redressing the deep sense of silencing, powerlessness and/or alienation felt by many marginalized groups and individuals, a sense which wrongly is often used by political actors or community leaders to justify strong hate speech regulation. This disproportionate focus on hate speech regulation finds its counterpart in the media and in a generalized public obsession with "extremist" positions, all of which create a distorted and distracting dynamic.

Indeed, as experts on the Camden Principles panel and A19 have well argued, it is not necessarily the most extremist speeches that cause harm and hurt – but rather the relentless small infringements and the daily routine of racism or sexism. None of these can be solved by regulation nor restricted through the heavy, blunt instruments of censorship or by means of other of the state's possible negative interventions (even if one has in mind a kind of totalitarian state). But many of these painful daily routines (which are also directed at the silencing of others) can be offset somewhat and addressed to some extent at least through positive and balancing measures. The Principles thus also highlight the state's obligations to take positive steps to promote diversity and pluralism, to provide equitable access to the means of communication and to strengthen intercultural understanding. The Principles insist that open debate is essential if negative stereotypes about individuals and groups are to be combated and the harm caused by prejudice to be exposed.

The example set forth by our recent experience in Kenya should encourage us all to support similar initiatives elsewhere, to remain open minded and supportive of the process initiated by the HCHR around the interpretation of the ICCPR's Article 20. The Kenyan conference was a very impressive event: it brought together a large number of participants, with different viewpoints representing different segments of civil society, different faith and ethnic groups, drawn also from across the broad government and political spectrum. We did not reach an ultimate consensus nor an agreement on all aspects but we engaged in healthy debate. People spoke their minds, raised sensitive issues, shared their pain and anger about censorship and/or the lack of respect that they had experienced, raised their deep concerns about the role of the police, about the problem of corruption and about the responsibilities of political or community leaders. These were "mature" discussions conducted by people who

clearly understood that Kenya is at a cross-roads and that these critical junctures could not be wasted.