



To:

Ambassador Idriss Jazairy, Chair of the Ad Hoc Committee on the Elaboration of Complementary Standards

Madame Navenethem Pillay, United Nations High Commissioner for Human Rights

Mr Yuji Iwasawa, the Chair of the Human Rights Committee

Madame Fatimata-Binta Victoire Dah/Diallo, the Chairperson of the Committee on the Elimination of Racial Discrimination

22 October 2009

Open Letter to the UN Ad Hoc Committee for the Elaboration of Complementary Standards

ARTICLE 19, the Cairo Institute for Human Rights Studies, the Egyptian Initiative for Personal Rights, Human Rights Watch and the other human rights non-governmental organisations named below, non-governmental organisations that have contributed to the UN's human rights mechanisms and procedures in various ways over many years, are writing to express our concern about the submissions of the Organization of Islamic Conference (“OIC”), represented by Pakistan, and the African Group, represented by Egypt, to the Ad Hoc Committee for the Elaboration of Complementary Standards (“Ad Hoc Committee”) in advance of the second session taking place in Geneva from 19 to 30 October 2009.

The Ad Hoc Committee is mandated to “elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps in the Convention, and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred” (Human Rights Council resolution 6/21). However, in our opinion, many of the proposals submitted by OIC and the African Group distort and undermine existing international human rights protection of both the right to freedom of expression and equality, even though they purport to uphold the latter right.

Our concerns about the submissions of the OIC and the African Group, outlined here, are informed by the principles of universality, interdependence and indivisibility of human rights, specifically freedom of expression and equality, as well as established international treaty law on these rights. We also base our comments on the progressive interpretation of international human rights law that supports the mutually reinforcing nature of the rights to freedom of expression and equality.

Our principal concerns relate to these submissions' apparent inclusion of religions, religious ideas, objects and personalities as subjects that warrant protection under international human rights law. We are particularly concerned about the following features of the two submissions.

- **Defamation of religions:** The OIC submission proposes the development of “new binding normative standards relating to religious ideas, objects and positions while incorporating ... contemporary issues” such as “defamation of religions, religious personalities, holy books, scriptures and symbols”; “provocative portrayals of objects of religious veneration as a malicious violation of the spirit of tolerance”; “prohibition of the publication of ... gratuitously offensive attacks on matters regarded as sacred by the followers of any religion”; “abuse of the right to freedom of expression in the context of racio-religious profiling”.

As our organizations have previously argued, the concept of “defamation of religions” is contrary to freedom of expression but also the international human rights law framework more generally.¹ Moreover, the protection of religions, religious ideas, symbols and personalities through the application of the concept is counterproductive to the objective of promoting equality. Tolerance and understanding can only be properly addressed through open debate and intercultural dialogue involving state actors, politicians and public figures, the media and civil society organisations. Furthermore, the concept of defamation of religions 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.

- **Protection from offensive speech to religion:** The OIC submission proposes that a new instrument should provide for the “legal prohibition of publication of material that negatively stereotypes, insults or uses offensive language on matters regarded by followers of any religion or belief as sacred ...” and “legal restriction to public insults”. Our organizations find this provision to be extraordinarily broad and would require the sanctioning of any material which stereotypes, insults or offends any believer of any religion. In this way, critics of religions or religious interpretations, religious dissidents, adherent of minority religions and non-believers would all be criminalised for expressing their opinions. Yet international law has never protected individuals from insults or offences to their religion. Moreover, these concepts would involve largely subjective issues of interpretation as nobody in a diverse society would agree to one common set of acceptable speech. We note that the international law has always protected offensive speech in general precisely because of the subjective nature of the concept.
- **Concepts of religion-phobias:** The African Group proposes that the Ad Hoc Committee defines “Islamophobia”, “Anti-Semitism” and “Christianophobia” without offering up any definitions of these concepts itself. These categories of phobias relating to Islam, Judaism and Christianity clearly discriminate against believers of other religions and non-believers. They also demand a specific interpretation of particular religions because they assume that these

¹ <http://www.article19.org/pdfs/press/human-rights-council-article-19-calls-on-hrc-members-to-vote-against-propose.pdf>

religions were themselves homogenous and uncontested internally, when in fact religious ideas are themselves open to interpretation and dynamic.

Whilst we recognise that a number of individuals and groups face discrimination on the basis of their religion, such proposals for a new convention or additional protocol, if adopted by the Ad Committee, would threaten freedom of expression and equality within states, they would also have an impact upon the international human rights system itself, by obfuscating and distorting the focus of international human rights law since its inception upon individuals and groups. As our organizations previously pointed out, and as duly noted by the Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, international human rights standards do not protect religions *per se*.² Instead, it should be the protection of individuals on the basis of their religion or ethnicity that should be of concern. We note that this position was further reaffirmed by the Outcome Document of the Durban Review Conference³ that also focuses on protecting the rights of individual believers, rather than belief systems.

Moreover, we strongly believe that if the Ad Hoc Committee followed up on the proposals of the OIC and the African Group, it would completely overlook the necessary role played by freedom of expression in the protection of equality. Instead, we strongly encourage the Ad Hoc Committee to focus on measures that promote diversity and pluralism, promote equitable access to the means of communication, and guarantee the right of access to information and creating an enabling environment for both freedom of expression and equality.

We strongly recommend that the Ad Hoc Committee:

- **Rejects proposals for a convention or additional protocol that overstep in any way the long-established limits of international human rights law, principles and values which protect individuals and groups, rather than religious ideas, objects and symbols;**
- **Supports the proper implementation by states of existing international human rights law on freedom of expression, as guaranteed by Articles 19 and 20 of the International Covenant on Civil and Political Rights;**
- **Reflect mutually supporting and reinforcing nature of freedom of expression and equality and the need to promote both rights in the conclusions for its current, second, session as well as in its final proposal for any new measures on the subject.**

We will continue to observe closely the work of the Ad Hoc Committee. We look forward to Your Excellencies' response in connection to this matter.

Africa Democracy Forum (ADF)
Arab Penal Reform Organization
ARTICLE 19
Asian Legal Resource Centre (ALRC- Hong Kong)

² Report to the Second Session of the HRC A/HRC/2/3, 20 September 2006, paragraph 38

³ Outcome document of the Durban Review Conference,

http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.

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Conectas (Brazil)
Democracy Coalition Project (DCP)
Asian Forum for Human Rights and Development (FORUM-ASIA)
East and Horn of Africa Human Rights Defenders Network (EHAHRDN)
Group for Human Rights Legal Aid (Egypt)
Human Rights Watch
Legal Resource Consortium (Nigeria)
Moroccan Organization for Human Rights
New Woman Research Centre- Egypt
Partnership for Justice (Nigeria)
West Africa Human Rights Defenders Network (WAHRDN)
The Arab Network for Human Rights Information
The Egyptian Association for Community Participation Enhancement
The Egyptian Initiative for Personal Rights
The Yemeni Organization for Defending Rights and Democratic Freedom

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.