

**OHCHR expert workshops
on the prohibition of incitement to national, racial or religious hatred**

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I. Introduction

The topic of the 2011 expert workshops on the prohibition of incitement to national, racial or religious hatred is highly relevant for our three mandates as Special Rapporteurs, i.e. on racism, racial discrimination, xenophobia and related intolerance, freedom of religion or belief, and freedom of opinion and expression. We welcome the organization by the Office of the High Commissioner for Human Rights of these expert workshops and the possibility for us to contribute to these important discussions.

The expert workshops touch upon the rights and freedoms enshrined in the following provisions of international human rights instruments:

- Article 18 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR) on freedom of thought, conscience and religion;
- Article 19 of the UDHR and of the ICCPR on freedom of opinion and expression, respectively;
- Article 20 of the ICCPR on the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and
- Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on the eradication of incitement to racial discrimination as well as acts of violence or incitement to such acts.

In the present written submission, we first explore some legislative and judicial practices in the workshop's region, Asia-Pacific, and policies conducive to effectively prohibit and prevent advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (chapter II). We then provide some concluding remarks concerning the protection of individuals against incitement to national, racial or religious hatred (chapter III).

II. Legislative and judicial practices as well as policies in Asia-Pacific

Notwithstanding the many positive national initiatives, we would like to refer to some examples and pertinent recommendations from our mandates' country fact-finding visits in the Asia-Pacific region and our communications sent to Governments with a view to constructively engage States to help review legislative and judicial practices and policies in order to ensure compliance with international human rights standards.

1. Legislative practices

In his Human Rights Council report on **Singapore**¹, the Special Rapporteur on racism referred to several domestic legislative provisions which address the promotion of feelings of “enmity”, “ill-will” or “hostility” between members of the different ethnic groups in Singapore. In this context, section 298A of the Penal Code², section 4 of the Undesirable Publications Act³ and section 7 of the Public Order Act⁴ appear to be aimed at framing and limiting any public debate or discourse on issues that are regarded as highly sensitive. The Special Rapporteur stated that, in view of Singapore’s historical legacy, the concerns of the authorities with regard to communal tensions are understandable. However, the Special Rapporteur emphasized that it is absolutely necessary in a free society that restrictions on public debate or discourse and the protection of racial harmony are not implemented at the detriment of human rights, such as freedom of expression and freedom of assembly. During his mission, many interlocutors assured the Special Rapporteur that the Singaporean society had evolved substantially from the days of the violent confrontations 45 years ago, and that it was now able to hold open public debate on a sensitive issue like ethnicity in a dispassionate and fruitful manner. The Special Rapporteur therefore recommended that the Government remove legislative provisions preventing all individuals living in Singapore from holding open public debate on matters related to ethnicity, so that they may share their views, identify potential issues of discomfort and above all, work together to find solutions.

In his Human Rights Council report on the **Republic of Korea**,⁵ the Special Rapporteur on freedom of expression noted that the United Nations Human Rights Committee has on several occasions expressed concerns regarding the National Security Act of the Republic of Korea. Its article 7 provides that anyone who praises, incites, or propagates the activities of an anti-Government organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment of up to seven years. The Special Rapporteur reiterated his predecessor’s analysis in a previous report⁶ that only in exceptional cases can a nation’s security be directly threatened by a person’s exercise of the right to freedom of expression. Such a threat would require, at the very least, the clear establishment of the person’s ability and intention to cause the taking of actions directly threatening national security, in particular by propagating or inciting the use of violence. Given the vagueness of article 7 of the National Security Act and its impact in inhibiting discussions and exchange of views on matters of public interest, the Special Rapporteur encouraged the Government of the Republic of Korea to abolish this provision.

¹ See A/HRC/17/40/Add.2, paras. 26-28 and 62.

² Section 298A of the Penal Code of Singapore: “Whoever (a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquillity, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both”.

³ Section 4 of the Undesirable Publications Act of Singapore: “For the purposes of this Act, a publication is objectionable if, in the opinion of any controller, it [...] describes, depicts, expresses or otherwise deals with [...] (b) matters of race or religion in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups”.

⁴ Pursuant to section 7 of the Public Order Act of Singapore, the police may refuse to grant a permit for a public assembly or public procession if it has reasonable ground for apprehending that the proposed assembly or procession may “cause feelings of enmity, hatred, ill-will or hostility between different groups in Singapore.”

⁵ See A/HRC/17/27/Add.2, paras. 66-71.

⁶ See E/CN.4/1996/39/Add.1, para. 16.

In the Human Rights Council report on the **Lao People's Democratic Republic**,⁷ the Special Rapporteur on freedom of religion or belief reiterated that restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Special Rapporteur noted with concern the low threshold for limitations on the freedom to manifest one's religion or belief applied by the Lao People's Democratic Republic by seeking to outlaw "all acts creating division among religions." The Special Rapporteur argued that this domestic concept is highly subjective and could be abused by the State to prohibit religious activities that are protected under international law, such as the teaching and dissemination of religious beliefs or proselytism in general. In this context, the Special Rapporteur was concerned about reports of discriminatory application of article 13 of the Decree No. 92/PM⁸ by local authorities to the detriment of religious minorities. While welcoming the ratification in 2009 of the ICCPR by the Lao People's Democratic Republic, the Special Rapporteur regretted that the Government has felt it necessary to enter a declaration stating that all acts creating division among religions are incompatible with article 18 of the ICCPR. Arguably, the declaration of 25 September 2009 is not in line with the text and spirit of the ICCPR and the Special Rapporteur encouraged the Government to keep its declaration under review and to revisit it in the near future.

In the Human Rights Council report on **Tajikistan**,⁹ the Special Rapporteur on freedom of religion or belief reviewed several domestic provisions against incitement to hatred. For example, article 189 of the Criminal Code establishes penalties with regard to acts intended to incite ethnic, racial, regional or religious enmity. Public calls for violent change to the constitutional order of Tajikistan and the organization of activities of "extremist organizations" are punishable according to article 307 of the Criminal Code. Furthermore, the Extremism Act defines extremism as "the manifestation by legal or physical entities of the expression of extreme forms of actions, calling for destabilization, a change to the constitutional order of the country, seizure of power or appropriation of its authority, the incitement of racial, ethnic, social and religious enmity". Article 3 of the Extremism Act deals with the liability of religious organizations for extremist activities, including propaganda of exclusion, the superiority or inferiority of a citizen on the grounds of his or her relationship to religion, social, racial, ethnic, religious or linguistic affiliation. The Special Rapporteur underlined that the State must ensure that any measure taken to combat acts of terrorism complies with its obligations under international law, in particular international human rights, refugee and humanitarian law. Some anti-terrorism measures could include elements, or have unintended consequences, that undermine the respect for fundamental human rights.

In a communication sent to the Government of **Australia** on 9 July 2009,¹⁰ the Special Rapporteur on racism referred to physical assaults and verbal abuse against international students from India studying in Australia. In its reply dated 28 October 2009,¹¹ the Government of Australia affirmed its commitment to opposing intolerance and referred to recent legislative amendments, for example to the Sentencing Act in Victoria (requiring judges to take into account hatred for, or prejudice against, a particular group as an aggravating factor when sentencing) and to the Crimes (Sentencing Procedure) Act in New South Wales (providing that motivation by hatred for, or prejudice against, a group – including of people of a particular racial or ethnic origin – may be taken into account as an aggravating factor in sentencing).

⁷ See A/HRC/13/40/Add.4, paras. 29 and 67.

⁸ Pursuant to article 13 of the Decree No. 92/PM for the Management and Protection of Religious Activities, it is punishable to conduct activities inimical to the regime of the Lao People's Democratic Republic or to create divisions among ethnic groups or religions with a view to disturbing public order.

⁹ See A/HRC/7/10/Add.2, paras. 16, 48-49 and 57.

¹⁰ See A/HRC/14/43/Add.1, paras. 5-13 and 30.

¹¹ See A/HRC/14/43/Add.1, paras. 14-29.

In an allegation letter sent to the Government of the **Maldives** on 20 May 2010,¹² the Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of religion or belief voiced their concerns at provisions in the draft “Regulations on protecting religious unity of Maldivian Citizens”, which may seriously hamper the manifestation of freedom of religion or belief and stifle any related debate. Article 27 of the draft Regulations would prohibit, for example, “promoting one’s own individual opinion on issues that are in disagreement among Islamic scholars”, “inciting people to disputes” and “talking about religions other than Islam in the Maldives”. Similarly, it would be prohibited to commit any action that may offend Islamic thought (article 32), for Non-Muslims to express their religious beliefs or carry out their religious activities (article 33) and to propagate any religion other than Islam (article 34). In a report on his 2009 country visit to the Maldives,¹³ the Special Rapporteur on freedom of expression observed that people are prevented both by legislative provisions and through social pressure from expressing their views about issues relevant to religion or belief and as a result exercise self-censorship. Against this background, the two Special Rapporteurs urged the Government of the Maldives to reconsider the draft Regulations, specifically taking into account the international human rights standards on freedom of religion or belief and freedom of opinion and expression. To this end, they called upon the Government of the Maldives to allow for further debate and revision of the draft Regulations due to concerns that their implementation could have a significant negative impact on human rights in the country.

2. Judicial practices

We have received a number of reports regarding expressions of incitement to national, racial or religious hatred. Some of the incidents were allegedly not followed up by the local authorities despite that concrete information had been filed by the alleged victims with the police.

For example, in a joint urgent appeal sent on 22 September 2008 to **Pakistan**,¹⁴ the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on freedom of expression brought to the attention of the Government information they had received concerning threats made against members of the Ahmadiyya community. Reportedly, thirty-four years after the adoption of the law related to the Ahmadiyya community in Pakistan, GEO Television broadcasted a programme on 7 September 2008 that included a panel discussion during which two Maulanas reportedly said that, in reference to the beliefs of the Ahmadiyya community, people who held such beliefs were “Wajb-ul-Qatl” or “liable to death”. This phrase was reportedly used repeatedly during the programme. On 8 September 2008, the President of the Ahmadiyya community in Mirpurkhaas was murdered while working in the local hospital and, on the following day, the President of the Ahmadiyya community in Nawab Shah was also killed. The Special Rapporteur on freedom of religion or belief regretted that she had not received a reply from the Government of Pakistan concerning the above mentioned allegations and expressed concerns at the continued violations of freedom of religion or belief suffered by members of the Ahmadiyya community, including through incitement to religious hatred.

In a joint communication sent to the Government of **Saudi Arabia** on 2 February 2010,¹⁵ the Special Rapporteurs were concerned about threats made against members of the Shi’a community. Allegedly, a Government-appointed Imam had delivered a Friday prayer speech in Al-Bourdi mosque in which he called for the elimination of all Shi’a believers in the world,

¹² See A/HRC/16/53/Add.1, paras. 227-245 and A/HRC/17/27/Add.1, paras. 1523-1533.

¹³ See A/HRC/11/4/Add.3, para. 46.

¹⁴ See A/HRC/10/8/Add.1, paras. 166-170.

¹⁵ See A/HRC/16/53/Add.1, paras. 362-366.

including those residing in the Kingdom of Saudi Arabia. Furthermore, he stated that Shi'a believers were not true Muslims, their doctrine was based on blasphemed principles and that they were remnants of an old Persian religion. Furthermore, while wearing a Saudi military uniform, he had reportedly urged the Saudi soldiers in the border area to Yemen to kill all Shia's they can see in their fight against rebels. Reportedly, the Saudi authorities have not taken any legal action against the Imam, who receives a monthly salary from the Government and delivers speeches on national television and radio. In addition, the Imam's speeches are available online on Internet websites. The Special Rapporteurs highlighted the principle that the right to freedom of expression carries with it special duties and responsibilities. In this regard, they also referred to Human Rights Council resolution 12/16, in which the Council condemns "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, consistent with their obligations under international human rights law, to address and combat such incidents."

Intra-religious violence and incitement thereto was also mentioned by the Special Rapporteur on freedom of religion or belief in the Human Rights Council report on **Sri Lanka**.¹⁶ Representatives of a Sufi group in Batticaloa told the Special Rapporteur about the difficulties they had suffered for 25 years. Between 1979 and 1982 their mosque was burned three times, and, in September 2004, Muslim organizations allegedly incited a mob which destroyed the mosque used by 32 Sufi families. The attack went on for seven days and, shortly afterwards, a fatwa was pronounced against their leader, declaring him an infidel. It was subsequently withdrawn under the condition that the Sufi leader would give up teaching Sufism. The Special Rapporteur condemned all acts of religious violence and intolerance that have been committed in Sri Lanka against any religious communities, but also within religious communities. The Special Rapporteur reiterated that the Government of Sri Lanka has to fulfill its positive obligation to protect the right to freedom of religion or belief of all its citizens, irrespective of the religious community to which they belong.

In the Human Rights Council report on **Israel and the Occupied Palestinian Territory**,¹⁷ the Special Rapporteur on freedom of religion or belief was concerned about tendencies towards increased radicalization and serious examples for advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. The Special Rapporteur referred to examples of recent indictments and judgments in Israel concerning cases of incitement to racism against the Arab population or hate crimes¹⁸ as well as to reported incidents where advocacy of religious hatred or acts of violence by Jewish settlers against Muslims had not been adequately investigated. Furthermore, the Special Rapporteur was worried about reports from the Occupied Palestinian Territory on cases of incitement to religious hatred vis-à-vis Jews, for example a broadcast in March 2007, in which the interviewer from Al-Aqsa TV in Gaza asked the two young children of a Palestinian suicide bomber "how many Jews" their mother had killed and if they wanted to join her in paradise. The Special Rapporteur stressed that – both in the State of Israel and in the Occupied Palestinian Territory – any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be effectively investigated, prosecuted and punished. Similarly, any related violent acts should be investigated in a prompt, transparent and independent manner, the perpetrators should be prosecuted and sentenced, and avenues for redress and protection should be offered to victims.

¹⁶ See E/CN.4/2006/5/Add.3, paras. 99 and 112-113.

¹⁷ See A/HRC/10/8/Add.2, paras. 55-57 and 84.

¹⁸ See Third Periodic Report of the State of Israel concerning the implementation of the International Covenant on Civil and Political Rights, CCPR/C/ISR/3, paras. 337-339.

We are also worried about the vague formulation of some domestic legal provisions that are designed to combat “incitement to religious unrest”, “promoting division between religious believers and non-believers”, “inciting to violation”, “instigating hatred and disrespect against the ruling regime”, “inciting subversion of state power” or to “offences that damage public tranquility”:

- *“Incitement to religious unrest”*: In a communication sent to the Government of **Turkmenistan** on 25 July 2007,¹⁹ the Special Rapporteur on freedom of religion or belief referred to the case of a Ukrainian citizen, expelled in 2001 for inciting “religious unrest” for having organized prayer groups and religious meetings for an unregistered Baptist group. After being released with neither money nor food across the border in Kazakhstan he allegedly had no option but to return to Turkmenistan, where he was subsequently sentenced by the Turkmenbashi city court to three years of hard labour for crossing the border illegally.
- *“Promoting division between religious believers and non-believers”*: In the report to the Commission on Human Rights concerning his country visit to **Viet Nam**,²⁰ the Special Rapporteur on freedom of religion or belief criticized that Vietnam’s Penal Code provides for heavy penalties, including life prison terms and death penalty, for particularly vaguely worded offences, e.g. for “attempts to undermine national unity by promoting division between religious believers and non-believers”. The Special Rapporteur recommended to bring domestic legislation into conformity with international law, including the ICCPR, and to eliminate the use of vague, imprecise and “catch-all” expressions. However, problems related to the application of vaguely worded offences still seem to be prevalent in Viet Nam. This is illustrated by the Special Rapporteur’s communication of 3 February 2010,²¹ concerning alleged incitement to violence by the police against a Protestant convert and the interpretation of Ordinance 21/2004/PL-UBTVQH11 which provides that religious activities will be suspended if they “negatively affect the unity of the people or the nation’s fine cultural traditions”. In its response of 17 June 2010, the Government of Viet Nam argued that the Protestant convert had demolished the traditional animist places of worship of his family, which incited a dispute on beliefs within the family members and caused violent reactions, including a punch from the father.²²
- *“Incitement to violation”*: The Special Rapporteur on freedom of religion or belief sent a communication to the Government of the **Islamic Republic of Iran** on 30 August 2007,²³ with regard to the trial of the Shi’a cleric Ayatollah Seyed Hossein Kazemini Boroujerdi, allegedly in relation to his support for freedom of religion and the separation between religion and politics. In its response dated 14 February 2008, the Government indicated that Mr. Boroujerdi had himself committed illegal acts of “incitement to violation”, including by openly stating that the Government of Iran was an oppressor and that judges were not competent to try him in court, repeating the claim that the Government had killed his father. In her observations on the case, the Special Rapporteur emphasized that limitations to freedom of expression and freedom of religion or belief are strictly defined in international law, for example in articles 18 (3), 19 (3) and 20 (2) of the ICCPR and in this regard she referred to the report on the OHCHR expert seminar, held in Geneva in October 2008.²⁴

¹⁹ A/HRC/7/10/Add.1, para. 252.

²⁰ See E/CN.4/1999/58/Add.2, paras. 26-27 and 110.

²¹ See A/HRC/16/53/Add.1, paras. 432-440.

²² See A/HRC/16/53/Add.1, paras. 441-447.

²³ See A/HRC/7/10/Add.1, paras. 127-129 and A/HRC/10/8/Add.1, paras. 81-85.

²⁴ See A/HRC/10/8/Add.1, para. 85 and A/HRC/10/31/Add.3.

- *“Instigating hatred and disrespect against the ruling regime”*: In an urgent appeal sent to the Government of **Bahrain** on 19 February 2009,²⁵ the Special Rapporteur on freedom of expression and the Special Rapporteur on the situation of human rights defenders referred to the prosecution of a representative of the non-governmental organization Front Line, who had delivered a speech denouncing instances of corruption and discrimination in Bahrain and calling for resistance to human rights violations by peaceful means and civil disobedience. Concern was expressed that the charges against him, including for “publicly instigating hatred and disrespect against the ruling regime”, may be related to his legitimate activities defending human rights, particularly his defense of freedom of expression in Bahrain. In its reply of 1 April 2010,²⁶ the Government of Bahrain argued that the NGO representative had made a number of untrue and inflammatory allegations against the government and against members of the ruling family with the purpose of inciting hatred. While acknowledging that he “evidently attempted to choose his words carefully (doubtless for international consumption), to give the impression that he was advocating ‘peaceful resistance’,” the Government of Bahrain indicated that it was “abundantly clear from the timing, tone and content of his remarks that his intention was to defame the government and individuals within it, and to incite and promote violence against the government, its employees and property.”
- *“Inciting subversion of state power”*: Several communications sent recently to the **People’s Republic of China**²⁷ relate to the application of article 105 (2) of the Penal Code, which prohibits “inciting subversion of state power”. The Special Rapporteur on freedom of expression voiced his concerns that the Government of China continues to charge and imprison human rights defenders and bloggers on the basis of article 105 (2) of the Penal Code, which carries a sentence of up to five years of imprisonment, or more in case of severe crimes. The Special Rapporteur reiterated his concern regarding the vagueness of the broad prohibition of “subversion of state power” and underscored that any limitation imposed on the right to freedom of expression sought to be justified on the ground of national security is not legitimate unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.²⁸ Any restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect Government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology or to suppress industrial unrest.
- *“Incitement to offences that damage public tranquility”*: In joint urgent appeals and a press release on **Myanmar**,²⁹ the Special Rapporteur on freedom expression and the Special Rapporteur on freedom of religion or belief raised the cases of detained leaders of the peaceful protests held in August and September 2007. Some were charged for incitement to offences that damage “public tranquility” or for attempting to incite civil unrest by placing

²⁵ See A/HRC/14/23/Add.1, paras. 98-102.

²⁶ See A/HRC/14/23/Add.1, paras. 103-111.

²⁷ See A/HRC/17/27/Add.1, paras. 427, 446, 450, 480, 543, 544, 547, 557, 573 and 584.

²⁸ See Principle 6 of the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (E/CN.4/1996/39, Annex).

²⁹ See A/HRC/7/10/Add.1, paras. 186-189; A/HRC/10/8/Add.1, paras. 150-157; and joint press release of 18 November 2008 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8894&LangID=E>).

a poster with anti-government slogans at a public place. The Special Rapporteurs voiced their concerns that the closed-door hearings were held inside prisons by courts which lack independence and impartiality; three of the defence lawyers had been sentenced to several months of imprisonment for contempt of court, after they transmitted their clients' complaints of unfair trials. In November 2008, a dozen detainees, including several women, were each given 65-year prison sentences. The Special Rapporteurs strongly urged the Myanmar authorities to cease harassing and arresting individuals for peacefully exercising their internationally recognized human rights. Furthermore, the Special Rapporteurs called on the authorities to undertake a comprehensive review of national legislation to ensure its compliance with international human rights standards, to release political prisoners of conscience and to reform the armed forces and the judicial system.

In addition, we have repeatedly criticized the discriminatory application of domestic *anti-blasphemy laws* and their adverse consequences, either directly or indirectly, especially for members of religious minorities:

- For example, an urgent appeal sent to the Government of **Pakistan** on 27 July 2010,³⁰ concerned the killing of two Christian brothers in Faisalabad. They had been arrested in Faisalabad on 2 July 2010, on charges of having written a pamphlet with derogatory remarks in respect of the Prophet Mohammad, which pursuant to section 295-C of Pakistan's Penal Code is punishable with death or imprisonment for life. On 7 July 2010, during a procession in Warispura, local Muslim residents chanted threatening slogans against Christians, calling for the hanging of the two brothers. At a public meeting on 11 July 2010, Muslim leaders from various political parties allegedly reiterated death threats against the brothers and announced that a set of gallows had been set up in the centre of Faisalabad, in preparation for the hanging of blasphemous Christians. On 19 July 2010, the brothers were taken to their hearing at the sessions court in Faisalabad city, however, when leaving the court under police custody they were killed by two unidentified gunmen who managed to escape despite the presence of a number of police officers. The late Federal Minister for Minority Affairs of Pakistan³¹ reportedly said he suspected that the two brothers had been falsely accused of blasphemy by people with a grudge against them.
- Further urgent appeals sent to **Pakistan** on 22 November 2010 and 24 January 2011,³² took up the case of a Christian woman, who had been sentenced to death on blasphemy charges under section 295-C of Pakistan's Penal Code by the Sheikhpura district and sessions court. Reportedly, in June 2009, a group of Muslim women from the village of Ittanwali had claimed that the water the Christian woman served was "unclean". When the Christian woman maintained that her religion was as good as any and refused to convert to Islam, a mob led by a local Muslim religious leader reportedly tried to attack her and she was taken by the police into so-called "protective custody". Subsequently, she spent more than a year as an under-trial prisoner on blasphemy charges at Sheikhpura District Jail. In this context, the Special Rapporteurs stressed the risk that efforts to combat blasphemy may be manipulated for purposes contrary to human rights and that any blasphemy legislation should not be used to censure all inter-religious and intra-religious criticism.³³ They also recommended a review of the Penal Code, reiterating that a useful alternative to blasphemy

³⁰ See A/HRC/16/53/Add.1, paras. 300-314.

³¹ See also the joint press release of 2 March 2011, in which four Special Procedures mandate-holders expressed their outrage and condemned the ambush and killing of the Minister for Minority Affairs of Pakistan, Mr. Shahbaz Bhatti (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10786&LangID=E>).

³² See A/HRC/16/53/Add.1, paras. 326-335 and A/HRC/17/27/Add.1, paras. 1741-1757.

³³ See E/CN.4/2000/65, para. 111; A/HRC/16/53/Add.1, para. 334; and A/HRC/17/27/Add.1, para. 1759.

laws is to fully implement the protection of individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.³⁴

- In the report to the 65th session of the General Assembly,³⁵ the Special Rapporteur on freedom of religion or belief called on States to focusing their attention on the protection of believers and non-believers against discrimination and violence, rather than trying to shield religions *per se* against criticism or ridicule. The Special Rapporteur noted, however, that in some countries there still appears to be resistance to abandoning the criminalization of blasphemy or to repealing discriminatory provisions that purport to combat “defamation of religions”. On 19 April 2010, for example, the Constitutional Court of **Indonesia** upheld the country’s anti-blasphemy law (No. 1/PNPS/1965), which imposes criminal penalties of up to five years’ imprisonment on individuals who deviate from the basic teachings of the official religions. The Special Rapporteur also sent urgent appeals on 21 April and 12 June 2008,³⁶ with regard to the situation of the Ahmadiyya community in Indonesia. The Special Rapporteur criticized the Government’s argument in its reply letter of 27 June 2008, according to which the Government “appeals to the Ahmadiyya followers to return to the Islamic mainstream religion”. In this regard, the Special Rapporteur reiterated that, apart from the legal courses available against harmful activities, “it is not the business of the State or any other group or community to act as the guardian of people’s consciences and encourage, impose or censure any religious belief or conviction.”³⁷

3. Policies

We would like to briefly refer to some policies and civil society initiatives conducive to effectively prohibit and prevent advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

In the Human Rights Council report on **India**,³⁸ the Special Rapporteur on freedom of religion or belief acknowledged the Prime Minister’s *New 15 Point Programme for Welfare of Minorities*, which unequivocally states that the prevention and control of communal riots is a basic duty of the State. This programme, as adopted by the cabinet of the central government on 22 June 2006, notes that minority communities have suffered loss of lives and property on account of communal violence in the past decades and that the welfare of minority communities is inextricably linked with the effectiveness of measures adopted to address this issue. It furthermore emphasizes that district and police officials of the highest known efficiency, impartiality and secular record must be posted in areas which have been identified as communally sensitive and riot prone (point 13). With regard to prosecution for communal offences, the programme indicates that special courts or courts specifically earmarked to try communal offences should be set up so that offenders are brought to justice speedily (point 14). Finally, the programme states that victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation (point 15). The Special Rapporteur lauded the Prime Minister’s *New 15 Point Programme for Welfare of Minorities* as well as various reports on religious minorities, for example the reports issued by the committees headed by Justice Rajinder Sachar in 2006 and by Justice Renganath Misra in 2007. Such committees mandated by the Government are good examples of mechanisms put in place to analyse the situation and put forward recommendations for Government action.

³⁴ See A/62/280, para. 76; A/HRC/16/53/Add.1, para. 334 and A/HRC/17/27/Add.1, para. 1759.

³⁵ See A/65/207, para. 44.

³⁶ See A/HRC/10/8/Add.1, paras. 55-68.

³⁷ See E/CN.4/1997/91, para. 99; A/HRC/4/21, para. 46; and A/HRC/10/8/Add.1, para. 68.

³⁸ See A/HRC/10/8/Add.3, paras. 41 and 60-61.

Concrete follow-up to such recommendations both at the national and at the state levels seems vital in order to address the problems identified in these reports. The Special Rapporteur also highlighted the importance of applying a gender perspective and having an adequate representation of women in national minority or human rights commissions, since the Special Rapporteur had noted that women's groups across religious lines had been the most active and effective human rights advocates in situations of communal tension in India.

In the Human Rights Council report on **Lao People's Democratic Republic**,³⁹ the Special Rapporteur on freedom of religion or belief noted with interest that the Government has adopted a Legal Sector Master Plan which, inter alia, calls for the implementation of a research project on customary justice practices by collecting local and customary rules especially among minority ethnic people. Research is currently being implemented by the Ministry of Justice and the United Nations Development Programme, which may ultimately lead to a better understanding of customary legal practices and improved access to justice for villagers living in remote areas. The Special Rapporteur emphasized that it should also promote the application of international human rights standards, including on freedom of religion or belief as enshrined in the International Covenant on Civil and Political Rights.

During his mission to the **United Arab Emirates**,⁴⁰ the Special Rapporteur on racism was particularly impressed by the human rights strategy designed by the Dubai Community Authority Development, which is responsible for setting up and developing frameworks for social development in Dubai. This governmental institution, which aims at reaching out to all individuals within the society, including non-nationals residing in Dubai, will most probably help raise awareness about human rights and instill a human rights culture in Dubai. Therefore, the Special Rapporteur expressed his hopes that such a local institution could be turned in the near future into a full-fledged and Paris Principles-compatible national human rights institution covering all seven Emirates with an oversight mandate, including the monitoring of racism, racial discrimination, xenophobia and related intolerance.

The Special Rapporteur on freedom of religion or belief has in several country mission reports⁴¹ referred to promising approaches of **inter-faith and intra-faith dialogue** on various levels and has encouraged that such concrete initiatives, especially at the grass-roots level, should be fostered and encouraged in order to bridge the divides along religious lines. According to the Special Rapporteur, interfaith dialogue, ideally including members of civil society and women, might prevent misunderstandings and help defuse tensions and promote tolerance as well as mutual understanding.

We would also like to refer to the **Musawah Framework for Action**, which provides a conceptual framework for Musawah, a global movement for equality and justice in the Muslim family. The Musawah Framework for Action has been developed by a core group of Muslim activists and scholars, coordinated by Sisters in Islam (Malaysia), comprising a twelve-member planning committee from eleven countries. The Musawah Framework for Action, inter alia, states: "We, as women and men who embrace the Islamic and universal values of equality and justice, call for a renewal of these values within the Muslim family. We urge our governments and political leaders, international institutions, religious leaders, and our sisters and brothers to come together to ensure that our family laws and practices uphold these values."⁴²

³⁹ See A/HRC/13/40/Add.4, para. 71.

⁴⁰ See A/HRC/14/43/Add.3, para. 23.

⁴¹ See A/HRC/7/10/Add.2, para. 62; A/HRC/10/8/Add.2, paras. 73 and 85; and A/HRC/13/40/Add.4, para. 63.

⁴² See <http://www.musawah.org/docs/framework/Musawah-Framework-EN.pdf>.

The **Johannesburg Principles on National Security, Freedom of Expression and Access to Information**⁴³ were adopted on 1 October 1995 and have been endorsed by the Special Rapporteur on freedom of opinion and expression in several reports and referred to by the Commission on Human Rights in annual resolutions on freedom of expression since 1996. The Johannesburg Principles refer to issues of incitement in the following provisions:

“Principle 2: Legitimate National Security Interest

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. [...]

Principle 6: Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Principle 7: Protected Expression

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

- (i) advocates non-violent change of government policy or the government itself;
- (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;
- (iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;
- (iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.”

The **Camden Principles on Freedom of Expression and Equality**⁴⁴, prepared in 2009, represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognized by the community of nations. The Camden Principles also address the issue of incitement to hatred and in this context Principle 12 provides the following:

“12.1. All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation, that:

⁴³ See E/CN.4/1996/39, Annex.

⁴⁴ See <http://www.article19.org/advocacy/campaigns/camden-principles>.

- i. The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
 - ii. The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group.
 - iii. The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
 - iv. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.
- 12.2. States should prohibit the condoning or denying of crimes of genocide, crimes against humanity and war crimes, but only where such statements constitute hate speech as defined by Principle 12.1.
- 12.3. States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech as defined by Principle 12.1.
- 12.4. States should ensure that persons who have suffered actual damages as a result of hate speech as defined by Principle 12.1 have a right to an effective remedy, including a civil remedy for damages.
- 12.5. States should review their legal framework to ensure that any hate speech regulations conform to the above.”

We also note the positive development of the adoption, without a vote, by the **Human Rights Council** of resolution 16/18, entitled “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief”.⁴⁵ In this resolution, the Human Rights Council “condemns any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual or electronic media or any other means” (operative paragraph 3). It also “recognizes that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels can be among the best protections against religious intolerance, and can play a positive role in strengthening democracy and combating religious hatred, and convinced that a continuing dialogue on these issues can help overcome existing misperceptions” (operative paragraph 4). Furthermore, the resolution notes the speech given by the Secretary-General of the Organization of the Islamic Conference, Ekmeleddin İhsanoğlu, at the 15th session of the Human Rights Council and draws on his call on States to take several actions to foster a domestic environment of religious tolerance, peace and respect (operative paragraph 5 (a) to (h)). Finally, the Human Rights Council “calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs, and decides to convene a panel discussion on this issue at its seventeenth session within existing resources” (operative paragraph 9). We very much appreciate that the Human Rights Council has – after years of debate – ultimately found a way to unanimously address these worrying phenomena without referring to concepts or notions that would undermine international human rights law. In this context we would like to emphasize the principle that individuals rather than religions *per se* are the rights-holders.

⁴⁵ See A/HRC/RES/16/18, adopted on 24 March 2011.

III. Concluding remarks

We have repeated on a number of occasions that all human rights are universal, indivisible and interdependent and interrelated. Nowhere is this interdependence more obvious than in the discussion of freedom of expression and incitement to national, racial or religious hatred.

The right to freedom of expression constitutes an essential aspect of the right to freedom of religion or belief and therefore needs to be adequately protected in domestic legislation. Freedom of expression is essential to creating an environment in which a critical discussion about religion can be held. For freedom of thought, conscience and religion to be fully realized, robust examination and criticism of religious doctrines and practices – even in a robust manner – must also be allowed. In recent years, there have been challenges with regard to the dissemination of expressions which offend certain believers. This is not a new phenomenon and historically has concerned countries in all regions of the world and various religions and beliefs. The events of 11 September 2001, have exacerbated tensions in inter-community relations. In that context, a clear distinction should be made between three types of expression:

- expressions that constitute a criminal offence;
- expressions that are not criminally punishable but may justify a civil suit; and
- expressions that do not give rise to criminal or civil sanctions but still raise a concern in terms of tolerance, civility and respect for the religion or beliefs of others.

Notwithstanding this, we would like to strongly emphasize that freedom of expression and the demands of a pluralist, tolerant, broad-minded and democratic society need to be taken into consideration in all cases being examined. Freedom of expression has to be understood in the positive sense and is one of the essential foundations of a democratic and pluralistic society. We also have to generate, with the exercise of this freedom, an atmosphere of respect and understanding between peoples, cultures and religions.

We have to guarantee freedom of expression equally for all as a form to combat racism and discrimination. The Durban Review Conference Outcome Document reaffirms the positive role that the exercise of the right to freedom of opinion and expression, and the full respect for the freedom to seek, receive and impart information, can play in combating racism, racial discrimination, xenophobia and related intolerance, in line with relevant provisions of international human rights law, instruments, norms and standards.

Whereas the debate concerning the dissemination of expressions which may offend certain believers has throughout the last twelve years evolved around the notion of “defamation of religions”, we welcome the fact that the debate seems to be shifting to the concept of “incitement to national, racial or religious hatred”, sometimes also referred to as “hate speech”.

Indeed, the difficulties in providing an objective definition of the term “defamation of religions” at the international level make the whole concept open to abuse through excessive application or loose interpretation. At the national level, domestic blasphemy laws can prove counter-productive, since this could result in the de facto censure of all inter-religious and intra-religious criticism. Many of these laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner. There are numerous examples of persecution of religious minorities or dissenters, but also of atheists and non-theists, as a result of legislation on religious offences or overzealous application of laws that use a *prima facie* neutral language. Moreover, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule.

Whereas some have argued that “defamation of religions” could be equated to racism, we would like to caution against confusion between a racist statement and an act of “defamation of religion”. We fully concur with the affirmation in the preamble of the International Convention on the Elimination of All Forms of Racial Discrimination that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous”. However, invoking a direct analogy between concepts of race or ethnicity on the one hand and religion or belief on the other hand may lead to problematic consequences. Religious adherence, membership or identity can be the result of personal choices the possibility of which constitutes an essential component of the human right to freedom of religion or belief. For this reason, freedom of religion or belief also covers the rights to search for meaning by comparing different religions or belief systems, to exchange personal views on questions of religion or belief, and to exercise public criticism in such matters. For this reason the criteria for defining religious hatred may differ from those defining racial hatred. The difficult question of what precisely constitutes religious hatred, at any rate, cannot be answered by simply applying definitions found in the area of racial hatred.

It is necessary to anchor the debate on these issues in the relevant existing international legal framework, provided for by the ICCPR. Whereas the ICCPR provides for freedom of expression, it also clearly defines limitations to it, e.g. in articles 19 and 20. Furthermore, article 20 (2) of the ICCPR requires States to prohibit expressions if they amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence. We would like to underline that any measure to implement article 20 of the ICCPR will have to withstand the clear test that article 19 (3) imposes for restrictions on freedom of expression.

Defining which acts might trigger article 20 (2) of the ICCPR remains difficult. What does “advocacy” mean? Who is targeted by the advocacy of hatred? What constitutes incitement to violence, hostility or discrimination? Where do we draw the line between criticism – even if deemed offensive – and hate speech? From a legal perspective, each set of facts is particular and can only be assessed and adjudicated, whether by a judge or another impartial body, according to its own circumstances and taking into account the specific context. An independent judiciary and respect for the rules of due process are therefore essential pre-conditions when prohibiting certain forms of expression.

Defining which expressions may fall under the categories of incitement to commit *genocide*, *violence* or *discrimination* may be an easier task than to determine which expressions amount to incitement to *hostility*. In the case of genocide, statements inciting violence are more evident to assess. The example of Radio Mille Collines in Rwanda with its calls for Hutus to “kill the cockroaches [Tutsis]” is a case of advocacy of racial hatred which constitutes incitement to violence. Let us never forget our duty to act swiftly when confronted with such cases and to heed early-warning signs. There is much we can learn from the relevant international criminal tribunals or courts which have addressed these difficult issues in a number of leading cases.

The notion of incitement to *hostility* may, however, be more prone to subjective approaches, very much dependent upon the perspective taken. Indeed, the alleged perpetrator of hate speech, the alleged victim, the average person on the street or a judge, may come up with completely different definitions of what constitutes – or not – incitement to hostility. We should bear in mind that whoever interprets the concept of hostility, there always remains a risk of subjectivity. As elaborated above, the criteria for defining religious hatred or hostility cannot be simply deduced from the criteria applicable to racial hatred or hostility. It is at least

conceivable that some provocative expressions which, if directed to some person's ethnic characteristics would doubtless amount to hostility, may find a different assessment when applied to questions of religion or belief.

The OHCHR expert seminar on articles 19 and 20 of the ICCPR, held in Geneva in October 2008, identified some objective criteria to prevent arbitrary application of national legal standards pertaining to incitement to racial or religious hatred:

- The public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized;
- Any limitations on freedom of expression should be clearly and narrowly defined and provided by law. In addition, they must be necessary and proportionate to the objective they propound to achieve, i.e. prohibiting hate speech;
- Limitations should not threaten the exercise of the right itself. The least intrusive means insofar as freedom of expression is concerned should be used to prevent a chilling effect;
- The adjudication of such limitations should be made by an independent and impartial judiciary.

In addition, the Camden Principles on Freedom of Expression and Equality provide useful guidance for the interpretation of international law and standards, inter alia with regard to incitement to hatred. We would like to reiterate its Principle 12 which clarifies that the terms *hatred* and *hostility* refer to “intense and irrational emotions of opprobrium, enmity and detestation towards the target group”, that the term *advocacy* is to be understood as “requiring an intention to promote hatred publicly towards the target group” and that the term *incitement* refers to “statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups”.

The ultimate goal is to find the most effective ways through which we can protect individuals against advocacy of hatred and violence by others. Hate speech is but a symptom, the external manifestation of something much more profound which is intolerance and bigotry. Therefore, legal responses, such as restrictions on freedom of expression alone, are far from sufficient to bring about real changes in mindsets, perceptions and discourse. To tackle the root causes of intolerance, a much broader set of policy measures are necessary, for example in the areas of intercultural dialogue or education for tolerance and diversity. This set of policy measures should also include strengthening freedom of expression.

The strategic response to hate speech is more speech: more speech that educates about cultural differences; more speech that promotes diversity; more speech to empower and give voice to minorities, for example through the support of community media and their representation in mainstream media. More speech can be the best strategy to reach out to individuals, changing what they think and not merely what they do.
