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

**Report of the Special Rapporteur on contemporary forms of racism,
racial discrimination, xenophobia and related intolerance,
Githu Muigai, on the manifestations of defamation of religions, and
in particular on the serious implications of Islamophobia, on the
enjoyment of all rights by their followers**

Summary

The present report is submitted pursuant to Human Rights Council resolution 10/22 of 26 March 2009 entitled “Combating defamation of religions”, in which the Council requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, to “report on all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers, to the Council at its twelfth session”.

In view of the important developments that have taken place during the reporting period, the present report takes stock of the ongoing conceptual debate on the issue of “defamation of religions” and incitement to religious hatred. In this regard, the Special Rapporteur refers to the last report of his predecessor, the expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights, as well as the outcome document of the Durban Review Conference.

In the second chapter, the Special Rapporteur addresses the issue of religious discrimination and incitement to religious hatred. Following an overview of the information received, since taking up his mandate, on serious implications of Islamophobia on the enjoyment of all human rights of their followers, he distinguishes between intolerant mentalities, incitement to religious hatred, religious discrimination, and violence perpetrated against members of religious or belief communities. The Special Rapporteur then highlights the interrelatedness of the applicable international human rights standards.

Lastly, he presents a number of conclusions and recommendations, proposing a way forward in international efforts to combat incitement to racial or religious hatred. In this regard, he reiterates the recommendation of his predecessor to encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred. He also welcomes the consensus reached at the Durban Review Conference and recommends that policymakers rely on the robust and adequate language of the outcome document and implement it domestically. Finally, he recommends that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech, and stresses the need to protect members of religious or belief communities from violation of their right to freedom of religion or belief.

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Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 10/22 of 26 March 2009 entitled “Combating defamation of religions”, in which the Council requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to “report on all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers, to the Council at its twelfth session”.
2. The Special Rapporteur would like to highlight that this is the first report he submits to the Human Rights Council on this topic. In this regard, the focus of the report is on the legal and conceptual questions related to the ongoing debate on “defamation of religions” and incitement to racial or religious hatred. The Special Rapporteur believes that these questions should be tackled initially in order to address concrete manifestations and cases brought to his attention.
3. In view of the important developments that have taken place during the reporting period, culminating with the agreement reached in the outcome document of the Durban Review Conference, the present report takes stock of ongoing conceptual debates regarding the interpretation of relevant international legal standards (chapter I). The Special Rapporteur also provides an overview of the information received since taking up his mandate on serious implications of Islamophobia on the enjoyment of all human rights by their followers (chapter II). Lastly, he presents a number of conclusions and recommendations, proposing a way forward in the efforts to combat incitement to racial or religious hatred (chapter III).

I. CONCEPTUAL DEBATE ON THE ISSUE OF “DEFAMATION OF RELIGIONS” AND INCITEMENT TO RACIAL OR RELIGIOUS HATRED

A. Report of the former Special Rapporteur to the ninth session of the Human Rights Council

4. In his last report to the Human Rights Council on “the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights” (A/HRC/9/12), the former mandate holder, Doudou Diène, explained that, in order to address the question of defamation of religions from a universal standpoint, it was essential to relate the discussion to international human rights instruments. More specifically, the former Special Rapporteur noted that provisions relating to incitement to national, racial or religious hatred already form part of the main international instruments to which a large majority of countries are signatory. In addition, he stressed that linking the political discussion on the treatment of religious discrimination to specific legal provisions would show that combating incitement to hatred was not a North-South ideological question but a reality present in a large majority of national legislations in all regions.
5. In this regard, the former Special Rapporteur advocated for a “change of paradigm”, shifting the debate from the sociological notion of the defamation of religions to the human rights concept of incitement to racial and religious hatred, the latter being grounded in relevant international, regional and national instruments. Particular reference was made to article 7 of the Universal Declaration of Human Rights, which affirms that “All are entitled to equal protection

against any discrimination in violation of this Declaration and against any incitement to such discrimination.” In addition, the International Covenant on Civil and Political Rights, in its article 20, paragraph 2, prescribes binding limitations on freedom of expression by stating that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” With regard to article 20 of the Covenant, the former Special Rapporteur also recalled that in his joint report with the Special Rapporteur on freedom of religion or belief to the second session of the Human Rights Council (A/HRC/2/3), the two mandate holders highlighted that a definition of its threshold of application would be particularly welcome in order to avoid confusion or simplistic conclusions regarding its application. The two mandate holders thus encouraged the Human Rights Committee to consider the possibility of drafting a general comment on this article.

6. With regard to incitement to racial hatred, the former Special Rapporteur also made reference to article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination. According to this article, States parties “shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.” In addition, the former mandate holder noted that, in its general recommendation No. 15, the Committee on the Elimination of Racial Discrimination expressed the view that “the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression”.

7. The former mandate holder concluded by strongly recommending that the Human Rights Council encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred, on the basis of the legal provisions laid down in international human rights instruments, in particular article 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

B. The expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights

8. The Special Rapporteur would like to highlight the initiative taken by the Office of the United Nations High Commissioner for Human Rights in organizing, in October 2008, a seminar gathering 12 experts in the field of freedom of expression and incitement to racial or religious hatred and over 200 participants. As the High Commissioner stated in her report on the expert seminar (A/HRC/10/31/Add.3), the main objectives of the meeting were to “address the underlying human rights concerns behind the concept of ‘defamation of religions’, presenting an approach based on human rights law; and to ensure a sound legal interpretation of articles 19 and 20 of the Covenant”.

9. Notwithstanding the large variety of views expressed during the seminar by experts and participants from different legal and cultural backgrounds, the Special Rapporteur would like to note that a common understanding was reached on a number of questions that are central to the discussion on incitement to racial or religious hatred. In particular, it is noteworthy that the

expert seminar reaffirmed the approach taken by the former mandate holder with regard to the desirable shift from the sociological notion of the defamation of religions to the legal concept of incitement to racial or religious hatred.

10. The experts also identified a need to further clarify the concepts contained in relevant international standards, particularly article 20 of the Covenant, in view of the limited jurisprudence in this field. In this regard, a technical, non-political setting was recommended as a good approach to allow for a better understanding of this phenomenon. In particular, it was suggested that regional workshops be organized in order to explore this issue in an inclusive way at grass-roots level. This approach has been referred to in the Durban Review Conference outcome document.

11. The experts also agreed that, in addition to legislation on hate speech, a wide array of actions were needed to combat this phenomenon in general. In this regard, the criminalization of cases of incitement to racial or religious hatred, in line with international instruments, should be but one of the tools available for authorities to address this problem. In this respect, particular emphasis was placed on the overarching obligation of States to implement the right to non-discrimination and equal treatment. The role of education, the need to strengthen the professionalism of the media and its ability to self-regulate, as well as the promotion of inter- and intra-religious dialogue were also highlighted as relevant actions.

C. The outcome document of the Durban Review Conference

12. The Special Rapporteur welcomes the adoption of the important outcome document (A/CONF.211/L.1) of the Durban Review Conference held in Geneva from 20 to 24 April 2009. For the purpose of the present report, he would like to specifically refer to the paragraphs in the outcome document addressing the question of incitement to racial or religious hatred and incidents of racial or religious violence.

13. In paragraph 12 of the outcome document, the Conference deplored “the global rise and number of incidents of racial or religious intolerance and violence, including Islamophobia, anti-Semitism, Christianophobia and anti-Arabism manifested in particular by the derogatory stereotyping and stigmatization of persons based on their religion or belief; and in this regard urges all the United Nations Member States to implement paragraph 150 of the DDPA”.¹

14. In paragraph 13, the Conference reaffirmed “that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law; reaffirms further that all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such

¹ Paragraph 150 of the Durban Programme of Action “calls upon States, in opposing all forms of racism, to recognize the need to counter anti-Semitism, anti-Arabism and Islamophobia worldwide, and urges all States to take effective measures to prevent the emergence of movements based on racism and discriminatory ideas concerning these communities”.

acts shall be declared an offence punishable by law, in accordance with the international obligations of States and that these prohibitions are consistent with freedom of opinion and expression”.

15. In addition, in paragraph 68, the Conference expressed its concern “over the rise in recent years of acts of incitement to hatred, which have targeted and severely affected racial and religious communities and persons belonging to racial and religious minorities, whether involving the use of print, audio-visual or electronic media or any other means, and emanating from a variety of sources”.

16. In paragraph 69, the Conference resolved to, “as stipulated in article 20 of the ICCPR, fully and effectively prohibit any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence and implement it through all necessary legislative, policy and judicial measures”.

17. In paragraph 99, the Conference called upon States, in accordance with their human rights obligations, to “declare illegal and to prohibit all organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote national, racial and religious hatred and discrimination in any form, and to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”.

18. Finally, in paragraph 134, the Conference took note “of the proposal of the OHCHR, in cooperation with regional stakeholders in all parts of the world, to organize in light of the OHCHR Expert Seminar on the links between articles 19 and 20 of the ICCPR a series of expert workshops to attain a better understanding of the legislative patterns, judicial practices and national policies in the different regions of the world with regard to the concept of incitement to hatred, in order to assess the level of implementation of the prohibition of incitement, as stipulated in article 20 of the ICCPR, without prejudice to the mandate of the Ad Hoc Committee on the Complementary Standards”.

19. The Special Rapporteur commends all delegations that were actively involved in the negotiations of the draft outcome document for their flexibility and their common interest in achieving a consensual solution. He believes that the text of the outcome document reaches a fine balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. In this regard, the outcome document should be seen as a building block for a new era in the international approach to the question of incitement to racial or religious hatred, offering robust and adequate language to guide policymakers in this area.

20. The Special Rapporteur also notes that the only sustainable solution to the problem of hate speech, and racism or discrimination more broadly, is to implement in their entirety the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference. Those documents offer the most comprehensive framework to guide actions at the international, regional and national levels in the common fight against racism.

II. RELIGIOUS DISCRIMINATION AND INCITEMENT TO RELIGIOUS HATRED

A. Serious implications of Islamophobia on the enjoyment of all rights by their followers

21. Since his appointment in August 2008, the Special Rapporteur has received information on “acts related to the phenomenon of Islamophobia” collected by the Islamophobia Observatory of the Organisation of the Islamic Conference. He would like to thank the Organisation of the Islamic Conference for the reports² he received from its Permanent Observer Mission in Geneva on 6 October 2008, 24 February, 18 March, 30 April, and 11 and 19 May 2009. They constitute a compilation of media reports available on the Internet and cover a wide array of issues mostly relating to European and other Western countries.

22. The information sent by the Organisation of the Islamic Conference to the Special Rapporteur includes reports on negative stereotyping of Muslims and Islam in the media, associating them with “a threat” or “a problem”; restrictions on the wearing of headscarves and burkas in public schools; discrimination against Muslims in the field of employment; desecration of and restrictions on the building of Muslim places of worship; a computer game called “Muslim massacre” inciting the killing of Muslims; the public release of films and documentaries associating Muslims exclusively with violence and terrorism; activities of extremist right-wing European groups related to the organization of meetings on “anti-Islamification” or on “practical steps in the struggle against the spread of Islam”; and on a teacher being charged for having insulted the Prophet Muhammad. The information provided by the Islamophobia Observatory of the Organisation of the Islamic Conference also includes reports on promising initiatives by Governments and civil society organizations aimed at fostering intercultural and inter-religious dialogue, promoting the participation of Muslim women in politics and encouraging the development of the talent of Muslim artists.

23. The Special Rapporteur would also like to thank the European Union Agency for Fundamental Rights for having sent on 28 May 2009 its report entitled “Data in Focus Report 2: Muslims”,³ which forms part of the first-ever European Union-wide survey on immigrant and ethnic minority groups’ experiences of discrimination and racist crimes. The report provides data on how Muslims across the European Union experience discrimination and victimization.

24. The key findings of the European Union Minorities and Discrimination Survey focusing on Muslims indicate high levels of discrimination and victimization of Muslim respondents. For instance, on average, one in three Muslim respondents stated that they had experienced

² The monthly bulletins of the Islamophobia Observatory of the Organisation of the Islamic Conference are available online at: http://www.oic-oci.org/page_detail.asp?p_id=182.

³ See European Union Agency for Fundamental Rights, European Union Minorities and Discrimination Survey, “Data in Focus Report 2: Muslims”, available online at: http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf.

discrimination - the highest levels of discrimination occurred in employment - in the past 12 months and, on average, one in four Muslim respondents were stopped by the police in the previous 12 months and 40 per cent of these believed that this was specifically because of their immigrant or minority status. The report also indicates that the great majority of those Muslims surveyed who had experienced at least one incident of discrimination did not consider religion to be the main reason for their discrimination or that being a citizen of a European Union Member State and a longer period of residence in a European Union country considerably reduced the likelihood of being discriminated against. Furthermore, the report also shows low levels of rights awareness and knowledge about, or trust in, mechanisms for making complaints. For instance, whereas 11 per cent of all Muslim respondents considered that they were a victim of a racially motivated assault, threat or serious harassment in the last 12 months, the report indicates that there is a real problem with undercounting the extent of racist crime in the majority of European Union Member States.

25. On the basis of the above-mentioned information provided by the Organisation of the Islamic Conference and the European Union Agency for Fundamental Rights, the Special Rapporteur would like to distinguish between: (a) intolerant mentalities; (b) incitement to religious hatred; (c) religious discrimination; and (d) violence perpetrated against members of religious or belief communities.

26. First, he would like to express his concern with regard to the level of intolerance against Muslims in European and other Western countries. The use of stereotypes does not contribute to the creation of an environment conducive to constructive and peaceful dialogue among different communities. For instance, the former mandate holder, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression condemned the tone and content of the online film by Dutch Member of Parliament, Geert Wilders, which was released on the Internet on 27 March 2008. They criticized the provocative nature of the film depicting an extremely distorted vision of Muslims and stated that the film "Fitna" illustrated an increasing pattern that associates Muslims exclusively with violence and terrorism. Racial and religious intolerance towards specific ethnic or religious groups should be addressed by Governments through a wide range of measures aimed at educating people and providing them with space to dialogue, and finding ways to create a peaceful society. More generally, the Special Rapporteur is of the view that, while intolerant mentalities by themselves do not yet constitute human rights violations, they may, however, eventually lead to such violations.

27. Second, the Special Rapporteur would like to voice his grave concern at the reported incidents of incitement to religious hatred. Intolerant mentalities become a human rights issue as soon as they are publicly expressed through advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In this regard, the report received from the Organisation of the Islamic Conference on the computer game "Muslim Massacre", which was available as a free download over the Internet and in which players controlled a soldier on a mission to "wipe out the Muslim race with an arsenal of the world's most destructive weapons", constitutes, in the Special Rapporteur's view, an example of public incitement to violence, based on the racial or religious affiliation of the targeted individuals. He expresses his deep concern about the use of new information technologies, such as the Internet, for purposes contrary to

respect for human values, equality, non-discrimination, respect for others and tolerance,⁴ and would like to recall the obligations of States, which are defined in international law, in particular in article 20, paragraph 2, of the International Covenant on Civil and Political Rights, and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

28. Third, the Special Rapporteur is worried about the above-mentioned reports of incidents where members of racial or religious minorities have been discriminated against. Discrimination against members of religious or belief communities prevents them from fully enjoying all their human rights. It adversely affects their right to freedom of religion or belief but also has a negative impact on the enjoyment of other human rights or fundamental freedoms. Indeed, other civil and political rights, such as equality before the law, right to a fair trial, freedom from arbitrary detention, freedom from torture, freedom of movement, and freedom of assembly and association may be at stake. Similarly, economic, social and cultural rights, such as the rights to work, adequate food and housing, health, education and to take part in cultural life, may be adversely affected. In this regard, the Special Rapporteur would like to refer to the latest report of the Special Rapporteur on freedom of religion or belief to the Human Rights Council, which focuses on discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights (A/HRC/10/8, paras. 29-54). He would like to remind States of their obligations as prescribed in international human rights law. Concerning discrimination, States have the duty to refrain from discriminating against individuals or groups of individuals based on their ethnicity and/or religion or belief; to prevent such discrimination, including from non-State actors; and to take steps to ensure that, in practice, every person in their territory enjoys all human rights without discrimination of any kind.

29. Fourth, acts of violence perpetrated against members of religious or belief communities constitute a blatant human rights violation, for example, with regard to the right to security of the person or ultimately to the right to life, as prescribed by articles 9 and 6 of the International Covenant on Civil and Political Rights. In this regard, the report sent by the European Union Agency for Fundamental Rights highlights that Muslim respondents to the survey who were victims of assault, threat or serious harassment experienced on average roughly three incidents over a 12-month period. The Special Rapporteur strongly deplores acts of violence against individuals based on their religious affiliation and calls upon States to take all necessary and appropriate measures to investigate these acts, prosecute and sanction the perpetrators in accordance with international human rights law, and compensate the victims.

30. Whereas the reports sent to the Special Rapporteur by the Organisation of the Islamic Conference and the European Union Agency for Fundamental Rights both focus on members of one specific religion and on a specific region of the world, the Special Rapporteur would like to highlight that members of other religions or beliefs and other regions are also affected by instances of religious discrimination and incitement to religious hatred. While the present report specifically focuses on one religion, the Special Rapporteur would like to reiterate the recommendation of the former mandate holder concerning the need to avoid establishing any hierarchy in the different manifestations of religious discrimination, even if they may vary in

⁴ See paragraph 91 of the Durban Declaration.

nature and degree depending on historical, geographical and cultural context. Indeed, while the present report has a specific focus, cases of religious discrimination and of incitement to religious hatred affecting members of other religions or beliefs should also be acknowledged and addressed.

31. Furthermore, the specific focus of the present report should not detract attention from the intra-religious dimension qualified by the former mandate holder (A/HRC/9/12, para. 37) as “one of the most pervasive and historically most violent and tenacious manifestations of religious discrimination” and which often leads to the persecution of intra-religious minorities. In addition, the former mandate holder voiced his concern at the situation of members of religious minorities, spiritual and syncretistic traditions, “sects” or new religious movements, since they are frequently subject to various forms of discrimination as a consequence of government policies and national legislation (A/HRC/9/12, para. 38).

B. Interrelatedness of international human rights standards

32. The question of incitement to racial or religious hatred involves the rights and freedoms enshrined in the following four provisions of international human rights law: article 18 of the International Covenant on Civil and Political Rights on freedom of conscience, thought and religion; article 19 of the Covenant on freedom of opinion and expression; article 20 of the Covenant on 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 on incitement to racial discrimination as well as acts of violence or incitement to such acts.

33. Given the interrelatedness of these provisions of international human rights law, the Special Rapporteur has cooperated with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression. The three mandate holders addressed the question of “freedom of expression and incitement to racial and religious hatred” during a side event organized by the Office of the United Nations High Commissioner for Human Rights at the Durban Review Conference.⁵

34. Recalling that all human rights are universal, indivisible, interdependent and interrelated, the three mandate holders stressed this interdependence in the context of the discussion on freedom of expression and incitement to racial or religious hatred. They reaffirmed that 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. Moreover, freedom of expression is essential to creating an environment in which a critical discussion about religion can be held. While the exercise of freedom of expression could, in some extreme cases, affect the right to manifest the religion or belief of certain identified individuals, the three mandate holders stated that it was nonetheless conceptually inaccurate to present “defamation of religions” in abstracto as a conflict between the right to freedom of religion or belief and the right to freedom of opinion or expression.

⁵ The full text of the joint statement of the three Special Rapporteurs is available online at: www2.ohchr.org/english/issues/racism/rapporteur/docs/Joint_Statement_SRs.pdf.

35. The three mandate holders acknowledged that there had been, in recent years, challenges with regard to the dissemination of expressions offending certain believers. This was not a new phenomenon and had historically concerned countries in all regions of the world and various religions and beliefs. The events of 11 September 2001 had, however, exacerbated tensions in intercommunity relations. In that context, the three mandate holders suggested that a clear distinction be made between three types of expression: (a) expressions that constitute an offence under international law; (b) expressions that are not criminally punishable but may justify a civil suit; and (c) 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. They nonetheless strongly emphasized that freedom of expression and the demands of a pluralist, tolerant, broad-minded and democratic society needed to be taken into consideration in all cases being examined. Freedom of expression has to be understood in the positive sense. The guarantee of freedom of expression equally for all constitutes a form to combat racism and discrimination. The three experts added that there was a need to generate, with the exercise of freedom of expression, an atmosphere of respect and understanding between peoples, cultures and religions.

36. Whereas the debate concerning the dissemination of expressions offending certain believers had, throughout the years, evolved around the notion of “defamation of religions”, the three mandate holders welcomed that the debate seemed to be shifting to the concept of “incitement to racial or religious hatred”. They recalled the difficulties in providing an objective definition of the term “defamation of religions” at the international level, which makes the whole concept open to abuse. At the national level, domestic blasphemy laws can prove counterproductive, since this could result in de facto censure of all inter- and intra-religious criticism. Indeed, many of these laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner. The three experts mentioned that there were 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 are fairly neutral.

37. Whereas some had argued that “defamation of religions” could be equated to racism, the three Special Rapporteurs cautioned against confusion between a racist statement and an act of “defamation of religion”. In this regard, they fully concurred with the affirmation from 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, there is not necessarily an analogy to be drawn with regard to religious issues. Indeed, several religions are characterized by truth claims - or even by superiority claims - which have been traditionally accepted as part of their theological grounds. Consequently, the elements that constitute a racist statement may not be the same as those that constitute a statement “defaming a religion” as such. To this extent, the legal measures, and in particular the criminal measures, adopted by national legal systems to fight racism may not necessarily be applicable to “defamation of religions”.

38. The three experts deemed it necessary to anchor the debate on these issues in the relevant existing international legal framework, provided for by the International Covenant on Civil and Political Rights. Whereas the Covenant provides for freedom of expression, it also clearly defines limitations to it, for example in articles 19 and 20. Furthermore, article 20, paragraph 2, of the Covenant requires States to prohibit expressions if they amount to advocacy of national,

racial or religious hatred that constitutes incitement to discrimination, hostility or violence. However, they also admitted that defining which acts might trigger article 20, paragraph 2, of the Covenant remains difficult. Indeed, it is difficult to determine what constitutes incitement to violence, hostility or discrimination or where a line can be drawn between criticism - even if deemed offensive - and hate speech. From a legal perspective, the three mandate holders suggested that each set of facts was particular and could 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.

39. 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]” was a clear-cut case of advocacy of racial hatred which constitutes incitement to violence. The three mandate holders recalled that there was a duty to act swiftly when confronted with such cases and to heed early warning signs. There is much to be learned from the relevant international criminal tribunals or courts which have addressed these difficult issues in a number of leading cases.

40. The three experts recalled that the notion of incitement to hostility may, however, be more prone to subjective approaches, very much depending on the perspective taken. Indeed, the alleged perpetrator of hate speech, the alleged victim, the average man on the street or a judge may come up with completely different definitions of what constitutes - or not - incitement to hostility. It is necessary to bear in mind that, whoever interprets the concepts of hostility, there always remains a risk of subjectivity. In comparison with racial issues, which tend to be more clear-cut, the degree of subjectivity may be even higher when religious sentiments and sensitivities are invoked. Eventually, only a mature and informed public opinion can fully guarantee racial and religious harmony, and it is important to be able to build on a set of objective legal criteria.

41. In this context, the three mandate holders referred to the expert seminar on articles 19 and 20 of the Covenant, organized by the Office of the United Nations High Commissioner for Human Rights in October 2008 in Geneva. During the expert seminar, the following objective criteria were identified in order to prevent arbitrary application of national legal standards pertaining to incitement to racial or religious hatred:

(a) The public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized;

(b) 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;

(c) Limitations should not threaten the exercise of the right itself. The least intrusive means insofar as freedom of expression is concerned should be used in order to prevent a chilling effect;

(d) The adjudication of such limitations should be made by an independent and impartial judiciary.

42. In conclusion, the three mandate holders reminded that the ultimate goal was to find the most effective ways through which to 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 being sufficient to bring about real changes in mindsets, perceptions and discourse. The three experts reaffirmed that, in order to tackle the root causes of intolerance, a much broader set of policy measures was necessary, for example in the areas of intercultural dialogue or education for tolerance and diversity. In addition, this set of policy measures should also include strengthening freedom of expression. Indeed, the strategic response to hate speech is more speech: more speech that educates about cultural differences; more speech that promotes diversity; and 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' hearts and minds, changing what they think and not merely what they do.

III. CONCLUSIONS AND RECOMMENDATIONS

43. **The Special Rapporteur welcomes the important developments that have occurred in the last year on the issue at hand. He recalls the recommendation of his predecessor (A/HRC/9/12, para. 65) that the Human Rights Council should “encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred, on the basis of the legal provisions laid down in international human rights instruments, in particular articles 18 to 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination”.**

44. **In addition, the Special Rapporteur would like to highlight the initiative of the High Commissioner for Human Rights in organizing an expert seminar on the topic, which helped to further clarify the contours of this debate and set some important ideas for the future. He also would like to express his support for the idea of the High Commissioner that a series of expert workshops be held in order to attain a better understanding of legislative patterns and judicial practices in the different regions of the world, reflecting the various legal systems and traditions with regard to the concept of incitement to racial or religious hatred as contained in article 20 of the International Covenant on Civil and Political Rights, and to arrive at a comprehensive view of the state of implementation of the prohibition of incitement (A/CONF.211/PC.4/5, para. 58, which is also reaffirmed in the outcome document of the Durban Review Conference, para. 134).**

45. **The Special Rapporteur believes that the agreement reached in the outcome document of the Durban Review Conference constitutes a fine balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. He therefore recommends that this consensual document be used as a reference in the way forward when approaching difficult questions such as that of incitement to racial or religious hatred. He particularly recommends that policymakers rely on the robust and adequate language of the outcome document and implement it domestically.**

46. With regard to the above-mentioned reports sent to the Special Rapporteur (see paragraphs 21-24), a distinction should be made between the following four concerns: (a) intolerant mentalities which do not yet constitute human rights violations, but may eventually lead to such violations; (b) advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which is prohibited in international human rights law; (c) discrimination against members of religious or belief communities which is also clearly prohibited by international human rights standards and which adversely affects the enjoyment of civil, cultural, economic, political and social rights; and (d) acts of violence perpetrated against members of religious or belief communities which constitute a blatant human rights violation, for example with regard to the right to security of the person or ultimately to the right to life.

47. The Special Rapporteur would like to reiterate his predecessor's recommendation that the Human Rights Council invite Governments, in combating racial and religious discrimination, as well as incitement to racial or religious hatred, to fully comply with their obligations in relation to freedom of expression and freedom of religion or belief, in keeping with the relevant international instruments and in particular articles 18, 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, having due regard to their interrelatedness and complementarity.

48. In this regard, the Special Rapporteur would like to recall that existing international standards already address racial and religious discrimination, as well as incitement to racial or religious hatred. In this regard, he would like to highlight that, as of June 2009, a total of 164 States have ratified the International Covenant on Civil and Political Rights and that there are 173 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination. He calls upon States which have not yet ratified these international instruments to consider doing so.

49. The Special Rapporteur highlights that, while the obligation to prohibit discrimination and incitement to racial or religious hatred is unambiguous under international human rights law, this is only one among a number of actions that need to be implemented in order to fully guarantee the right to equal treatment and to fight racism and all forms of discrimination. In this regard, under the International Convention on the Elimination of All Forms of Racial Discrimination, States have a central obligation to adopt measures that will foster tolerance and respect for cultural diversity, including religious diversity. It is only by implementing this wide array of actions that States will be able to secure long-term defences against the insidious implications of hate speech.

50. Finally, the Special Rapporteur recommends that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech. Cases of incitement to racial or religious hatred are of serious concern and need to be addressed promptly within the existing international human rights framework. He also would like to remind States of their obligation under existing international human rights standards to protect members of religious or belief communities from violation of their right to freedom of religion or belief.