

OHCHR Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred

Statement by the UN High Commissioner for Human Rights, Ms. Navi Pillay.

Distinguished participants,

Ladies and Gentlemen,

It is of great pleasure to me to welcome you on the occasion of the opening of this expert workshop on the prohibition of incitement to national, racial or religious hatred, which is part of a series of events my Office is organising this year in all regions of the world. This exercise complements the expert seminar on freedom of expression and incitement to hatred which OHCHR organised in Geneva, in 2008.

In our era of deepening interaction and mutual learning among people of different origins, the need for equality, respect and tolerance is becoming ever more pressing. The enriching variety of backgrounds merging in communities around the world – physically or virtually through modern technology – also presents a mounting challenge to States as they seek to promote and ensure mutual respect, social harmony, equal opportunity and fairness of treatment for all.

Against this background, the demarcation line between freedom of expression and hate speech has come increasingly under focus. This has fuelled national discussions extensively, has permeated debates at international human rights fora and has created friction among diverse communities. To clarify such demarcation, this series of expert workshops will examine legislations, jurisprudence, and national policies on these issues in the various regions. My objective is to help ensure compliance of the prohibition of incitement to hatred in full respect of freedom of expression as protected by international human rights law. In the course of four expert workshops, participants are expected to study various ways in which the international prohibition of incitement to hatred has been implemented at the national and regional level and how this accords with international human rights law.

Today all of us struggle to grasp the full implications of the rapid development of globalisation as we seek to assert our own identities and our historical heritage while adapting to the increasingly interconnected world offered by modern communication methods. Regrettably, those that are identified as the “others” , as people who do not share a community’s history, traditions and values

are all too often perceived as predatory competitors, or at least a threat to the stability of that community's belief system.

Migrant workers, for example, are sometimes seen in such light rather than as additional contributors of talent, hard work, and ingenuity to the wealth, welfare and culture of receiving communities. Today, 214 million people, about three per cent of the world's total population, are international migrants, while the number of internal migrants is estimated at 740 million. Migrants in such situation are more likely to face discrimination, hatred and even violence at the hands of bigots, xenophobes and racists. When I chaired the inter-agency Global Migration Group, in the second half of 2010, the heads of the GMG agencies issued a landmark joint statement calling on "States, civil society, the private sector, the media and host communities ... to work actively to combat xenophobia, racism and incitement to discrimination in national politics and public discourse, to protect all migrants, as well as to actively promote tolerant societies in which every person can enjoy his or her human rights, regardless of migration status".

As High Commissioner, I have expressed alarm at the often extraordinarily negative portrayal, in many countries in the world, of not only migrants but also minority groups by the media, politicians and other actors in the society. Measures need to be taken to curb growing xenophobic attitudes in all parts of the world. In this regard, it is essential to swiftly denounce hate speech and prosecute racist and violent actions perpetrated by some individuals. All that is necessary for the triumph of evil is that good people do nothing; doing nothing simply compounds the problem and leads to more hatred, more discrimination and more violence.

My personal experience as a judge in the International Criminal Tribunal for Rwanda has also showed me that virulent and hate-laden advocacy can trigger the worst of crimes. Genocide is the ultimate form of discrimination and racial hatred. Unfortunately, several regions in the world have witnessed the atrocities of such heinous crime. In international law, as well as in the jurisprudence of most national courts, it has been clearly stated that well-defined and narrowly limited classes of speech, such as the hate messages transmitted by Radio Mille Collines, should be legitimately restricted in order to safeguard against these transgressions. History has proven time and time again that, when allowed to take root, discrimination, racial strife and intolerance shatter the very foundations of societies and damage them for generations. I also know this through my personal experience of growing up and living in apartheid South Africa.

In the aftermath of 9/11, the peaceful coexistence in many multicultural societies has been put to the test even more. The response of many countries to legitimate security concerns in the context of the fight against terrorism has had a negative and disproportionate impact on minorities leading to instances of stigmatisation, profiling and negative stereotyping of vulnerable groups along divides of origin or religion. I should stress that any counter-terrorism or security measure put in place needs to fully respect international human rights law.

It is often purported that freedom of expression and freedom of religion are in a tense relationship or can even be contradictory. I wish to clearly state that instead they are mutually dependent and reinforcing. Freedom of religion cannot exist if freedom of expression is not respected. Likewise, freedom of expression is essential to creating an environment in which a constructive discussion about religious matters could be held. Indeed such discussion can be critical. But criticism of religion need not be seen as bad, as it can lead to rejuvenation and breath of new life into religion for purposes of its continued endurance.

Whereas hate speech, if not acted upon promptly, may create a threatening and discriminating context for the followers of the targeted religion, remarks that criticise human interpretations of religions or beliefs, even vehemently, do not automatically constitute incitement to religious hatred. Since time immemorial, religions have sought to express not only the human relationship with the divine, but also the values of tolerance, compassion and solidarity that should define human beings' interaction with one another. Only free and critical evaluation in open debate is the soundest way to probe whether religious interpretations adhere to, or rather distort these original values that underpin religious belief. A thriving civil society and free press are important pre-requisites for such a debate.

Distinguished participants,

In response to the above mentioned challenges related to freedom of expression and incitement to hatred, many governments have reinforced existing law and introduced new punitive measures. These actions may however not be applied in a vacuum. In order to provide protection against abuse, excessive state intervention, loose interpretation and selective application of norms, such measures need to be implemented in accordance with international human rights standards and should be subject to review by competent courts.

In addition to the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination, the body of international law outlines several provisions which are relevant to freedom of expression and incitement to hatred. First of all, the Universal Declaration of Human Rights contains provisions on freedom of expression and has been interpreted to permit States' action to prohibit hate speech or speech that is considered inflammatory or to incite hatred. The 1948 Genocide Convention explicitly includes "public incitement to commit genocide" among punishable acts, a provision which is verbatim taken over in both the Statutes of the International Criminal Tribunal for the Former Yugoslavia as well as that of the International Tribunal for Rwanda. Also the Rome Statute of the International Criminal Court replicates this provision and provides for liability for anyone who "directly and publicly incites others to commit the crime" of genocide.

Therefore freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19 (3) ICCPR, which provides for freedom of expression, lays down a clear test by which the legitimacy of such restrictions may be assessed. In addition, it is clear that article 20 ICCPR imposes a positive obligation on governments to prohibit war propaganda and “advocacy of national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence”. The UN Human Rights Committee has held that any law seeking to implement this provision on incitement to hatred must not overstep the limits on restrictions of freedom of expression. Furthermore, the Convention on the Elimination of Racial Discrimination prohibits the mere dissemination of ideas based on racial superiority or hatred.

Distinguished participants,

Properly balancing freedom of expression and the prohibition of incitement to hatred is no simple task. It will entail addressing difficult questions concerning for instance the different weight attributed to intent, motivation, medium, context and foreseeable consequences in a given circumstance; whether the speech in question must incite to a proscribed result or whether it is sufficient for it to merely fall within a category of prohibited statements.

Some guidelines would therefore be useful when weighing freedom of expression against the prohibition of incitement to hatred. First, one should realise that the question of distinguishing those forms of expression that meet the criteria mandated by the prohibition of incitement to hatred is contextual and needs to take into account the individual circumstances of each case such as local conditions, history, cultural and political tensions. An independent judiciary is therefore a vital component in the process of effectively adjudicating cases related to incitement to hatred.

Second, restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals holding specific beliefs or opinions, whether of a religious nature or not, from hostility, discrimination, or violence, rather than to protect belief systems, religions, or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinise, openly debate, and criticise – even in a manner many consider harsh and unreasonable – belief systems, opinions, and institutions, including religious ones, as long as this does not advocate hatred which incites to violence, hostility or discrimination against an individual or group of individuals.

Third, in relation to sanctions, it is essential to make a careful distinction between (a) forms of expression that should constitute an offense under criminal law in accordance with international norms, (b) forms of expression that are not criminally punishable but may justify a civil suit and (c)

forms of expression that do not give rise to neither criminal nor civil sanctions but still raise concerns in terms of tolerance, civility and respect for the convictions of others.

It should be clear from the above that the balancing act between fundamental freedoms is indeed far from an easy task. It is compounded by the fact that some of the concerned provisions of international law are not sufficiently detailed. Indeed there is no consensus on certain critical elements and practice varies considerably across the regions of the world. Therefore this series of expert workshops – as an important platform for sharing of good practices – aims to map the various approaches throughout the world and will look into the level of implementation of international human rights obligations. It will hopefully succeed in enhancing the understanding of these obligations and in identifying measures to assist governments with their arduous responsibility of weighing such fundamental freedoms.

Let us be clear about the stakes in our discussion. By addressing possible limitations to a fundamental right, this workshop also tests whether our commitment to the full and interdependent set of human rights is truly genuine, and not expediently used in the pursuit of political agendas. We should not lose sight of the fact that, while the concept of freedom of expression has been well-established for many centuries in the legal traditions of different cultures, its practical application and recognition are still far from universal. In many parts of the world, freedom of expression unfortunately remains a distant dream, facing resistance from those who benefit from silencing dissent, stifling criticism, or blocking discussion on challenging social issues.

Ladies and gentlemen,

There are traditions of deprivation and exclusion just as there are traditions of social justice. There are human traditions that promote hatred just as other customs sustain respect and promote tolerance. Our task, and that of the world community, is to sustain squarely and unequivocally those traditions that protect and nurture individual and collective rights and which promote justice. In this regard, it is clear that we must put everything to work to counter the escalation of prejudice predicated on ethnic, national or religious divides and to break the vicious cycles of hatred and retribution.

With this in mind, I wish you the very best in your deliberations.

Thank you.