
Report of the expert workshop for Africa on the prohibition of incitement to national, racial or religious hatred (unedited)

Introduction

1. On 2 and 3 November 2008, an expert seminar was held in Geneva on articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) with regard to freedom of expression and incitement to hatred. In follow-up to that seminar, the Office of the United Nations High Commissioner for Human Rights is organizing a series of expert workshops on the prohibition of incitement to national, racial or religious hatred in international human rights law. The objectives of the workshops are:

(a) To gain a better understanding of legislative patterns, judicial practices and various types of policies in countries of the various regions of the world with regard to prohibiting incitement to national, racial, or religious hatred while ensuring full respect for freedom of expression as outlined in articles 19 and 20 of the ICCPR;

(b) To arrive at a comprehensive assessment of the state of implementation of the prohibition of incitement in conformity with international human rights law;

(c) To identify possible actions at all levels.

2. Four workshops were scheduled for 2011: one for the European region, held in Vienna on 9 and 10 February 2011, one for the African region (Nairobi, 6 and 7 April 2011), one for the Asian and Pacific region (Bangkok, 6 and 7 July 2011), and one for the Americas region (Santiago de Chile, 12 and 13 October 2011).

I. Opening of the meeting

3. The expert workshop for Africa on the prohibition of incitement to national, racial or religious hatred was opened by Mr. Ibrahim Salama, Director, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights, who welcomed participants.

4. A video message was delivered by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights. She noted that, as the world became increasingly interconnected, those seen as others, who did not share a community's history, traditions and values, were often perceived by that community to be predatory competitors or threats to the community's belief system. As discrimination and racial hatred were on the rise, often conveyed through hate speech broadcast in the mass media, it was legitimate to restrict well-defined and narrowly limited classes of speech to safeguard against such transgressions. She referred to her experience as a judge of the International Criminal Tribunal for Rwanda to underline that it is essential to swiftly denounce hate speech and counter racist, xenophobic and violent attitudes as soon as they come to the surface.

5. The High Commissioner continued to stress that freedom of expression and freedom of religion were mutually dependent and reinforcing. Criticism of religion could be constructive and yet still critical; it was not something that should be outlawed, as only free and critical evaluation in open debate could probe whether religious interpretations adhered to, or distorted, the original values that underpinned religious belief. At the same time, however, freedom of expression was not absolute and could be curbed within strictly defined parameters. In that regard, there was a need to distinguish between forms of expression that should constitute offences under criminal law in accordance with international norms, forms of expression that were not criminally punishable but might justify civil liability, and forms of expression that did not give rise to either criminal or civil sanctions but still raised concerns in terms of tolerance, civility and respect for the convictions of others.

6. In conclusion, she stressed that there was a need to counter the escalation of prejudice predicated on ethnic, national or religious divides and to break the vicious cycles of hatred and retribution. The current workshop, by considering possible limitations on a fundamental right, would test whether there was a genuine commitment to the full and interdependent set of human rights or whether they were merely being used as expedients in the pursuit of political agendas.

II. Introduction of the preparatory study

7. Mr. Doudou Diène, moderator of the workshop in Nairobi, introduced a study that he had prepared on legislation, jurisprudence, and policies with regard to the prohibition of incitement to national, racial or religious hatred in Africa.¹ He identified three important phenomena relevant to the prohibition of incitement to hatred on national, racial or religious grounds in Africa. First, ethnicity and race played central roles in nation-building and national or related conflicts, of which the genocide in Rwanda constituted an extreme example; second, more provisions on freedom of expression and freedom of the media were present over the legal and formal observance of the prohibition of national, racial or religious hatred; and, third, tribalism and religion were prominent features in many countries. In the face of those phenomena the defense of human rights by civil society was weak.

8. His findings were that legal systems differed widely in Africa. There were a number of national court cases, but in a number of instances priority was given to the promotion of traditional mechanisms and practices to combat incitement to hatred in national policies that were conducive to the creation and fostering of national unity. He asserted that incitement to national, racial or religious hatred represented a serious danger for African societies. Moreover, the amalgamation of race and ethnicity, of culture and religion in societies that were deeply multi-ethnic, particularly in their national policies, demonstrated that priority attention should be given to drawing up legislation in accordance with the provisions of the International Covenant on Civil and Political Rights and to the implementation of coordinated policies at the national and regional levels that would reflect a clear political determination to prevent the manipulation of ethnic tension for political ends and would focus on the elimination of potential ethnic and tribal hostility, with a view to building a sound legal and cultural basis for people to live together in multicultural African societies. The issues discussed in his report constituted the main obstacles to the strengthening of democracy in Africa.

III. Work of the expert mechanisms

A. Presentations by the special rapporteurs and discussion

9. Mr. Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief, Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Mr. Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, introduced a joint submission regarding the work of international human rights instruments.²

10. Mr. Muigai explained that the main instruments to be discussed were article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights on freedom of thought, conscience and religion; article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights on freedom of opinion and expression; article 20 of the International Covenant on Civil and Political Rights on the prohibition of any advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence; and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination on the eradication of incitement to racial discrimination and acts of violence or incitement to such acts.

11. The special rapporteurs had reviewed legislative and judicial practices and policies in Africa, focusing, in the implementation of their mandates, on legislative practices in Côte d'Ivoire and Mauritania, judicial practices in Angola, Egypt, Kenya, Nigeria, Somalia and Uganda, and policies in the Libyan Arab Jamahiriya and Rwanda. They had also taken note of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Camden Principles on Freedom of Expression and Equality and Human Rights Council 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".

12. Summarizing their conclusions, he said that that the right to freedom of expression constituted an essential aspect of the right to freedom of religion or belief and therefore needed to be adequately protected in domestic legislation. Freedom of expression was essential to creating an environment in which a critical discussion about religion could 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 harsh manner – must also be allowed. In recent years, there had been challenges to the dissemination of expressions that offended certain believers. That was not a new phenomenon and

¹ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/NairobiStudyE.pdf>

² <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/JointSRSubmissionNairobiWorkshop.pdf>

historically had concerned countries in all regions of the world and various religions and beliefs. The events of 11 September 2001 had exacerbated tensions in inter-community relations. In that context, a clear distinction should be made between three types of expression: those that constituted an offence; those that were not criminally punishable but might justify civil liability; and those that gave rise to neither criminal nor civil sanctions but might nevertheless be of concern in terms of tolerance, civility and respect for the religions or beliefs of others.

13. Mr. Bielefeldt stressed that manifestations of collective hatred were not natural disasters. Instead, they stemmed from fear and contempt and were very often fuelled by Governments. The additional component of envy made for a toxic cocktail that was used to mobilize collective action for political purposes. To combat hatred effectively there was a need for a comprehensive approach that would involve articles 18, 19 and 20 of the International Covenant on Civil and Political Rights.

14. Looking to the issue of freedom of religion or belief, he drew attention to the link between racist hate speech and religious hate speech, while warning that the same definition criteria could not be applied to both. Religion or belief was not the same as ethnicity, given that with religion or belief an element of choice was involved in terms of a person's religious identity. While there was a need for a holistic approach, care should be taken not to yoke disparate items together.

15. Mr. La Rue said that when racism existed as a broad phenomenon with tragic consequences, as seen in the case of the Rwandan genocide, it was often linked to a struggle for power. Hatred and discrimination could be whipped up for nefarious purposes, but could also be countered in the same manner. There was a need for greater public awareness. The Rwanda genocide was proof of that, as there had been signals and warnings of the tragic events that were to unfold but preventive measures had not been taken in time. Accordingly, when referring to freedom of expression, the aspects of promotion, protection and prevention should be seen as priorities, given that those aspects were more important than limitations of a right.

16. With regard to limitations on freedom of expression, Mr. La Rue said that he had been asked to look into religious issues in his role as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. He was of the opinion that it should not be a crime to discuss religion and that all theoretical issues related to religion and spirituality were open to debate. The concept of defamation of religions should therefore not exist and expressions of opinion should not be criminalized as blasphemy.

17. Referring to the role of the press and media in galvanizing public opinion, he said that lessons had been learned from the incident involving threats to burn the Koran in Florida in September 2010, which had become headline news worldwide. In a recent meeting in Geneva with high-level representatives of media organizations, the press had been self-critical and had vowed not to allow similar stories to take on such magnitude in the future. The press had a responsibility to handle information and to analyse it appropriately. It should be seen as self-regulating in terms of ethics, but there was a need to engage in dialogue with the free press, Governments and stakeholders to build consensus on how to handle particularly sensitive issues.

18. Following the introduction of the paper prepared by the Special Rapporteurs, the moderator invited comments, suggesting that the experts might wish to reflect on why the African continent repeatedly saw cases of incitement to national, racial or religious hatred in the conflicts that had arisen over the past years. He drew attention to specific African issues linked to tribalism and the notion of incitement in building national unity in the post-colonial period.

19. Ms. Majodina said that the paper prepared by the Special Rapporteurs referred to the meaning of some of the concepts and definitions found in article 20 of the International Covenant on Civil and Political Rights, noting that they had not been articulated clearly by the drafters of the Covenant and by the Human Rights Committee itself.

20. Mr. Bahgat drew attention to the recent revolution in Egypt, noting that there had been a distinct sense of unity during the street protests that had led to the fall of the then President. There was a long period during the uprising in which the streets of Cairo were bereft of security personnel, but no attacks on churches or religious minorities took place. There was a need to delve more deeply into that phenomenon to explore how the desire for change had apparently overcome sectarian divides.

21. He called for a comprehensive approach to the application of article 20 of the ICCPR and for consideration of the decriminalization of laws that purported to protect religious sentiments but that actually encroached on freedom of expression, citing the example of the Deputy Prime Minister of Egypt being questioned by the Public Prosecutor with regard to comments that allegedly insulted God. Lastly, he drew attention to xenophobic discourse against Muslims in Europe and North America, with

Muslim minorities being racialized. There was a need for a more in-depth discussion of race and religion and how the human rights framework could be used to combat all forms of discrimination.

22. Mr. Omar Faruk drew attention to the problem of hate media in East Africa, as was seen in the Rwandan genocide and the post-election violence that had swept through Kenya in 2008. In both situations, media outlets had played a key role in fanning the flames of violence. In Côte d'Ivoire both sides were using the national media for propaganda purposes, while in Somalia the warring parties had gone so far as to set up radio stations to fight tribes and clans. He asked why, whenever there was an African conflict, the issue of hate media came to the fore, often followed by hate crimes against journalists.

23. Mr. La Rue said that States were often built on the idea of ethnicity being something negative, when in fact it was part of diversity. Accordingly, national constitutions should be premised on ethnic and cultural diversity, with all ethnicities being equal. Ethnic problems could stem from the past denigration of tribes, clans and African culture in general. There was a need for education to counter the phenomenon, particularly where the media was concerned. Journalists should work for a culture of peace and to promote the learning of lessons from previous conflicts.

24. Mr. Tungwarara noted that regional institutions were weak, with a sense of pessimism and cynicism surrounding them. The fault, he suggested, lay with African leaders, most of whom remained locked in a nostalgic, revolutionary mode, without moving to tackle the complex issues currently being faced. He cited the example of the President of Zimbabwe, who had been applauded by the African Union rather than censured after making a number of inflammatory and racist statements. He noted that apartheid-era revolutionary songs were again being sung in South Africa, questioning whether that should be permitted in a free and democratic society. Commitments made on paper needed to become reality, through enforcement mechanisms that would put an end to such behaviour.

25. Mr. Beyani drew attention to the links between the various articles and instruments mentioned in the paper by the Special Rapporteurs, also giving examples of regional instruments, such as the Pact on Security, Stability and Development in the Great Lakes Region, and other overarching instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide. Observing that while democracy could be inclusive it could also lead to fragmentation if not managed properly, he endorsed the idea that there was a need to promote inclusivity on the African continent to foster the stability and coexistence of diverse groups. Positive measures should be taken to do so.

26. Responding to the points made, the moderator said that the case of Egypt was interesting, as the revolutionaries had gone beyond religious and ethnic borders to promote democracy and human rights, with all sectors participating. A similarly complex case could be seen in Côte d'Ivoire, where the civil war was not splitting the country along ethnic or religious lines, but was a struggle for political power on the basis of disputed election rights, in which all groups were united. He said that tribalism in Africa had led to conflict and that diversity was a fundamental value that needed to be promoted and respected.

27. Following the experts' contributions, observers were afforded the opportunity to speak.

28. One observer drew attention to the idea of intolerance founded on political persuasion, noting that the post-election violence that had been seen in some African countries, even if masking a form of hatred based on racism and ethnicity, took the form of conflict between supposed winners and losers. He endorsed the call for education, particularly when tensions began to rise during elections.

29. Another observer said that the Organization of the Islamic Conference shared many of the concerns raised and had tabled resolution A/HRC/RES/16/18, which had been passed by consensus at the Human Rights Council on 24 March 2011. The resolution turned away from the concept of defamation of religions and supported an individual's right to freedom of belief. He called for an examination of the interface between articles 19 and 20 of the ICCPR, saying that the issue had not been adequately considered in the past. There was a need to integrate existing frameworks better and come up with new principles and enhanced interpretations defining the limits to freedom of expression. Many of the concerns raised, such as the racialization of Muslim minorities, were issues for the world as a whole to tackle.

30. A third observer drew attention to the situation of South Africa, saying that all could learn from that country's unique history. He said that a prominent leader of young people was singing apartheid-era songs related to the killing of Boers and, at the same time, white farmers were actually being murdered. While there was no direct link between the two, the hostile environment being created was troubling and could lead to further problems.

31. Responding to the points raised, the moderator said that in some parts of Africa political persuasion formed part of an unholy trinity with ethnic and religious hatred, a mix that undermined society as a whole. He congratulated the representative of the Organization of the Islamic Conference on the Human Rights Council's unanimous adoption of resolution A/HRC/RES/16/18, which had shifted the debate from an ideological discussion to a more practical one on the prohibition of incitement to national, racial or religious hatred, a milestone in the Council's history. He stressed the importance of the role of the Organization of the Islamic Conference, given the emerging trend in Africa of an amalgamation of race, culture and religion, with tensions between Islam and other religions stirring in some countries. Looking to the case of South Africa, he noted that comprehensive legislation to combat racism had been enacted, but a racial paradigm still ran through the heart of South African society. While it was no longer a case of white versus black, or vice versa, the country had seen shocking examples of xenophobic violence against migrant workers from other African countries. The way in which South Africa dealt with its current troubles could be a model for other countries and it was important to monitor the situation closely.

32. Following the observers' comments, the Special Rapporteurs were afforded the opportunity to respond to the comments raised.

33. Mr. Bielefeldt said that there was a tendency to talk of Muslim minorities not as believers but rather as an ethnic group to which was ascribed a negative collective mentality, with individual voices unable to make themselves heard. There was therefore a need to maintain distinctions at the conceptual level between ethnicity and religion. When referring to ethnic or racial superiority, it was simple to rebut reprehensible notions that some skin colours were better than others, but assessing whether one religion was somehow superior to another was much more difficult. There had to be room for intellectual exchange on the nature and merits of religions.

34. Mr. Muigai said that, in Africa, issues of racial and ethnic discrimination were chimerical. In colonial times, there was a clear white/black dichotomy, but the switch to the post-colonial period had brought about a paradigm of ethnicized politics with nuances that needed to be considered. Hate speech, a product of such politics, had come to the fore and several countries, such as Kenya, had already been compelled to enact special legislation to combat it.

35. Mr. La Rue suggested that article 20 of the ICCPR should be seen as a follow-up to article 19, with the interconnection of both articles crucial to understanding the scope and dimension of the application of article 20.

B. Presentations from the Human Rights Committee and the Committee on the Elimination of Racial Discrimination

36. Ms. Zonke Majodina, Chair of the United Nations Human Rights Committee, gave a presentation on some aspects of the Committee's work.³ She provided details on the Committee's general comments (its authoritative interpretation of the content of provisions in the ICCPR) and concluding observations, before providing some summaries of the Committee's case law relating to African countries. Her conclusions were that some African countries had broadened the scope of article 20 of the International Covenant on Civil and Political Rights in a manner that did not meet the strict test under paragraph 3 of article 19. African national legal systems lacked clearly formulated provisions for the protection of freedom of expression as required by article 19, and for the prohibition against incitement to hatred, as required by article 20. In addition, most of the case law relating to freedom of expression was concerned with political violations and restrictions of freedom of expression rather than expressly prohibiting incitement to national, racial and religious hatred. It was evident that national legislation and case law should be drafted in a way that clearly linked the prohibition of incitement to national, racial or religious hatred to freedom of expression. That would remove ambiguity in interpreting such legislation and provide a solid framework for enabling the provisions to be implemented most effectively.

37. Mr. Dieudonné Ewomsan, member of the United Nations Committee on the Elimination of Racial Discrimination, gave a presentation on the Committee's work.⁴ He explained that parties to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) were obliged to submit periodic reports to the Committee, which were analysed to assess their compliance with the provisions of the Convention. One of the main problems facing the Committee in that regard was that many parties failed to report on time. In addition, a good number of parties were often unaware that racial discrimination also encompassed ethnic discrimination, tribalism and other such forms of discrimination, which could hamper direct dialogue with them. The Convention and the

³ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/ZonkeMajodina.pdf>

⁴ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/Ewomsan.pdf>

Committee focused closely on education and the Committee's concluding observations made following the consideration of a party's periodic report were intended to guide all parties and not just the party at issue. The Committee was competent to hear cases brought by individuals who had exhausted domestic remedies. It also had a prevention and early warning mechanism that had enabled it to sound a warning regarding the events in Côte d'Ivoire and the Libyan Arab Jamahiriya.

38. Following the presentations, the moderator invited comments from the experts present.

39. Ms. Simbiri-Jaoko welcomed the Committee's emphasis on ethnic discrimination, given that the issue was the most prevalent in African countries yet was often appreciated by few Governments. One of the greatest challenges facing Africa was impunity. Taking Kenya as an example, she said that those who engaged in hate speech, often politicians and the most powerful, went unpunished, as prosecutions were often unsuccessful, the legislation governing hate speech and incitement notwithstanding. It was all well and good to have regional mechanisms in place for hearing individual complaints, but if there was inaction at the national level it would be difficult for anyone to be brought to justice. Such impunity at the national level severely weakened the capacity of international and regional mechanisms to afford redress to victims of such crimes.

40. An observer drew attention to the complementarity between articles 19 and 20 of the ICCPR. One paragraph of the Human Rights Council's resolution A/HRC/RES/16/18 required parties to adopt measures to criminalize incitement to imminent violence based on religion or belief. He asked whether that could be done by integrating the various existing frameworks already mentioned.

41. Responding to the points raised, the moderator drew attention to the growing importance of the religion and the amalgamation of race, culture and religion in Africa. In that regard, he cited the example of inflammatory comments made by Mr. Muammar Al-Qadhafi, the Head of State of the Libyan Arab Jamahiriya, and noted that there was great tension surrounding issues of race and ethnicity in that country at the current time, with refugees and migrant workers being attacked by Libyans.

IV. Law and judicial practices

42. Presentations were made by Mr. Hossam Bahgat, Director of the Egyptian Initiative for Personal Rights⁵; Ms. Florence Simbiri-Jaoko, Chair of the Kenyan Commission on Human Rights⁶; Mr. Henry Maina, Director of Article XIX Eastern Africa⁷; and Mr. Chaloka Beyani, professor of international law at the London School of Economics and Special Rapporteur on the human rights of internally displaced persons⁸.

43. In his presentation, Mr. Bahgat considered the status of legislation on incitement in Egypt, where offences dealt with by the country's penal code related to attacks on worship and the defamation of religions, but had rarely been invoked. Such offences were dealt with by the security forces and prosecutions were often blocked as it was considered that they would perpetuate the cycle of violence. The law prescribed mandatory prison sentences for such offences but they were seldom handed down. The broad formulation of the provision against contempt of religion allowed wide interpretation by the regime and societal and government criminalization of religious minorities, the media and other groups and actions. Its use in the past against minority religions such as the Baha'i community had also established a hierarchy of religious faiths and denial of State protection to those not belonging to the main Abrahamic religions, running counter to international law.

44. The focus on religion for cultural and historic reasons, seen in several parts of Africa, and the absence of incitement to hatred and violence in the penal code had left xenophobic attacks as an unclear area in the law, as demonstrated during recent events in Egypt when attacks against foreigners had been instigated by the State media. The changes in the country notwithstanding, it was still proving difficult to build cases against perpetrators of such instigation. In conclusion, he highlighted the need for political will and a comprehensive approach. It was not enough to have legislation prohibiting violence; the problem lay in the inconsistent application of that legislation. In addition, an institutional mechanism was needed to examine the diversity of religious issues and to monitor the enforcement of equality and provision of remedies for the victims.

45. In her presentation, Ms. Simbiri-Jaoko considered the situation in Kenya, where the issues of freedom of speech and incitement to violence had been closely linked to elections over a number of

⁵ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/HossamBahgat.pdf>

⁶ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/FlorenceJaoko.pdf>

⁷ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/HenryMaina.pdf>

⁸ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/ChalokaBeyani.pdf>

years. Outlining the background to that, she noted that the current National Commission on Human Rights had been formed only in 2003 and that the previous legal framework had contained no provisions on hate speech. Since its inception, the Commission had sought to define hate speech in a proposed law and to raise leaders' awareness of the issue, using the example of Rwanda. Its findings had been published in 2008 in a report entitled "On the brink of the precipice: a human rights account of Kenya's post-2007-election violence". Kenya had witnessed not only personal attacks during political campaigning but the demonization of entire ethnic communities in which the media had also been involved; the structure for such grievances and the scapegoating of communities had already been in place prior to the 2007 elections and the country had been primed for ethnic violence.

46. She described the improved provisions and definitions, in line with articles 19 and 20 of the International Covenant on Civil and Political Rights, in the Kenyan Constitution, noting that those, however, were not yet on the statute books. Challenges remained in terms of implementation, notably the lack of judicial and other mechanisms for implementing the legal framework; some lack of clarity and political support; and the culture of impunity and hence the difficulty in bringing charges. Citing the current case of Kenyan politicians before the International Criminal Court, she said that it showed the lack of political leadership and of plausible local mechanisms in which citizens could have confidence. In conclusion, she said that strong institutions and the support of the political leadership were essential to ensure that prohibited speech was taken seriously and perpetrators prosecuted, and to promote political and individual censure. It was also critical to define the parameters of hate speech, particularly in volatile situations, while guarding against branding too many things as such and thereby rendering the concept irrelevant.

47. In his presentation, Mr. Maina focused on the inconsistency and lack of clarity in African legislation and jurisprudence related to incitement and the importance of understanding the historical context in which regulations were being developed. The consequences of incitement in Africa were very real, with too many examples of how it could result in violence.

48. Grounds for protection in most African countries had centred on race and religion and there was a strong need to develop legislation dealing with incitement and discrimination on other grounds. Recent events in Kenya, for example, had shown the need to look at protection related to elections. It was also necessary to define incitement and have clear thresholds for what constituted hatred; in that connection, Article XIX had recommended a framework of seven tests to determine the level of hatred in speech, for example, assessing the severity, intent, content, extent, imminence, likelihood of action and the context. He also drew attention to the reluctance of the judiciary in Africa to move the process forward. There was a great need for the judiciary to be trained to deal with the different manifestations of incitement, requiring heavy investment, and equally a need to strengthen monitoring of the processes. In conclusion, he emphasized the need to understand the relation between those in power, the media and violence. In both Kenya and Rwanda, for example, the media were used as platforms for incitement by the politicians who regulated them. New models were needed to create diverse and pluralistic media.

49. In his presentation, Mr. Beyani considered judicial practices on incitement and effective remedies. Outlining existing instruments, he said it was vital for the provisions of articles 19 and 20 of the ICCPR and other provisions of international law to be adapted to national laws to achieve levels of protection congruent with international norms and to tackle the problem of incitement to national, racial and religious hatred. Judicial practice could only be as effective as the laws on which it was based, and those were often colonial in character and falling short of international standards of human rights. He cited examples of judicial practice that helped to determine what behaviour constituted incitement to hatred, such as criminal proceedings conducted by the International Criminal Tribunal for Rwanda.

50. Turning to remedies, he said that it was incumbent on the State to investigate any allegations of incitement and to ensure that incitement was not protected by freedom of speech. In many countries incitement was prohibited but not criminalized and there was often no specific legislation criminalizing hate speech. The way forward, he said, was to establish proper national observatories and human rights institutions.

51. In the ensuing discussion, one observer spoke about difficulties encountered by Amnesty International in the specific case of Rwanda, where the consequences of hate speech were clearly illustrated. Rwandan laws were very broadly drafted, making it difficult for the Government to prosecute hate speech or for judges and ordinary Rwandans to be clear about what constituted expressions of hatred. Furthermore, the vagueness of the prohibitions opened the way for expansionist interpretations extending to the criminalization of criticism of the justice system and a broad range of human rights work. There were thus many acquittals as a result of the large number of cases brought,

but also some very heavy sentences. The vagueness of the laws had a chilling affect on freedom of discussion generally. The Government was committed to revising the genocide law, which was seen as a welcome development, but it was also necessary to develop both clear definitions of hate speech and an enabling environment for freedom of expression.

52. Another observer referred to the experiences of the Kenyan National Cohesion and Integration Commission, noting that the term “ethnicity” as defined under the act establishing the Commission was sufficiently broad to include race and religion. The Commission was, however, relatively new and was grappling with those concepts, and there was no clear understanding in Kenya of what exactly constituted hate speech. The Commission had held various conferences to bring together media personalities and other players to discuss the issues and had had support from the police in setting up a joint task force to define hate speech. Nevertheless, a clearer definition of hate speech and a body to deal with it would be useful; currently the office of the Attorney-General had to be involved in prosecutions. Politicians were often responsible for hate speech and the police were consequently reluctant to prosecute.

53. The need was also stressed to examine closely the concept of ethnicity and the internal tensions that existed within ethnic groups. It was important to understand the origins of ethnic tensions that continued to influence current events and to seek catharsis.

54. Mr. Bielefeldt gave the example of the use of the word “Kaffir”, originally simply a descriptive term for a particular ethnic group that had become racially abusive and offensive, querying whether such usage had given rise to protests.

55. Ms. Majodina expressed the view that varied approaches were needed to deal with incitement to hatred. Common problems in Africa were the weakness of institutions and legal frameworks and inconsistencies in penal codes. Countries such as Egypt and Kenya were signatories to international conventions, yet international treaty provisions had not been properly incorporated into domestic law. The judiciaries in African countries were not independent, fair and impartial, which resulted in a culture of impunity. Strengthening the judiciary would require considerable resources, a change of mindset and training for judges, which the Office of the United Nations High Commissioner for Human Rights could undertake if requested. Treaty bodies should also disseminate information on the implications of treaties.

56. One observer suggested that the best response was clear interpretation and monitoring. He recalled that participants at the Durban Review Conference had proposed the establishment of an observatory at the international level to provide effective monitoring and to bring to world attention failures to conformity to international standards. In the light of recent trends, international human rights organizations should play a proactive role in continuing to shape the interpretation of existing international standards and guidelines.

57. Another observer noted that a positive aspect of the situation in that country had been the creation of a forum for Baha’is to respond to attacks; the situation was far worse in other countries where persecuted groups had no capacity to respond. She noted that national unity could become a problem if associated with only one identity, including religious affiliation. One expert noted in connection with the issue of national unity that the concept of multicultural relations was in crisis worldwide. He called for recognition of differences and for dialogue and reconciliation. Preventive policies were needed to avoid extreme policies in reaction to hate speech and other forms of incitement. Clear violations of freedom of expression on the basis of articles 19 and 20 of the ICCPR should be criminalized but those should be exceptions.

58. Summarizing the debate, the moderator noted a number of significant points that had been raised, including the importance of political goodwill in tackling incitement, the need for clear definitions, and the global relevance of the country examples that had been cited. The context of such examples should be borne in mind: the deep and historic origins of hate speech; the close linkage between use of language, for example the language used by politicians to depict certain communities, and violence; the absence of protection for minority groups such as non-Abrahamic religions; the lack of judicial and legal frameworks and, where those existed, the failure to implement legal provisions; the fact that in many cases it was the security bodies that were responsible for enforcing the law; and the culture of impunity engendered by the foregoing. The independence of the media was also a central issue in countries where the media was controlled by a few powerful and influential groups; the ultimate protection against prejudice and incitement was pluralism and diversity of the media and of opinion and communities.

59. In his view, the example of Kenya was a test case; although some laws had been approved, no measures had yet been taken. The society remained fragile and a sensitive situation with potential for

post-election violence persisted. There was a need to seek legal and cultural solutions, to reflect and act upon issues raised in the meeting, such as the building of national unity throughout the African continent, to examine more deeply the origins of ethnicity and internal tensions and to reconstruct unity in post-colonial environments, taking account of social and economic considerations. Africa had seen dramatic and continuing expressions of incitement to religious, racial and national hatred in recent years. In that sense the continent was vulnerable, but it also had the strength of traditional practices of coexistence and could find solutions in that rich tradition.

60. In her concluding remarks, Ms. Simbiri-Jaoko noted that judicial officers in Kenya were being trained in international conventions and standards even before the enactment of the Constitution and that they should have the authority to seek prosecution and make pronouncements; test cases existed, for example in the area of women's rights. Shying away from responsibility was indicative of a lack of independence and weak institutional capacity. Laws had to be clear and rights clearly demarcated, as several representatives had stressed, to end the culture of impunity. The examples of Kenya and Rwanda also highlighted the need for tolerance to be demonstrated by both Governments and citizens themselves. Citizens also had responsibility for ensuring that the wide space in which to operate and scope for diversity accorded to the media under the Kenyan Constitution could be given effect.

61. Mr. Maina said in his final remarks that the events in Kenya and Rwanda had precipitated attempts to pass legislation to which insufficient thought had been given. The language of international human rights instruments had been appropriated in an effort to appear compliant with those instruments but was so broad that it was open to misinterpretation as applied in the national context.

62. Mr. Bahgat made a number of concluding points, emphasizing, first, the importance of consistent application of international law. The politicization and political exploitation of the issues, especially after the 11 September 2001 attack on New York, had led to uneven attention being paid to instruments and policies that were very similar in nature, sometimes resulting in glaringly inconsistent application of similar standards. Second, he said, it should be the role of the United Nations to encourage the establishment of national and independent bodies to consider issues of equality. Discussions should not be confined to the international level and regional meetings should be encouraged. Third, more consideration should be given to prevention in combating incitement to hatred; events had shown that early warning mechanisms and pre-emptive measures were needed, based on examination of the root causes of violence.

63. Subsequently, the moderator invited additional presentations on the subject.

64. Ms. Susan Benesch, consultant with the Office of the United Nations Special Adviser on the Prevention of Genocide, gave a presentation in which she identified four forms of incitement, explained how to distinguish incitement from hate speech, discussed incitement to genocide in international criminal law and jurisprudence and suggested a framework that could be used in identifying incitement.

65. Ms. Benesch said that intent was not included as a criterion in the framework as it was an element of the crime that had been a legal requirement in many instruments, beginning with the Convention on the Prevention and Punishment of the Crime of Genocide. The five criteria that she had proposed were not elements of the crime, but were intended as interpretative aids for adjudicators, judges and other decision makers who were seeking to define incitement in specific cases and to judge, among examples of incitement, which cases were particularly dangerous. Turning to the issue of foreseeability, she said that that issue was often a way of deriving intent. It was also important to recognize that the speakers who were most likely to catalyse violence were those who were in good positions to foresee the consequences of their actions. In the case of Rwanda, for example, the radio presenters were well aware of the strong potential impact of the coded language that they used, given their familiarity with the historical, cultural and social context. She concluded that, while there was a right to freedom of expression, there was no right to the unlimited dissemination of one's speech. Such an approach could be used as a way to distinguish between the use and the abuse of a right.

66. Mr. Chile Eboe-Osuji, legal and policy advisor to the High Commissioner for Human Rights, discussed the various articles of the International Covenant on Civil and Political Rights and stressed the need to protect society from social disharmony. He said that a breakdown in society could stem from a cycle of hate. When there was such disruption in society that people lost their lives, it was likely that a Government would impose a state of emergency that would limit rights and freedoms. In such circumstances, it was crucial to consider the rights of society as a whole.

67. Following the presentations, the moderator opened the floor for discussions.

68. Ms. Majodina said that there was a direct link between articles 19 and 20 of the ICCPR when taking into account the interests of victims and of society at large, citing the example of recent xenophobic violence against migrant workers in South Africa. Prior to the outbreak of violence, there had been many expressions of hatred towards non-South Africans, and there had been no legislation in place to prevent that. In some ways, the country was teetering on the edge of an abyss, given that many of the underlying causes, including those of a social and economic nature, had not been resolved, engendering social disharmony.

69. Mr. La Rue stressed the importance of the foreseeability of a risk when talking of incitement. It was important for a speaker to have a clear perception of the consequences of any statement being made or action being taken. In that regard, the question of intent was also crucial: one had to ask whether someone was merely speaking irresponsibly or was speaking with the intention of provoking specific feelings. He suggested that not all forms of hate speech could be prohibited, limited or banned, and that there was a need to concentrate on those that had the most serious consequences.

70. Mr. Ewomsan drew attention to the power of the internet, suggesting that there was a need for special legislation to govern incitement using that medium. He also referred to incitement to religious intolerance, calling for attention to be paid to sermons. Mr. Frank La Rue, while acknowledging that there were differences between bilateral comments and comments made to an audience from a pulpit or via mass media, disagreed that there should be particular standards for some forms of communication. He suggested keeping to the standards laid down in articles 19 and 20 of the ICCPR and avoiding new legislation geared specifically to some media.

71. One observer endorsed the comments made regarding the deficient nature of domestic legal frameworks and judicial practices. In that regard, an interpretation gap needed to be filled. He also called for cultural complexities to be taken into account.

72. Mr. Beyani said that, in many cases, there was no political will to incorporate international law into domestic law. Even where international instruments were ratified, there was a distinct lack of follow-up. There should be a legal basis for the domestic inclusion of international instruments, as could be seen in the constitutions of some African countries. He described a possible integrated approach that took two forms: the first a simple human rights approach and the second predicated on criminalization.

73. Looking to the issue of intentionality, he said that, for there to be a crime of incitement, there was a need for there to be a specific intent. Evidence needed to be found that a speaker was seeking to provoke, instigate or prompt by virtue of the speech given, and also that there was knowledge of the circumstances and the likely outcomes of the speech.

74. Responding to the points raised, the moderator said that religious factors were playing an increasingly preponderant role in conflicts. He welcomed the emphasis laid on the Pact on Security, Stability and Development for the Great Lakes Region and endorsed the suggestion that there should be better engagement between United Nations and regional institutions.

V. Institutions and various types of policies

75. Mr. Omar Faruk Osman, Secretary-General of the National Union of Somali Journalists and President of the African Journalists Federation, gave a presentation focusing on the role of the media in terms of freedom of expression and the prohibition of incitement.⁹ He emphasized that, in Africa, racial affiliation took a backseat to those of clan, tribe or ethnicity, which were often being fuelled by politicians in an attempt to cling to or consolidate power. The media was often accused of contributing by disseminating ideas and discrimination based on ethnic and tribal hatred, as was seen in the cases of Kenya and Rwanda. While there was a need for professional and ethical journalism, the media often suffered from legal restrictions on free reporting and journalists themselves had been victims of hate crimes, killed on the grounds of their religion or clan. The right to freedom of expression was not absolute, but there was a danger that, in many African countries, repressive laws were being used to suppress that right and that legislation was being deliberately misinterpreted for political purposes. Blasphemy legislation was a particular example.

76. Following the presentation, the moderator opened the floor for comments by the experts.

77. Mr. Bielefeldt condemned the violations of human rights that often afflicted journalists, recalling that homophobia and proselytism were issues that also fell within the purview of the current workshop.

⁹ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/OmarFarukOsman.pdf>

78. Mr. Maina referred to the negative role of the media in a recent case in which a homosexual Kenyan couple had married in a civil ceremony in London. The press had harassed the parents of one of the couple, to the extent that the mother had had an emotional breakdown and had been left unable to speak, and had stigmatized the parents, describing them as lacking in morals. The media would always have capacity challenges in understanding current issues and there was a need for greater professionalism and training. He also drew attention to the role played by the vernacular media in the post-election violence that had beset Kenya in 2008. One of the proposed solutions was to ban local-language stations, but such a move would lead to some languages being privileged over others as languages of cohesion and would not resolve the problem.

79. Mr. Ewomsan said that the media had an important role to play in building democracy in societies marked by intolerance. In fledgling democracies there was a need for the media to exercise restraint and abhor the language of violence.

80. Mr. Muigai said that the real manifestation of intolerance lay in xenophobia. Many people were concerned about the oppressive nature of rogue Governments that threatened democracy, freedom and human rights, while forgetting about the real danger posed by non-State actors within a society itself, in particular in Africa, where what passed for civil society was not necessarily an autonomous, uncompromised forum of free-thinkers. Many civil society bodies were partisan and operated along ethnic lines, driven by considerations other than principles, ethics or morals. In that regard, the media were often depicted as the last bastion against repressive States or elites, with insufficient attention paid to their championing of ethnic and parochial concerns. The danger in painting a world in broad strokes was that important subtleties were forgotten, which could prove dangerous. Looking to the situation in Kenya, he condemned the vitriolic writings of columnists who were trying to conceal their behaviour behind a respected tradition of political commentary.

81. Mr. La Rue suggested that the press was often representative of the society in which it operated. Journalists, as human beings, had their own personal biases, sometimes racial or xenophobic in nature, that they reflected in their writing. He also drew attention to the issue of homophobia, noting that, while homosexuality was not a new concept, it was becoming increasingly openly and massively rejected, often violently, in moves driven by religions of all denominations, supposedly to defend their values. He called for protection of journalists, given that they were often the victims of human rights violations. The United Nations Security Council had passed a resolution on the protection of journalists in conflict zones, but there was also a need for their protection in countries in which there was general strife that was not considered sufficiently serious to qualify as conflict. An emergency mechanism was required for, among others, journalists and human rights defenders. He went on to stress the importance of ethics in journalism and to ensure that there was self-regulation with sufficiently high standards. At the same time, it was important to have community-related media, so as to ensure diversity and plurality. In that regard, it was crucial to stop monopolies to prevent problems both commercially and in terms of abuse of power. Monopolies could lead to situations in which news was mishandled intentionally to benefit a person currently in or seeking to obtain power.

82. Mr. Bahgat said that, in the recent events in Egypt, it had not been the new media or social networking that had instigated the events, and that the changing media landscape notwithstanding, the traditional media had proved to be effective players. Although most Egyptians had been watching satellite television in the previous two decades, they turned to the State television during the crisis. The Egyptian Initiative for Personal Rights had long advocated self-regulation and a code of ethics in the media but had recognized that there were serious limitations to enforcement, largely as a result of the lack of an independent mechanism for complaints. The board of the national press association was elected by journalists and board members seeking re-election were reluctant to act on complaints against their colleagues. The Initiative called for an independent press complaints commission. On the issue of homophobia, raised by other representatives, he said that vilification of private citizens existed in Egypt. In his view, the right to privacy was not sufficiently developed in international human rights frameworks, including article 17 of the International Covenant on Civil and Political Rights, and did not take account of the impact of the internet and social media.

83. One observer noted that South Africa faced a problem not of unethical behaviour by the media, but rather of the need for the media and journalists to be protected. As a representative of a civil society organization, he called for more discussion of the role of civil society in terms of protection and support for the media and freedom of speech.

84. Summarizing the discussion, the moderator noted that journalists could be both the central actors and the victims in cases of incitement. Touching on the issue of proselytism, he said that, fundamentally, it was for each religion to go out and share its values and its nature – it was therefore in the nature of religion to proselytize. He highlighted the fact that the media in Africa were closer to

Governments than in most countries and that some African media had played a very central role in ethnic violence and genocide by giving visibility to specific political views. It was also common in Africa to use the prohibition of incitement as a political weapon against freedom of expression.

85. Concerning the notion of diversity in the media, there had been general agreement that it was very important in the multi-ethnic and multicultural societies of Africa. The appearance of diversity could, however, conceal the fact that the media were controlled by small economic or financial groups. The aim should be journalistic, editorial and ownership plurality. The promotion of community media was also important as a cultural tool, but needed to be monitored so that it was not used for socially divisive purposes.

86. In his presentation¹⁰, Mr. Ozias Tungwarara, Director of the Africa Governance Monitoring and Advocacy Project, discussed data collection, monitoring and fact-finding, looking specifically at the situation in Africa. An effective monitoring system was central to human rights protection. The United Nations human rights regime had formal systems and mechanisms for monitoring and fact-finding, and the Human Rights Committee played a central role therein.

87. In the African context, the implementation of human rights was more critical than their content. There was commitment on the continent to instruments for the protection of rights through the African Union and subregional bodies but there remained a huge gap between intentions and the situation on the ground. Monitoring should therefore focus largely on compliance in the three main areas of constitutional, legislative and policy frameworks. There was a need to monitor institutional arrangements, which were inadequately prepared to fulfil their role on the ground, and their effectiveness; and to include, for example, the conduct of political parties in election periods, the nature of public broadcasts and the denial of licensing to community radio stations.

88. Civil society monitoring efforts were viewed with suspicion and were largely dismissed by Governments. There was a need to build capacity in African civil society organizations to develop approaches incorporating international standards while remaining sensitive to the realities of the African context and to integrate African monitoring efforts such as those of the African Union with others.

VI. Suggestions for further action

89. Mr. La Rue expressed appreciation for the sharing of experiences from Africa, which had deepened the understanding of the realities on the continent. He said that the convening of the workshop had been timely and wise and called for a continuation of the consultation process. As Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, he said that the Office of the United Nations High Commissioner for Human Rights could play an important role in supporting regional and national press associations in the development of their strategies and codes, especially in relation to incitement. That did not imply a change in values but rather in focus and priorities, making them relevant to the present. Mr. Bielefeldt concurred that the workshop had been a valuable learning experience and called for a continuation of the process. The promotion of pluralism and diversity should be a normal feature of modern societies, he said, and the natural result of the recognition of human rights, dignity and equality.

90. Ms. Majodina said that it was clear from the workshop that African countries needed to craft clear legislation not just prohibiting hate speech but also criminalizing it. The participants had come up with an analytical framework that could serve as a starting point for developing consistent understanding of the issues across the African region. The Human Rights Committee also had a role to play in interpreting articles 19 and 20 of the Covenant. Strong institutions were needed, particularly a judiciary that had integrity and was capable of adjudicating the complex issue of what constituted incitement and xenophobia, among others. The root causes of those phenomena had to be examined in each context. A broader set of policy measures were needed, including preventive means, and more should be done to promote equality.

91. She endorsed the importance of the media for dialogue on the issues and the need for plurality, including community media, as a means of reaching groups affected by violence, and also the dire need identified in the discussions for monitoring at the regional and national levels. National monitoring mechanisms suffered from a lack of resources and it was difficult for their members to attend international forums. Legal frameworks were essential in the monitoring process; strong executives often took away the monitoring function from parliament. Non-State actors were also important to ensure that information reached the international level where compliance was monitored.

¹⁰ <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Nairobi/OziasTungwarara.pdf>

92. Mr. Maina noted the need to expand the dialogue beyond the United Nations and civil society and to involve more stakeholders. He also advocated tasking the three rapporteurs with examining the dynamics of media ownership in Africa. He observed that, although African states subscribed to the African Peer Review Mechanism and United Nations monitoring mechanisms, they were mostly insincere in terms of compliance with both international and their own mechanisms. Among civil society organizations there was also a problem of coordination with too many disparate processes and diverse groups, sometimes with diverse interests.

93. Ms. Simbiri-Jaoko concurred that although African national human rights bodies had the mandate to ensure compliance, they tended to engage more robustly at the international level than locally, and national and local bodies were not taken sufficiently seriously. She strongly emphasized the need for capacity-building for monitoring activities. A further area to be considered was the lack of understanding of international institutions and mechanisms among parliamentarians. Parliaments should be the custodian of those institutions and should hold Governments to account, but were often not taking up the responsibility.

94. Mr. Tungwarara said that credence should be given to Africa-inspired initiatives and resources should be mobilized to support those.

95. Mr. Bahgat proposed some steps for the way forward: the preparation of clear guidelines and principles on prevention to tackle the rise of tensions and hatred; further exploration of race and religion generally and how they were perceived; the repeal of all blasphemy laws that were clearly in contravention of international law; the formation of independent equality commissions; and an understanding that not all inflammatory speech constituted incitement to hatred and that democratic societies should reflect on how to deal with inflammatory speech that did not reach the threshold of article 20 of the Covenant.

96. One observer clarified that freedom of expression, religion, opinion and conscience were enshrined in the Algerian Constitution and were exercised by the Algerian press. He stressed, however, that the media had a responsibility to reflect the morals of society and to inform in an objective manner.

97. Another observer emphasized the role of the national human rights commission in Nigeria in cases of ethnic violence in that country; the commission had reported to the Government, concluding that the political classes were responsible for incitement, but had no power to force the Government to implement its recommendations. The commission had recently been given power to prosecute and, like others in Africa, needed capacity-building in that area.

98. One observer noted that the ratification by all African States of instruments related to democratic elections would help to prevent cases of post-election violence. Another said that many instruments were rooted in historical experiences based on colonialism and racism.

99. One observer suggested the organization of similar workshops at the subregional level since the topic of discrimination was of great interest in the light of recent events on the continent. It was 10 years since the World Conference against Racism and the adoption of the Durban Declaration and Programme of Action, and it would be opportune to undertake a stocktaking exercise. Another observer recommended the monitoring and documentation of statistics on hate speech prosecutions, noting the importance of recording sentences, to enable assessment of whether there was greater scope for action by treaty organizations. She had been struck by the level of agreement on the issues raised during the meeting, as discussions of such topics were often very heated in the region, and she proposed a collective pursuit of ways to reach out to African Governments.

IX. Concluding remarks and closure of the meeting

100. Concluding the meeting, the moderator delivered a statement encapsulating the main points of the workshop discussion (see annex).

Chair's wrap-up of the Nairobi expert workshop on the prohibition of incitement to national, racial or religious hatred (6-7 April 2011)

Incitement to violence has been present in most of the conflicts in the last 20 years in Africa. Incitement to hatred has special importance in light of recent political conflicts in Africa where incitement to hatred occupies a prominent place.

Experts and observers mentioned the central role played by the ethnic factor in nation-building and a number of conflicts on the continent. The 1994 genocide in Rwanda, for which today 7 April we observe the International Day of Reflection, constitutes an extreme example. In addition, the prominent role of tribalism as well as religion was underlined.

In terms of general principles, the following elements have been raised by experts and observers:

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;
- 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.

The meeting was informed of examples demonstrating that the wider the definition of incitement to hatred in domestic criminal laws, the more it opens the door for arbitrary application of these laws. The legal framework and jurisprudence on incitement should therefore be guided by express recognition of "incitement to national, racial or religious hatred" as provided by Article 20 of ICCPR, and robust definition of key terms like hatred, discrimination, violence, hostility, etc. Reference was made in this regard to the guidance and definitions in the Camden Principles.

Experts underlined the coherence between articles 19 and 20 of ICCPR and recognized that the three part test of legality, proportionality and necessity also applies to incitement cases. It was argued that article 20 of ICCPR is under-explored and has in the past been hardly mentioned in concluding observations of the Human Rights Committee. Increasingly, however, the Committee is paying more attention to the prohibition of incitement to hatred as reflected in article 20 of ICCPR.

It was suggested to have a very high threshold for both restrictions on freedom of expression and for the application of article 20 of ICCPR. In this regard, a seven part threshold was proposed:

- Severity
- Intent;
- Content;
- Extent, in particular the public nature of speech;
- Imminence;
- Likelihood or probability of action, and
- Context

There needs to be an integrated response to incitement to hatred, i.e. not only predicating measures taken on non-discrimination, but furthermore embedding such responses in education programmes and other initiatives in the different sections of society. Also, such an integrated approach implies utilizing not only the various relevant articles of the ICCPR (18, 19, 20 and 27) but also of the CERD and the Convention on the Prevention of Genocide.

LEGISLATION, JURISPRUDENCE, POLICIES IN AFRICA

One major challenge in Africa is to contain the negative effects of the amalgamation of race, ethnic origin and religion which unfortunately, and as demonstrated by several recent incidents, has led to tragic events suffered by members of certain groups following outright campaigns of hatred along

such lines. Caution should be exercised so that the concept of “national unity” is not instrumentalised or incurs adverse consequences for minorities.

This amalgamation has often been manipulated by political parties and their leaders for electoral reasons. This trend is likely to exacerbate the enclosure of national, ethnic and religious identities.

The fact that race, ethnic origin and religion are too closely associated to nationhood and national identity in Africa is however not necessarily a negative phenomenon because ethnicity and religion can be vehicles for cultural heritage provided they are not used in contradiction to universal human rights. African states are characterized by a rich diversity in terms of faiths, life convictions and ethnic origins. The existence of these groups within all levels of society needs to be recognized to lay the building blocks for sustainable and peaceful coexistence in multicultural societies. Also African States could not legitimately claim to not face challenges in relation to racism and racial discrimination.

The amalgamation of national identity and religious identity takes up a predominant position in national policies notably with regard to electoral platforms. This trend is likely to exacerbate the enclosure of religious identities.

The meeting also was informed of the dire situation of individuals for reasons of their sexual orientation. In this regard, reference was made to the hate campaign in Uganda by politicians and certain media. Incitement to violence and hatred against these individuals is often also nourished by conservative religious leaders in various countries of the continent.

The experience in Africa has shown that journalists and the media can be victims of incitement to hatred and suffer persecution for their activities. They can also be the perpetrator of acts of incitement to hatred, whether or not this is done out of their own initiative or when used as tools for political campaigns.

Given the richness of traditional African values, Africa is well-placed to provide answers to the difficult challenges in relation to freedom of expression and incitement to hatred.

MONITORING / INSTITUTIONS

All over the African continent, the situation is characterized by weak institutions, a weak legal framework and a weak judiciary leading to a culture of impunity. As part of a multi-pronged approach, it was suggested that African States take the benefit of the training and technical assistance, for instance by the OHCHR. The need was stressed to have regional/international monitoring mechanisms to facilitate the analysis of the facts behind incidents of incitement to hatred wherever they may occur. In addition, such mechanism or process should be complemented by strong national mechanisms. It is vital to conduct data-gathering, document the acts/facts and suggest action that could be taken. It was suggested in this regard that the UN human rights treaty bodies request States parties to provide statistics on the number and nature of cases, acquittals and sentences regarding incitement to hatred.

There had been high expectations for regional and sub-regional mechanisms established in Africa but the main challenge for empowering these institutions and ensuring follow-up to their recommendations lies in the weakness of national institutions.

The majority of African national legal systems do not contain a clearly formulated provision for the protection of freedom of expression as required by article 19 and stemming from the obligation, in article 20, to prohibit incitement to hatred.

In various African countries, rather vague and new categories of restriction or limitation to freedom of expression, often with a religious connotation (e.g. “fanaticism”, “treason”, “contrary to religious values”) are being incorporated in national legislation and thereby contribute to the risk of a re-interpretation of article 20 of ICCPR. One should indeed be cautious not to add any undefined limitation, beyond those contained in article 19 of ICCPR, which are not reflected in the Covenant. In addition, participants also suggested reviving efforts to repeal domestic blasphemy laws in various parts of the world.

COUNTRY SITUATIONS

The following country situations in Africa and problems with regard to incitement to hatred were explicitly mentioned by experts and observers:

Post-electoral violence in Kenya which had been fueled by hateful statements of politicians reinforcing ethnic divides and for which media had been instrumentalized. Although a certain number of legal provisions are in place, there have hardly been any prosecutions.

Côte d'Ivoire: abuse of state media as a vehicle for transmitting messages inciting to violence against individuals belonging to certain groups in society.

Egypt: deep sense of togetherness between people of all faiths and convictions at a time when there was a complete absence of security. Misuse by the state apparatus of laws on "contempt of heavenly religions" which censors artistic expression, justifies societal bigotry, stifles criticism and is targeting journalists, writer, bloggers and activists. National law did not properly transform international law into national law. The example of a talk show was mentioned, where a TV journalist encouraged violence against Bahai with crimes subsequently happening while state protection was not available because this religion is not protected.

Somalia: war lords establishing their own media outlets to disseminate their propaganda and to incite violence.

Rwanda: over-broad wording and expansive interpretation of the genocide ideology laws.

Statements by high-ranking leaders in Zimbabwe (instilling fears, e.g. through statements that "the only good white man is a dead one") and Libya (referring to anti-government demonstrators as "rats and cockroaches") were mentioned as examples of incitement to violence with impunity.

FURTHER SUGGESTED ACTION

Participants also underlined the importance of African countries respecting their reporting obligations under the core human rights treaties so that the UN expert mechanisms may better assist these countries in realizing human rights.

Participants congratulated member states for the recent adoption by consensus of the mentioned Human Rights Council resolution (res. 16/18); the shift away from the notion of "defamation of religions" to incitement to hatred, after years of discussion, was termed a historic turning point.

Participants stressed the need to encourage more dialogue, enhance policies of better understanding and create early warning and prevention measures. Whereas there is a clear need for early warning indicators, in addition action should be taken to create – through education and other spheres – an environment conducive to preventing acts of incitement to hatred.

It will be imported to create the necessary capacity to better guide the legislative drafting process, the work of the judiciary, and to better inform the adoption of relevant policies. In this regard, self-training and self-regulation of the media should also be encouraged.

Hatred is not a natural disaster but is man-made and constructed, and should therefore be deconstructed.

MAIN FINAL OBSERVATIONS

There is a clear need for comprehensive and sequential action to be taken to counter acts of incitement to national, racial or religious hatred. Of great importance is to take all necessary measures with a view to preventing intolerance, racism and hatred, and to do this via all spheres, legal, cultural, economic, etc. In addition, it is crucial that protection is offered to groups and individuals against acts of discrimination and violence instigated by national, racial or religious hatred. This will require well-trained and well-resourced state institutions, in particular the judiciary. These institutions, in turn, need to be complemented by independent monitoring institutions both at the national, regional and international levels as well as by a vibrant and active civil society. However, political will is essential for the success of any of these proposed measures or mechanisms.