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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), the Arab Organization for Human Rights, the Indian Movement "Tupaj Amaru", the International-Lawyers.Org, non-governmental organizations in special consultative status, the International Educational Development, Inc., the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Hate Speech in the Context of Political Leaders and Parties*

Focus

The focus of this statement is on hate speech in the context of politics, examining hate speech and the dangers by which political leaders and political parties engage in hate speech.

Introduction

Hate speech is generally defined as “speech that attacks, threatens, or insults a person or group on the basis of national origin, ethnicity, colour, religion, gender, gender identity, sexual orientation, or disability”. The term has been used around the globe for various purposes including vilification of, or discrimination against certain groups (usually minority groups), hatred and xenophobic tendencies (as is the case with the current migration phenomenon), and propaganda purposes among others. The intentions seemingly stem from intolerance and discrimination and lack of accurate information.

Interpreting hate speech can be problematic due to constitutional rights and the right to freedom of expression. This brings about difficulties in describing and explaining it as well as what constitutes hate speech. Furthermore, providing concrete evidence within context and meaning can be difficult, thus, it tolerates different types of interpretations across societies.

While, associations, groups of people, and/or individuals typically engage in hate speech, such discrimination and intolerance appears to be “gaining central stage in the political arena across Europe”¹. Political parties with anti-immigration agendas are gaining ground especially in Europe and the United States². One must consider the influence and outreach political leaders and political parties have on populations. They are not the average citizen as they have influence and power to produce results.

Hate speech under international law

International law has several provisions that prohibit or attempt to regulate speech based on hatred or discrimination against others. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees “freedom of expression”.

ICCPR - Article 19

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) For respect of the rights or reputations of others;*
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

¹ Regulation of hate speech. file:///C:/Users/GICJ/Downloads/pesinis_antonios.pdf

² Ibid

Whereas Article 20 of the ICCPR provides limitations to Article 19's "freedom of expression".

ICCPR - Article 20

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

Furthermore, the International Convention on the Elimination of Racial Discrimination (ICERD) under Article 4 states:

ICERD – Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

Some have argued that Article 4 of the ICERD covers more ground with regards to "hate speech", which may be the reason why some state parties, such as the United States of America, have ratified the Convention with reservations to Article 4. There has been much discussion on the said articles, particularly on the basis that Article 20 of the ICCPR may be somewhat contradictory to its Article 19; some argue that the distinguishing trait rests on the part of "incitement"³. However, if Article 20 did not explicitly state that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law", then it would open Article 19 to be used to encourage or instigate actions that violate basic human rights and freedoms.

It should be noted, perhaps even explicitly mentioned, that prohibition of "hate speech" does not mean prohibition of "expression of hate". Additionally, "hate speech" consists of hate specifically directed and/or targeted towards a group of people that share certain characteristics expressed or otherwise. It is necessary then, to distinguish between "hate speech" that is prohibited by law and freedom of expression that may contain offensive content but is nevertheless protected by law.

Hate speech in political context

In a recent study, it was found that in Kosovo, the majority of hate speech is made by politicians⁴. Moreover, the youth do not have a clear understanding of what hate speech actually is. This is the case for most, who are not to bear the full blame, as there is no clear definition of hate speech in international law.

³ Law and hate speech

⁴ Similar studies should be made in various and multiple countries and regions, though it can already be assumed that results will be alike.

*“In their discussions, the focus group respondents frequently pointed to politicians, who in their view use hate speech, and were generally of the view that politicians use hate speech to appear superior to others and gain political power at the expense of their political opponents;”*⁵

As Hiba Birat notes, “hate speech, as a term, does not have a specific definition”, therefore, better understanding and clarity is necessary to investigate the elements that warrant prohibition or at least regulation of “hate speech” under law. Elements in this case constitute, “intent”, “incitement”, “causation”, “context”, and “proscribed results”⁶; additionally, Mercy Muendo adds the elements of “the speaker”, “audience”, “content”, and “historical context”⁷.

Intent: the statement is meant to incite hatred;

Incitement: several factors may be present with regards to incitement that require investigation. Language that invokes taking action should be taken into consideration;

Causation: with regards to the International Tribunal for Rwanda, causation though slightly different from incitement creates “an actual risk of harm” that is directly or indirectly related to the statement;

Context: the statement in context has a “racist nature”, is discriminatory and inflammatory towards or targeting a particular group;

Proscribed results: the statement has propagated into illegal activities;

The speaker: the person or group presenting the message has influence to their followers, listeners, or audience;

Audience: audience may be known or have the tendency to act/react in a violent manner or ways that violate the law;

Content: content can be discriminatory and/or “hostile towards a targeted group”;

Historical context: similar statements may have led to violations or violence in the past.

Considering and applying these elements to hate speech gives more clarity to whence it should be regulated in order to avoid or propagate disputes and conflict⁸.

United Nations High Commissioner for Human Rights Zeid Ra’ad Al-Hussein made a statement on 21 March, 2017 (International Day for the Elimination of Racial Discrimination), in which he cautioned about the “dangers of demonising particular groups”, which has been on the increase leading to polarised ethnic identities in South Sudan that have been stoked by hate speech and brought about ethnic war to the country, anti-Semitism persists in the US, Europe, Middle East and beyond; increasing verbal and physical abuse on Muslims is on the rise, particularly amongst Muslim women who wear headscarves and the Rohingya Muslim community in Myanmar; and indigenous people, especially in Latin America, “continue to endure stigmatization, including in the media”.

Further, he suggested that states “adopt legislation expressly prohibiting racist hate speech, including the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and threats or incitement to violence.” As we are experiencing politics of division and rhetoric towards targeted groups, statements that embody fear of the other, discrimination, intolerance, and/or vilification towards certain groups “have real consequences”.

These consequences have already taken place. In the towns of Elin Pelin and Rozovo in Bulgaria, asylum seeking families from the Syrian Arab Republic were forced to leave town because residents believed them to be rapists and a threat to the locals⁹. Syrians have been increasingly vilified and discriminated against due to their misrepresentation and

⁵ “The Influence of Hate Speech as a Political Tool on the Youth of Kosovo”. 2016. Link

⁶ <http://www.paccusa.org/hate-speech-international-law-v-u-s-law/>

⁷ <http://theconversation.com/the-options-for-kenya-as-an-impending-election-fuels-fear-of-hate-speech-71913>

⁸ Additionally, there needs to be distinction between offensive speech and punishable speech. For example, the European Court of Human Rights in *Giniewski v. France* stated that expression targeting ideas even if offensive shall be protected under freedom of speech while abusive expression targeting individual human beings shall not

⁹ <http://bulgaria.bordermonitoring.eu/2017/02/28/mayor-of-elin-pelin-tells-syrian-family-with-humanitarian-status-to-leave/>

disinformation. Hate speech and negative attitudes towards them and Muslims has increased from 11 percent in 2014 to 38 per cent in 2016 according to the Open Society Institute in Sofia¹⁰. The growing intolerance towards refugees, asylum seekers, and Muslims is unacceptable. Political leaders should have some sort of responsibility to condemn such speech and action.

The fact that Viktor Orbán of Hungary (in addition to Anti-semitism and anti-Roma sentiments¹¹) openly discriminates against migrants, especially refugees and asylum seekers; is an example of how his influence on the media only diminishes any hope for tolerance and acceptance. Dutch politician Geert Wilders made comments about Moroccans in a disparaging way that even put him on trial. While he has a right to express his opinion, as a politician speaking to a wide audience, the manner and content of his expression has led to hatred of a particular group of people. Caution should be made as hatred can and has in the past led to violations of human rights including violence.

The majority of hate speech by politicians is accompanied by sweeping statements of a particular group that are usually untrue, contain fabricated information, or exaggerated. Moreover, political parties with anti-immigration agendas are gaining ground¹². As per the few examples above, to which there are many more, these agendas use hate speech as a propaganda tool to win votes and support towards their objectives. Not only are they doing a disservice to society but “hate speech” also undermines the principle of dignity in that not everyone in society are regarded as equals. Dignity is a precondition to other rights that everyone is entitled to¹³.

Conclusions and recommendations

Hate speech legislation originally came into inception, through the European Convention on Human Rights (ECHR), ICCPR, and ICERD to help prevent the type of hatred that transpired before, during, and sometime after the Second World War¹⁴. Unfortunately, however, there have been incidents, for example the Rwandan genocide, where language that vilifies and discriminates in a racist manner has been used to directly incite violence.

The ICCPR clearly states under Article 20(2) that “*any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*”. States parties thus are required to prohibit hate speech. Politicians, in particular, should not disrespect the dignity of all people of society. Hate speech undermines this crucial aspect.

Hate speech, therefore, warrants and requires regulation; preventing incitement is one of the central goals of ‘hate speech’ regulation. Hate speech regulation, which is not about eradicating conflicts nor correcting passions but rather “affirming the value of equality in view of existing conflicts and heated emotions.”¹⁵

We, therefore, recommend that:

- The international community clearly defines “Hate Speech”;
- States must ratify and apply ICCPR and CERD without reservations;
- Enhance human rights discourse on hate speech and its regulation at the international and national level;

¹⁰ <http://www.balkaninsight.com/en/article/syrians-alarmed-by-hate-speech-against-refugees-in-bulgarian-media-08-18-2016>

¹¹ The Content and Context of Hate Speech: Rethinking Regulation and Responses. Cambridge University Press. 2012. Link

¹² Regulation of “hate speech”, the meaning of “incitement” under case-law

¹³ Ibid

¹⁴ Most notably what led to the holocaust of Jewish people but also the vilification of Japanese people who were hit twice by the atomic bombs.

¹⁵ Regulation of “hate speech”, the meaning of “incitement” under case-law

- Further studies on causes and effects of hate speech must be conducted.

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association- UK, Human Rights Defenders (HRD), The Brussels Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Alliance to Renew Co-operation among Humankind, General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), Women Will Association (WWA), The Iraqi Centre for Human Rights, The Perdana Global Peace Foundation, The International League of Iraqi Academics (ILIA), Organization for Widows and Orphans (OWO), International Anti-Occupation Network (IAON), Kuala Lumpur Foundation to Criminalise War, NGOs without consultative status, also share the views expressed in this statement.