

IPHRC 8th SESSION: OUTCOME DOCUMENT OF THEMATIC DEBATE ON 'FREEDOM OF EXPRESSION AND HATE SPEECH'

The OIC Independent Permanent Human Rights Commission (IPHRC) held a thematic debate on “**Freedom of Expression and Hate Speech**” during its 8th Regular Session, on 23rd November 2015. H.E. Iyad Ameen Madani, Secretary General of OIC and IPHRC Chairperson Amb. Ilham Ahmed inaugurated the debate. Key panelists for the thematic discussion were Dr. Abdul Salam Al Abadi, Secretary General of International Islamic Fiqh Academy (Fiqh Academy), Mr. David Kaye, UN Special Rapporteur on Freedom of Expression (participated through video link) and Mr. Doudou Diene, former UN Special Rapporteur on Racism. Ms. Pansy Tlakula, Special Rapporteur on Freedom of Expression from the African Commission on Human and Peoples Rights also sent a special message for the debate that was read by one of her colleagues. Besides Commission Members, representatives of OIC Member and Observer States actively participated in the debate.

After going through a rich, intense and inclusive discussion among panelists, Commission Members and Member States on the subject that covered almost all aspects of this important debate including its philosophical and legal basis, importance of its promotion and strengthening in all societies (religious and secular alike), differing views on how best to identify incitement to hatred and hate speech as well as possible measures to combat its misuse through legal and non legal measures including role of various stakeholders in this regard, the Commission adopted the following:

Acknowledged that freedom of expression is a key human right, which is vital for development of stable, peaceful and progressive democratic societies. However, the scope of freedom of expression as provided in the Holy Quran, Article 22 of the Cairo Declaration on Human Rights in Islam, Article 19 of Universal Declaration of Human Rights (UDHR), Article 10 of European Convention on Human Rights, Article 13 of American Convention on Human Rights, Article 9 of African Charter on Human and Peoples’ Rights and Articles 19 & 20 of the International Covenant on Civil and Political Rights (ICCPR) stipulate that this human right is not *‘absolute’* rather its exercise is subject to *‘special duties and corresponding responsibilities’* based on *‘avoidance of harm to others’* to ensure societal cohesion.

Highlighted that freedom and equality are fundamental precepts of Islam wherein it recognizes humans (both men and women) as free and equal beings. Islam, guarantees freedom of expression and like other religions recognizes the role of critical thinking. However, it makes distinction between criticism or constructive discussion and sheer disrespect, defamation, insult and negative stereotyping that fall into the category of inciting religious hatred.

Further highlighted that whereas freedom of expression has been one of the key factors for creation of modern day inclusive, tolerant and multicultural societies, the hate speech motivated by racism, xenophobia and intolerance, coupled with impunity for perpetrators

create a climate of fear and social exclusion of the targeted persons and groups, which is anathema to the ideals of pluralism and democracy. Hence, the need for responsible use of freedom of expression to ensure protection of the right of others, respect the right of privacy and personal dignity and maintenance of socio-cultural harmony.

Recalled that although not all hateful messages result in actual hate crimes, these crimes rarely occur without prior stigmatization and dehumanization of targeted groups and incitement to hatred fuelled by religious or racial bias. Hence the promotion and protection of freedom of expression must go hand in hand with efforts to combat intolerance, discrimination and incitement to hatred. To this end, it also called upon UN Special Procedures to present balanced reporting by paying equal attention to both issues.

Expressed serious concerns over the rising trend of violence using incitement to hatred and discrimination based on race or religion and squarely condemned all related acts of violence that resulted in killing and maiming of thousands of innocent people. It also condemned acts of incitement to hatred resulting in devastating and despicable killing of non-Muslims by terrorist groups such as Daesh and Boko Haram etc.; printing of senseless caricatures of Prophet Mohammad (PBUH); appalling treatment of Rohingya Muslims in Myanmar; desecration of holy scriptures and sites in different parts of the world, that have all resulted in promoting a culture of discrimination and violence leading to loss of innocent lives and wider sense of alienation, rejection, and polarization among affected communities.

Further expressed concern over the growing incidents of Islamophobia that are clear manifestations of incitement to hatred and discrimination against Muslims and their pristine religion Islam. Appreciated the role of Islamophobia Observatory of the OIC General Secretariat and encouraged it to continue working in close cooperation with relevant regional and international organizations to aptly highlight the blight of Islamophobia.

Reiterated its position on freedom of expression, which provides limitations in accordance with Articles 19 & 20 of the ICCPR, including the duty of the State to prohibit, by law, “*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*”. It was explained that the need to protect the sanctity of religions and their symbols is not to accord exceptional protection to the particular set of values but to avoid defamatory stereotyping and insults that result in negative profiling of their adherents leading to undue discrimination, hostility and violence against them. Hence, the beneficiary remains the individual of targeted religion, a legitimate subject of international human rights law.

Further expressed confidence in OIC sponsored HRC 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), repeatedly adopted by the Human Rights Council and UN General Assembly by consensus, which includes substantive, administrative, political and legislative actions to be taken at the national and international levels to address the concerns relating to incitement to religious hatred and

discrimination. To this end, urged Member States to address the implementation gaps and provide regular reports on its implementation to the Human Rights Council as well as rededicate to the agreed ideals in a comprehensive manner involving inclusive approaches provided in '*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*'.

Observed that there is a need to build consensus on the threshold of freedom of expression where it converts into hate speech and incitement to hatred needing criminalization as provided in Article 20 of the ICCPR and para 7(f) of the Res.16/18, which calls for "*adopting measures to criminalize incitement to imminent violence based on religion or belief*". To this end it referred to the well established legal provision based on Article 29 of UDHR, which provides that the *exercise of all rights and freedoms is subject to limitations set by law that include purposes such as recognition and respect for the rights and freedoms of others* as well as General recommendation No. XV on Article 4 of International Convention on the Elimination of All Forms of Racial Discrimination by ICERD Committee clearly stating that "*prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression*".

Stressed the need to avoiding double standards in application of universal standards of freedom of expression and while working to find common ground to define hate speech, suggested that existing legal practices used by different countries to address hate crimes, incitement to hatred, discrimination and violence based on race or religion must be applied universally to provide equal protection to all targeted groups and individuals.

Upheld that while legal response involving affirmative punitive action is of key importance, a '*multilayered approach*', which promotes human rights and tolerance, encourages dialogue and understanding among different groups and builds the capacity of national authorities, including security officials as well as media, thus creating an environment conducive to preventing acts of incitement to hatred, is of vital significance.

Underlined the need to depoliticize the international discourse on the subject by moving away from an ideological debate to a legal, moral and ethical discussion within the human rights framework. To that end urged adoption of an intellectual, moral and ethical strategy in both the West and the Muslim world to bridge the gulf of misunderstanding or '*clash of ignorance*' by countering the increasingly negative political rhetoric and biased media coverage.

Further underlined the importance of human rights education as an effective tool to combat hatred and promote better understanding of diversity, hence the need for its wider application and integration into national human rights plans of action, educational plans and other relevant national plans of action to foster universally recognized human rights values and to promote a culture of peace that helps achieving sustainable development.

Noted the crucial role of religious leaders in (i) speaking out against acts and expressions of inter and intra religious hatred and intolerance, (ii) defeating intolerance, discrimination and violence committed in the name of religion by providing a counter-narrative that

highlights the correct religious teachings of tolerance and peaceful co-existence thus strengthening the resilience of societies against extremist and intolerant views; (iii) raising awareness among masses on their right to seek legal recourse against religious intolerance and discrimination and (iv) promoting religious norms and values that strengthen socio-cultural and religious understanding among various segments of society.

Further noted the important role being played by young people in every field of human endeavour and the fact that they are the future of mankind, encouraged Member States to invest in capacity building of their youth through comprehensive strategies that would help them know, respect and develop the cultural heritage of their own and that of all mankind, thus promoting a culture of peace, mutual respect and understanding that would help combat culture of intolerance and strengthen peace and security.

Acknowledged the strength of social media in quickly disseminating views and forming opinions as well as its misuse by terrorist and extremist groups for fomenting hatred and intolerance as well as new recruitment in their ranks. Encouraged Member States to pay special attention and raise awareness about this phenomenon as well as monitor its misuse for incitement to hatred, discrimination and violence.

Called upon media to (i) abide by the standards of responsible journalism, (ii) avoid biased and unfounded reporting leading to stereotyping and incitement to hatred against specific groups and communities and (iii) promote respect for diversity and socio-cultural and religious sensitivities of different segments of society that are vital for building inclusive, peaceful and pluralistic societies.

Further called upon all States to take firm actions to avoid misuse of religion for inciting hatred, discrimination and violence and to pursue introspective approaches on improving/repealing laws with regards to rights of religious and other minorities to bring in conformity with their respective international human rights obligations.

Recommended that OIC may commission a study that analyzes the existing legal practices used to combat hate speech and incitement to hatred in different parts of the world with a view to suggesting parameters for hate speech and incitement to hatred based on one's race or religion as well as practical steps, in accordance with international human rights law, to combat such hateful expressions that include both legal action such as proscription when needed and other inclusive approaches as defined in Res 16/18 and Rabat Plan of Action.

Further recommended full and effective implementation of Res. 16/18 and the Rabat Plan of Action at all levels and in this context stressed the importance of political commitment at the highest level. It also encouraged States to strengthen and rationalize numerous expert mechanisms working on the issue of incitement to hatred to better interpret and implement existing international obligations including the use of Universal Periodic Review, relevant Treaty Bodies and UN Special Procedures as well as establishment of a mechanism under the Office of the High Commissioner for Human Rights to follow up its implementation.

Recognized the commendable scholarly work done by the Fiqh Academy in the field of human rights and emphasized the need to develop collaborative linkages among the OIC, IPHRC, Fiqh Academy and ISESCO for promoting better understanding of human rights perspective of Islam in a coordinated manner including through the use of media.