



Written contribution to the thematic discussion on Racist Hate Speech and Freedom of Opinion and Expression organized by the United Nations Committee on Elimination of Racial Discrimination, 28 August 2012

Amnesty International welcomes the initiative of the United Nations (UN) Committee on the Elimination of Racial Discrimination (the CERD) of organizing this thematic discussion on “Hate Speech” in the context of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) to enhance understanding of the causes and consequences of racist hate speech. The organization acknowledges the importance of balancing Articles 4, 5 and 7 of the Convention, and refinement of international law more broadly, in this area.

Amnesty International’s experience and research have indicated that prejudicial discourse can fuel discrimination and other human rights abuses,¹ but also that robust protection of freedom of expression is a powerful and essential tool for combating racial discrimination and violence. Efforts to prohibit “hate speech” or otherwise restrict expression in the interest of non-discrimination should reflect the principle that “All human rights are universal, indivisible and interdependent and interrelated.”² Indeed, it has been argued that “nowhere is this interdependence more obvious than in the discussion of freedom of expression and incitement to national, racial or religious hatred.”³ Freedom of expression is related to other rights and is essential for their realization. Excessive restrictions on freedom of expression may therefore undermine many other human rights. The interdependence between the rights to freedom of expression and non-discrimination requires States to pay detailed attention to laws and policies on “hate speech.”

Laws and policies which are not clearly and narrowly drafted can violate freedom of expression, and may also be counterproductive to efforts to eradicate racial discrimination. Accordingly, Amnesty International urges the Committee to clarify that the prohibitions required under Article 4(a) must, at a minimum:

- serve a legitimate aim under international human rights law and;
- be necessary and proportionate to achieving that aim.

It would also be useful for the Committee to continue to clarify in this context that that States parties must undertake a holistic approach to combating racial prejudice and discrimination that goes beyond the prohibitions required by Article 4 and especially which encompasses positive obligations under Article 7 of the Convention.

¹ *Choice and Prejudice: Discrimination against Muslims in Europe*, EUR 01/001/2012 (Highlighting discrimination against Muslims in Europe on account of their religion, ethnic origin and gender).

² Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, para. 5.

³ Joint submission by the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance to the 2011 Expert Workshop on the Prohibition of National, Racial or Religious Hatred, Vienna 9-10 February 2011 (See also similar recommendations of the three Special Rapporteurs following similar workshops for the African region (Nairobi, 6-7 April 2011), for the Asia Pacific region (Bangkok, 6-7 July 2011), and for the Americas region (Santiago, 12-13 October 2011), <http://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>).

Doing so will aid considerably in ensuring that domestic legal measures undertaken to satisfy the requirements of Article 4(a) contain sufficient legal clarity and are consistent with States' obligations regarding the rights to freedom of expression and non-discrimination.

Clarifying the Extent of State Obligations under Article 4(a)

The Universal Declaration of Human Rights both prohibits discrimination and protects freedom of expression. It is well-established in international human rights law that the right to freedom of expression, though not absolute, is a fundamental right which may only be restricted in certain limited circumstances.⁴ The conditions in which restrictions are allowed are set out in Article 19(3) and 20 of the International Covenant on Civil and Political Rights (ICCPR), as well as numerous regional treaties also ratified by many States parties to the Convention.⁵ Article 19(3) establishes a three-part test to determine the legality of restrictions of the right to freedom of expression: 1) they must be aimed at the protection of national security, public order, public health or morals, or respect for the rights and reputations of others; 2) they must be provided by law; and 3) they must be necessary (i.e. proportionate and the least restrictive possible) to achieve the intended aim.

Protecting the rights of others from advocacy of hatred that constitutes incitement to hostility, discrimination or violence justifies some restrictions on the right to freedom of expression. However, governments must also demonstrate that restrictions undertaken to meet this aim are provided by law and necessary to achieve these aims. This is all the more important because freedom of expression is the "basis for the full enjoyment of a wide range of other human rights."⁶ Accordingly, excessive or otherwise unlawful restrictions of the right to freedom of expression are likely to have deleterious effects on a host of other human rights.

Navanethem Pillay, the UN High Commissioner for Human Rights, has noted: "Defining the line that separates protected from unprotected speech is ultimately a decision that is best made after a thorough assessment of the circumstances of each case."⁷ With this in mind, the Committee would do well to clarify the scope of Article 4(a) obligations, to guide States in their assessment of these circumstances.

The Committee has stated that: "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression."⁸ While it is true that the prohibition of such ideas is compatible with freedom of expression in some cases, this requires further clarification: it cannot be said that *all* conceivable prohibitions would be compatible with the right of freedom of expression.

Therefore it would be useful for the Committee to clarify that laws seeking to implement Article 4(a) – must demonstrate "due regard" for the right of freedom of expression as well as other human rights. This means demonstrating that restrictions on expression are necessary and proportionate to a legitimate aim. This should include a requirement of intent to bring about a prohibited result. Clarification by the Committee that remedies other than criminal prohibition may be appropriate would also be useful.

⁴ UN Human Rights Committee, General Comment 34, para. 22.

⁵ African (Banjul) Charter on Human and Peoples' Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; American Convention on Human Rights.

⁶ UN Human Rights Committee, General Comment 34, para. 4.

⁷ Opening Remarks by Navanethem Pillay, UN High Commissioner for Human Rights, 2 October 2008, Expert Seminar on the Links Between Article 19 and 20 of the International Covenant on Civil and Political Rights; See also, UN Human Rights Committee, General Comment 34, para. 35, "When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."

⁸ General Recommendation No. 15, para. 4.

A Requirement of Intent

The obligations contained in Article 4(a) of the Convention read in conjunction with those contained in Articles 2(1) (prohibition of discrimination), 19(3) and 20(2) of the ICCPR mean that States may restrict the right to freedom of expression to protect the right to non-discrimination or to prevent advocacy of hatred that constitutes incitement to racial discrimination, hostility or violence as long as the restrictions are necessary and proportionate to that aim, and those who advocate hatred do so intentionally. The Committee has previously criticized laws aimed at “hate speech” which lack an intent requirement.⁹

The “hate speech” provisions of both the ICCPR and the American Convention on Human Rights refer to “advocacy of hatred.” Such advocacy implies intent since dissemination of discriminatory statements (for example statements of others) without intention to promote hatred cannot be said to advocate hatred.¹⁰ In its jurisprudence, the Human Rights Committee has focused on the element of intent in assessing the lawfulness of restrictions on freedom of expression to protect against discrimination and incitement.¹¹ Similarly, the UN Special Rapporteurs on freedom of religion or belief; on the promotion and protection of the right to freedom of opinion and expression; and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have noted that a 2008 Office of the High Commissioner for Human Rights seminar concluded that “[t]he public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized.”¹² The Special Rapporteurs also cite the Camden Principles on Freedom of Expression and Equality, noting: “the term *advocacy* is to be understood as ‘requiring an intention to promote hatred publicly towards the target group’” for restrictions on “hate speech” to be compatible with the right to freedom of expression.¹³

The need for the CERD to clarify that Article 4(a) of the Convention contains a requirement of intent is demonstrated by the European Court of Human Rights 1994 ruling in *Jersild v. Denmark*, in which the Court’s judges cite different interpretations of the Convention provisions in this regard.¹⁴

The court in this case found a violation of the right to freedom of expression where a journalist was convicted for having broadcast the racist statements of others in a documentary about an extremist racist group in Denmark.

In reaching its conclusion, the majority cited the divided opinion of the Committee about the conviction in Denmark. The court noted “[w]hilst some members [of the Committee] welcomed it [the Danish verdict] as ‘the clearest statement yet, in any country, that the right to protection against racial discrimination took precedence over the right to freedom of expression’, other members considered that ‘in such cases the facts needed to be considered in relation to both rights.’”¹⁵

⁹ Concluding Observations on Rwanda, 2011, para. 14. While this Concluding Observation was in relation to Article 2, the recognition of the risks that arise if intent is not present is important.

¹⁰ See, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, For the UN Special Advisor on the Prevention of Genocide, by Toby Mendel, GT-DH-DEV A(2006)004, p. 45.

¹¹ For example, in the case of *Faurisson v. France*, three concurring committee members who ultimately agreed that the author’s freedom of expression was validly restricted by prohibiting his denial of the Holocaust, noted that the law itself under which the author was convicted was problematic since it did not “link liability to the intent of the author, nor to the tendency of the publication to incite to anti-Semitism,” Communication No. 550/1993 (1996), individual opinion of Elizabeth Evatt and David Kretzmer, co-signed by Eckart Klein, para. 9; See also, Opinion of Rajsoomer Lallah, at para. 6.

¹² Joint submission by 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, OHCHR expert workshops on the prohibition of incitement to national, racial or religious hatred. Expert workshop on Europe (9-10 February 2011, Vienna), page 11.

¹³ *Id.* at page 12.

¹⁴ Application no. 15890/89 (1994).

¹⁵ Para. 21.

The court then went on to consider the Danish government's contention that the law underlying the conviction was designed to ensure compliance with the Convention. The court concluded that the complainant's conviction violated his right to freedom of expression because it did not consider intent, and that this reasoning was "compatible with Denmark's obligations under the [Convention]."¹⁶ Notably, the dissenting judges also did not agree as to whether the Convention compelled this conclusion. Judges Ryssdal, Bernhardt, Spielmann and Loizou argued that the complainant's rights had not been violated, but conceded that "The [Convention] probably does not require the punishment of journalists responsible for a television spot of this kind."¹⁷ The Committee's own reaction to the conclusions of the court in this case does not entirely clarify the Committee's opinion on whether Article 4(a) requires the prohibition of intentional incitement to hatred, only.¹⁸

Interpreting the requirement that dissemination of racist ideas be punishable by law inconsistently, with regard to the element of intention, can undermine international standards. As such, it would be important that the Committee clarify that Article 4(a) requires an intention to disseminate ideas that advocate racial hatred before that dissemination is punishable by law.

Necessary for and Proportionate to a Legitimate Aim

Legitimate Aims

Under the Universal Declaration of Human Rights and the ICCPR, only certain aims are legitimate as regards prohibitions on "hate speech." For example, the Universal Declaration on Human Rights does not specify grounds for restrictions on freedom of expression, but in Article 7 protects the right to be protected from any discrimination as well as incitement to discrimination. Articles 19 and 20 of the ICCPR, as noted, protect the rights of others against advocacy of hatred that constitutes incitement to discrimination, hostility or violence.

The Human Rights Committee has clarified that the right to freedom of expression encompasses "even expression that may be regarded as deeply offensive."¹⁹ The Human Rights Committee has also noted where a State seeks to justify restrictions on the right to freedom of expression with reference to the need to protect the rights of others, the State must demonstrate "a direct and immediate connection between the expression and the threat [to others' rights]."²⁰

This same test might usefully be adopted to aid States in their implementation of Article 4(a) of the Convention. There is a need to meaningfully distinguish offensive expression from expression which may or must be restricted in the interests of the rights of others, including efforts to prevent advocacy of hatred that constitutes incitement to discrimination, hostility or violence. This should be clarified by specifying that the requirement in Article 4(a) only applies where there is an immediate link between the expression and a threat of racial discrimination, hostility or violence.

¹⁶ Para. 30.

¹⁷ Joint dissenting opinion of Judges Ryssdal, Bernhardt, Spielmann and Loizou, para. 4.

¹⁸ "Noting the judgment of the European Court of Human Rights in the case of Jersild-v-Denmark (36/1993/431/510), the Committee affirms that the "due regard" clause or article 4 of the Convention requires due balancing of the right to protection from racial discrimination against the right to freedom of expression. The Committee recalls its General Recommendation No. XV on this point," Concluding Observations: Denmark, CERD/C/304/Add.2 (1996), para. 3.

¹⁹ Human Rights Committee, General Comment 34, para. 11, see also European Court of Human Rights, Handyside v. United Kingdom (Application No. 5493/72) 1976.

²⁰ Human Rights Committee, General Comment 34, para. 35.

Necessity and Proportionality

Restrictions on the right to freedom of expression must – in order to be lawful – conform to the principles of necessity and proportionality. This means that a restriction on freedom of expression is necessary in the sense that it is the only means of achieving the intended purpose (protection of the rights of others), and that the restrictive measure imposed “must be the least intrusive instrument amongst those which might achieve their protective function.”²¹ This requires an analysis of the necessity and proportionality of restrictions in light of the specific circumstances of each case. In order to accommodate this, the Committee should clarify that the requirement in Article 4(a) that dissemination of ideas based on racial superiority or hatred be declared “an offence punishable by law,” does not necessitate criminal punishment – which is rarely the least intrusive measure – but rather may apply to other forms of civil, administrative or other measures.

Indeed, the Committee has already acknowledged this on at least one occasion. In finding that Germany had not violated Article 4(a) by failing to prosecute the author of a “discriminatory, insulting and defamatory,”²² public letter, the Committee noted, *inter alia*, that the letter had already “carried consequences for its author, as disciplinary measures were taken against him.”²³ Specifically, the author was suspended from his job in the police commissariat.

Such an approach, which takes account of the necessity and proportionality of restrictions, is consistent with the right to freedom of expression.

The Human Rights Committee has reasoned similarly. In *Ross v. Canada*, a school teacher was removed from his teaching position as a result of anti-Semitic statements, followed by reinstatement in a non-teaching position after a period of unpaid suspension. The Human Rights Committee found no violation of freedom of expression and noted approvingly that “the restriction thus did not go any further than that which was necessary to achieve its protective functions.”²⁴

The Council of Europe Committee of Ministers recommendation on “hate speech” similarly recommends that States adopt a range of civil, criminal and administrative law provisions in order “to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.”²⁵

A Need for Legal Certainty

Identifying and defining racial hatred is a difficult task. Even leaving aside the differing formulations of the types of discriminatory expression which are prohibited in different international and regional human rights instruments, courts and other bodies have struggled with definitions.²⁶ However, defining such concepts clearly is imperative as laws which restrict freedom of expression must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.”²⁷ As argued above, the Committee can assist States parties in achieving the precision that international human rights law requires by clarifying that measures undertaken pursuant to Article 4(a) must be necessary for and proportionate to

²¹ Human Rights Committee, General Comment 34, para. 34.

²² *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, CERD/C/72/D/38/2006, (2008), para. 9.

²³ *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, CERD/C/72/D/38/2006, (2008), para. 7.7.

²⁴ Human Rights Committee, *Malcolm Ross v. Canada*, CCPR/C/70/D/736/1997 (2000), para. 11.6.

²⁵ Recommendation R(97)20 of the Committee of Ministers of the Council of Europe on “Hate Speech”, 30 October 1997, Principle 2.

²⁶ The European Court of Human Rights, for example, in its Fact Sheet on “Hate Speech,” explains that “There is no universally accepted definition of the expression ‘hate speech,’” (http://www.echr.coe.int/NR/rdonlyres/D5D909DE-CDAB-4392-A8A0-867A77699169/O/FICHES_Discours_de_haine_EN.pdf); see also Anne Weber, *Manual on Hate Speech*, Council of Europe Publishing, page 3; and *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, For the UN Special Advisor on the Prevention of Genocide, by Toby Mendel, GT-DH-DEV A(2006)004, p 12.

²⁷ Human Rights Committee, General Comment 34, para. 25.

the protection of a legitimate aim, including by requiring intent and allowing for proportionate restrictions.

The effects of restrictions that lack legal clarity are pernicious. Without being able to discern where the boundary between legal and illegal expression lies, people tend to exercise self-censorship, refraining from lawfully exercising their human rights for fear they may be punished, with insidious effects on freedom of expression for society as a whole. It may also cause “hate speech” to find expression outside of the public eye, where it can become much more dangerous. Amnesty International’s research has documented the human rights costs of such chilling effects.²⁸ For example, with regard to the application of vague “genocide ideology” laws in Rwanda, which are ostensibly aimed at combating “hate speech,” Amnesty International’s research found that even the judges charged with applying the law were unclear as to its meaning. The chilling effect of this vagueness in the criminal law was apparent:

One Rwandan human rights activist said, “Genocide ideology is a form of intimidation. If you dare to criticize what is not going well, it’s genocide ideology. Civil society and the population prefer to shut up.” As one representative of an international NGO working in Rwanda said, “Genocide ideology leads to general self-censorship.” Another said, “The population has to shut up, otherwise you risk being accused of genocide ideology.”²⁹

The Committee similarly recommended that Rwanda revise its “genocide ideology” law “with a view to making the definition of the term “the ideology of genocide” in Article 2 more specific, and to include intention as one of the constituent elements of this crime listed in Article 3, and thus to provide all the guarantees of predictability and legal security required of a criminal law and prevent any arbitrary interpretation or application of this law.”³⁰

The Committee should provide concrete guidance to States parties seeking to meet their obligations under Article 4(a) by clarifying the requirements of intent and necessity for and proportionality to a legitimate aim, as argued above. This will help States draft clear and narrow “hate speech” rules and avoid some of the negative impacts of laws which lack legal certainty.

Holistic Approaches to Combating Racial Discrimination

The measure of any prohibition on racially discriminatory expression must be whether it is effective in protecting the right to non-discrimination. Measures that restrict expression but which are ineffective in this cannot be justified under international human rights law: they cannot be said to be necessary and proportionate to a legitimate aim.³¹ It follows that measures that restrict expression will also fail the test of proportionality where less restrictive means would be equally, or more, effective. In this sense, criminal or other punitive measures should be used only as a last resort where less restrictive measures have failed.

To ensure that measures to prevent incitement to racial hatred are effective, the Committee should urge States to avoid exclusive or undue reliance on punitive measures and rather to adopt holistic approaches to combating prejudices and discrimination, paying particular attention to their obligations regarding education under Article 7.

²⁸ See for example, *Safer to Stay Silent: The Chilling Effect of Rwanda’s Laws on “Genocide Ideology” and “Sectarianism,”* AFR/47/005/2010; *Stifling Dissent: Restrictions on the Rights to Freedom of Expression and Peaceful Assembly in Uganda,* AFR/59/016/2011, *Cuba: Restrictions on Freedom of Expression,* AMR 25/005/2010

²⁹ *Safer to Stay Silent: The Chilling Effect of Rwanda’s Laws on “Genocide Ideology” and “Sectarianism,”* AFR/47/005/2010, p. 27.

³⁰ Concluding Observations on Rwanda, 2011, para. 14.

³¹ See, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred,* For the UN Special Advisor on the Prevention of Genocide, by Toby Mendel, GT-DH-DEV A(2006)004, p. 39.

Risks of Subjectivity or Abuse

The Committee has on many occasions highlighted illegal restrictions on freedom of expression, ostensibly justified by laws to curb racially discriminatory speech.³² The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, in urging respect for freedom of expression while combating “hate speech,” noted that: “‘hate speech’ laws have in the past been used against those they should be protecting.”³³ Amnesty International has also documented numerous instances of abuse of “hate speech” type laws.³⁴

Even in cases where laws are not excessively broad or intentionally abused, restrictions on expression can be implemented in a manner that risks undermining free expression as well as racial equality. “Hate speech,” “racial hatred” and similar wordings are disputed terms which invite subjective analysis.³⁵ This is problematic for several reasons. While there may be broad agreement about instances that clearly constitute racial hatred or incitement, there will also inevitably be cases that are harder to judge, for example which use coded or euphemistic speech to advocate hatred and incite discrimination or violence.³⁶ Judges and other actors will necessarily bring their own personal perspectives and biases to the judgment of such questions, which may be perceived quite differently by victims. Put otherwise: “Humans, including judges, are inclined to label positions with which they disagree as palpably unacceptable and therefore beyond the realm of protected expression. However, it is precisely where we face ideas that we abhor or despise that we have to be most careful in our judgment, as our personal convictions can influence our ideas about what is actually dangerous.”³⁷ This carries with it risks. Among these is the risk that people will – rightly or wrongly – perceive the personal approaches taken by judges in these peripheral cases as preferential treatments of specific groups in society, leading to interracial resentments which undermine the goals the Convention seeks to promote.³⁸

In addition, judicial determinations of guilt or innocence under “hate speech” laws have social implications that also affect the rights enshrined in the Convention. On the one hand, subjective readings of the law can create “martyrs” of those who would incite discrimination

³² See, Concluding Observations on Turkmenistan, CERD/C/TKM/CO/6-7, para. 16 “the Committee expresses its concern at the overly broad provisions of article 177 of the Criminal Code, such as on “enmity” or “offending ethnic pride” which may lead to unnecessary or disproportionate interference with the freedom of expression (arts. 4 and 5 (d)(viii)). In light of general recommendation 15 (1993) on the implementation of article 4 of the Convention, and drawing attention to the general comment 34 h(2011) by the Human Rights Committee on the right to freedom of opinion and expression, the Committee recommends that the State party clearly define criminal offences, in particular article 177 of the Criminal Code, so as to ensure that they do not lead to unnecessary or disproportionate interference with the freedom of expression”; Concluding Observations on Turkey, CERD/C/TUR/CO/3, para. 14, “The Committee is also concerned at reports that article 216 of the Penal Code [which prohibits, *inter alia*, incitement to racial enmity or hatred] has been applied against persons advocating their rights under the Convention”; Concluding Observations on Belarus, A/59/18, para. 264 “reminding the State party of its obligation to respect the right to freedom of opinion and expression when implementing article 4 of the Convention”; Concluding Observation on Mauritania, A/59/18, para. 340, “The Committee recommends that the State party guarantee respect for the freedoms of expression and association in its implementation of article 4 (a) and (b) of the Convention.”

³³ Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, London, 27 February 2001.

³⁴ See, *Freedom Limited: The Right to Freedom of Expression in the Russian Federation*, EUR 46/008/2008; *Ethnic Uzbek journalist must be released: Ulugbek Abdusalamov*, UA: 144/10 Index: EUR 58/006/2010, *Indonesia: Atheist imprisonment a setback for freedom of expression*, ASA21/021/2012 (regarding incitement to religious hatred).

³⁵ See note 25, above.

³⁶ The use of coded language in the direct and public incitement to genocide in Rwanda is an extreme example of this.

³⁷ European Court of Human Rights, *Vejdeland v. Sweden*, App. No. 1813/07, Concurring Opinion of Judge Spielmann, joined by Judge Nussberger (citing *Féret v. Belgium*, App. No. 15615/07, Dissenting Opinion of Judge András Sajó, joined by Judges Vladimiro Zagrebelsky and Nona Tsotoria).

³⁸ For example, the authors of a complaint before this Committee who objected to the failure to prosecute discriminatory statements against Roma and Sinti did so in part by arguing that “had those characterizations been made against Jews, massive judicial intervention would have resulted,” *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, CERD/C/72/D/38/2006, (2008), para. 5.5.

and can claim to have been unjustly silenced by the state. On the other hand, where courts find that offensive or even discriminatory statements fall short of, or lack evidence to sustain conviction under, domestic legal prohibitions on “hate speech,” authors may claim their statements have been “vindicated.” In both cases, such offensive expression is given more public attention than it might otherwise have received.

The Committee can aid States in avoiding such harms by urging specialized training for judicial and law enforcement personnel involved in the enforcement of “hate speech” laws, calling on States to monitor the implementation of these laws to ensure fair application and calling on States to ensure that there are mechanisms in place to receive and review complaints.

Elements of a Holistic Approach to Preventing Racial Prejudice and Discrimination

Prohibition of “hate speech” can only be truly effective when undertaken as part of a holistic approach to combating prejudice and discrimination that goes beyond prohibition of expression and takes account of all the requirements of the Convention. Such an approach should especially take account of obligations under Article 7 to “undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.”

As the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on freedom of religion or belief, and on racism, racial discrimination, xenophobia and related intolerance have argued:

Hate speech is but a symptom, the external manifestation of something much more profound which is intolerance and bigotry. Therefore, legal responses, such as restrictions on freedom of expression alone, are far from sufficient to bring about real changes in mindsets, perceptions and discourse. To tackle the root causes of intolerance, a much broader set of policy measures are necessary, for example in the areas of intercultural dialogue or education for tolerance and diversity. In addition, this set of policy measures should include strengthening freedom of expression.³⁹

Amnesty International urges the Committee to continue to emphasize that education should form part of a holistic approach to combating discrimination and racist expression.⁴⁰ Such education should be far reaching in approach, involving the formal educational syllabuses and broader public education efforts including advertising and publication of educational material directed toward a wide variety of audiences and, where necessary, in all appropriate languages (including targeting illiterate audiences if needed). Such efforts should emphasize issues of multiple discrimination, particularly how forms of direct or indirect racial discrimination may impact people differently or to a different degree because of other aspects of their identity, such as their sex/gender, sexual orientation, gender identity, religion or belief, political or other

³⁹ Joint submission by the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance to the 2011 Expert Workshop on the Prohibition of National, Racial or Religious Hatred, Vienna 9-10 February 2011.

⁴⁰ Concluding Observations on Bolivia, CERD/C/BOL/CO/17-20, para. 15, “[The Committee] recommends that the State party strengthen measures to combat racial prejudice that leads to racial discrimination in the media and in the press through education and training for journalists and for persons working with the media in order to increase awareness about racial discrimination in the population at large”; Concluding Observations on Spain, CERD/C/ESP/CO/18-20, para. 14, urging the state party “to promote general awareness of diversity at all levels of education”; Concluding Observations on Poland, CERD/C/POL/CO/19, para. 7, “The Committee urges the State party to sensitize the public on the problems relating to anti-Semitism.”

opinion, ethnicity, national or social origin, disability, or other status.⁴¹ In particular, education of public officials such as police officers and judges is essential. In addition, such approaches should include measures to empower members of groups which are discriminated against to have access to media to put their own voices across in order to combat racial discrimination and measures to promote inter-cultural dialogue. Such educational measures themselves also form only part of the other tools required by the Convention and recommended by the Committee to serve the broader goal of racial equality, such as effective monitoring of the impact of legislation and policies on different groups and collection of accurate data disaggregated by race and gender to use in identifying and addressing discrimination. Government offices and mechanisms, such as Racial Discrimination officers, can also be useful in both addressing instances of racism, as well as making the clear public statement that racism is taken seriously by the state.

Also importantly, government officials and political leaders should lead by example by promoting the values of equality and diversity and condemning instances of discrimination or discriminatory rhetoric by government officials.⁴²

Conclusion

The strategic response to hate speech is more speech: more speech that educates about cultural differences; more speech that promotes diversity; more speech to empower and give voice to minorities, for example through the support of community media and their representation in mainstream media. More speech can be the best strategy to reach out to individuals, changing what they think and not merely what they do.⁴³

Amnesty International takes the view that robust protections of freedom of expression also protect the right to be free from racial discrimination. We urge the Committee to clarify the requirements on States under Article 4(a) taking due regard of freedom of expression, including possible conflicts with this right, and by urging a holistic approach to preventing racial discrimination that avoids over-reliance on legal prohibition and sanction and focuses on positive measures, especially education, to combat racial intolerance and discrimination.

⁴¹ Committee on the Elimination of Racial Discrimination, General Recommendation no. 25: Gender Related Dimensions of Racial Discrimination.

⁴² See Human Rights First, "Institutions and Different Types of Policies," Submitted for The Americas Expert workshop on the prohibition of incitement to national, racial or religious hatred (OHCHR), Santiago, October 2011 (<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Santiago/TadStahnke.pdf>)

⁴³ Joint submission by the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance to the 2011 Expert Workshop on the Prohibition of National, Racial or Religious Hatred, Vienna 9-10 February 2011.