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**The Americas Expert workshops on the prohibition of incitement to national, racial or religious hatred (OHCHR), October 2011, Santiago**

**“Institutions and Different Types of Policies”**

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**1. Freedom of expression must only be restricted in specific and narrowly defined circumstances**

In the debate on the relationship between Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) with regard to freedom of expression and incitement to hatred, Human Rights First takes the view that robust protection for freedom of expression is one of the most effective tools in the fight against violence, discrimination, and hatred, and that the fundamental right to freedom of expression can only be restricted in certain narrowly defined circumstances, prescribed by ICCPR Articles 19 and 20.<sup>i</sup>

ICCPR Article 19(3) permits restrictions subject to a three-part test: the restriction must be (a) “provided by law,” and (b) “necessary” for (c) “respect of the rights or reputations of others” or for “the protection of national security or of public order (*ordre public*), or of public health or morals.” Similarly narrow restrictions on the right to freedom of expression are found in other major international instruments. In addition, incitement laws need to be drafted in such a way to meet the criteria of ICCPR Article 20(2). Moreover, ICCPR Article 20 does not provide an independent basis for restriction on the right to freedom of expression; a restriction enacted under ICCPR Article 20(2) must also meet the three-part test elucidated by ICCPR Article 19(3).<sup>ii</sup>

**2. Confronting Incitement to Hatred Through Means Other than Legal Restrictions on Expression**

The fact that the High Commissioner is holding these seminars at all demonstrates that there is no international consensus on how Article 20 should be interpreted and implemented at the national level. The United States has entered a reservation on Article 20, limiting its application to restrictions on speech that are permitted under the U.S. Constitution. Such limitations are extremely narrow, covering only certain circumstances where there is incitement to imminent violence. Moreover, the relevant prohibition in the American Convention on Human Rights covers incitement “to lawless violence or to any other similar illegal action against any person or group of persons (Art. 13(5)).” On its face, this provision is more limited in scope than Article 20. It should be noted, however, that the American Convention’s focus on violence and

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similar action against persons is entirely consistent with Article 20’s purpose of protecting individuals from violence and discrimination, rather than protecting religions and other ideas or beliefs from ridicule or criticism.

There are good reasons for the lack of a global consensus. There is very little data on the implementation and effectiveness of legal measures prohibiting incitement. Our anecdotal research shows that these laws are irregularly enforced; prosecutors and judges struggle to articulate principles that extend beyond individual cases. Moreover, the effort to create new international norms by enlarging the permissible limitations on freedom of expression to cover the so-called “defamation of religions” – in part in the name of combating incitement to religious hatred – has proven to be extremely divisive and controversial at both the international and national levels. The implementation of national laws prohibiting blasphemy, injury to religious feelings and other forms of religious defamation has resulted in systematic and well-documented abuses constituting severe violations of human rights. In its report “[Blasphemy Laws Exposed](#)”<sup>iii</sup>, Human Rights First has documented scores of cases where human rights have been abused as a result of criminalizing ‘defamation of religions’. All of this should give states pause when fashioning or applying legal restrictions to combat incitement. Indeed, incursions on the rights to freedom of expression and religion, in favor of greater regulation of speech may well exacerbate, rather than ameliorate, the problem of hate speech.

At the same time, hatred and the discrimination and violence that hatred can spawn continue to be serious public policy problems, afflicting the United States and other states in the Americas as well as all other regions of the globe. Unfortunately, the debates around the adoption and enforcement of legal norms restricting speech in order to fight incitement to hatred have diverted attention and resources from implementing political and educational tools that can effectively confront and counteract violence, discrimination, incitement and hatred.

Rather than pursuing restrictions on expression, Human Rights First recommends that governments, political leaders and public officials (a) condemn and counteract speech that incites violence against or promotes acts that curtail the enjoyment of rights by particular individuals and groups on account of their religion, race, national origin, etc.; (b) combat bias-motivated violence and other forms of public and private discrimination; (c) reduce fear among targeted individuals and communities and diffuse community tensions; (d) promote communication among affected communities, law enforcement, political leadership and civil society; and (e) advance intercultural and interreligious understanding. Based on our review of practice in the United States and elsewhere, the following are specific steps that governments, public officials and political leaders can take to confront incitement to hatred without resort to legal restrictions on expression:

***a. Speak Out Against Hatred***

*Political leaders, government and other officials serving in public office should:*

- Pledge to refrain from using rhetoric that incites violence or promotes acts that curtail the enjoyment of rights by others.
- Speak out publicly and consistently to condemn such speech when it occurs; build political consensus—reaching out across political party lines—to encourage speaking out.

*Governments should:*

- Establish guidelines and best practices for public officials at all levels to prevent statements that incite violence or promote acts that would curtail the enjoyment of rights by others.

**b. Counteract the Impact of Hatred**

*Governments and all officials serving in public office should:*

- Provide adequate security to individuals, communities and religious or other institutions that face threats of violence.
- Establish specialized bodies or empower the appropriate existing bodies to diffuse community tensions as well as foster collaborative approaches and improve lines of communication between local government, local law enforcement, civil society groups, and community leaders to ensure effective responses to violence and hateful public discourse.
- Train civil servants—particularly those that engage routinely with the public—on promoting respect for the rights of others, dealing with incidents of hate-motivated violence and combating negative stereotypes of, and discrimination against, individuals and groups.
- Enact laws prohibiting both public and private discrimination that are in line with international standards and ensure proper oversight and public accountability of their enforcement.
- Build public trust in government institutions by ensuring accountability for human rights violations by everyone including government officials—such as racial profiling and police abuse of victims of bias-motivated violence.
- Monitor, document and punish bias-motivated violence, ensuring that those responsible are held accountable under the law and that the prosecution of such violence targeting anyone -- regardless of their legal status in the country -- is a priority for the criminal justice system.
- Ensure adherence to international treaty commitments guaranteeing freedom of expression, freedom of association and assembly, freedom of religion and belief and other human rights.

*All officials serving in public office should:*

- Use every opportunity to affirm common bonds of humanity and to guarantee equal protection under the law without discrimination for all individuals—citizens and noncitizens—in their jurisdiction. Leaders should take advantage of their positions to promote interreligious and intercultural understanding as well as policies and practices of nondiscrimination.

**c. Strengthen the Capacity of Intergovernmental Bodies**

*Governments should:*

- Comply with international norms and cooperate with international human rights bodies and mechanisms that regularly review States' fulfillment of human rights commitments—including treaty bodies, the United Nations High Commissioner for Human Rights, and the special procedures of the Human Rights Council concerning freedom of expression, religion and belief, and combating racism.
- Support and strengthen the mandates of regional intergovernmental organizations and mechanisms that are addressing discrimination, such as the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the European Union, the Organization of American States and others.
- Encourage the active participation of civil society groups and representatives of targeted communities in relevant international bodies and mechanisms.

Of particular importance in combating hatred is a vigorous government response to bias motivated violence. In this regard, Human Rights First has published a [Ten-Point Plan for Combating Hate Crime](#)<sup>iv</sup>, which calls on governments to enact laws that expressly address hate crime violence and establish specific offences or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities or other similar status. Governments should also ensure that those responsible for hate

crimes are held accountable under the law, and that it remains a priority of the criminal justice system. Furthermore, there is also a strong need for authorities to maintain official systems of monitoring and public reporting on hate crimes, to provide accurate data for informed policy decisions in this field.

Another practical example of one of the steps outlined above – specialized bodies to diffuse community tensions – is the work of the Community Relations Service (CRS) of the U.S. Department of Justice. CRS is a specialized service of the U.S. Federal government that is available to state and local officials to help prevent and resolve racial and ethnic conflict, violence, and civil disorder. CRS aims to help governors, mayors, police chiefs, school superintendents, and civic leaders defuse and manage racial and ethnic tensions and crises. Human Rights First believes that this tool is a good way to assist local officials and residents to develop local solutions, either in response to a violent hate crime or in order to prevent such violence.

### 3. **A Sample of Cases Where Hate was Confronted through Non-Legal Means**

Human Rights First has documented real world examples whereby governments have confronted hateful incidents without restricting speech, particularly by marshaling political support against hateful speech. Human Rights First believes that it remains crucial for political leaders and other public personalities (whether religious or secular) to speak out against hatred. Firstly, speaking out marginalizes haters and prevents incitement from trickling deeper into society, without resorting to measures of criminal law. Secondly, free speech is the first step required to change attitudes and to challenge negative stereotyping. Indeed, education and informed discussions that lie at the root of tackling hate can only be nurtured through freedom of expression. Here several examples have been selected when dealing with religious intolerance- in this case hatred against Muslims.

a. ***Anti-Muslim hatred during the initiative to build Park 51 community center in New York***  
In August 2010, an initiative to build a mosque and interfaith community center in New York City, located near the site of “Ground Zero,” was approved by the New York City Landmarks Preservation Commission. This resolution paved the way for the ‘Parc 51’ project to become a reality. It simultaneously launched a heated public debate that spurred anti-mosque rallies and anti-Muslim rhetoric around the United States. Protestors rallied, carrying signs spewing hateful rhetoric, supported by high profile political leaders who used their platforms to spread fear and prejudice. Internet activists fueled the furor. But the controversy also inspired many others, including senior political, religious and other civil society leaders to counter the wave of discrimination and stand up for religious freedom, inclusion and tolerance.

Local political and religious leaders promoted intercultural and interreligious understanding. Counter protests promoting freedom of religion were organized to coincide with protests opposing the project. More than 2000 people attended a candlelight vigil in Manhattan to celebrate religious freedom and diversity. U.S. President Barak Obama, as well as New York City Mayor Michael Bloomberg and others, defended the right to construct the mosque and affirmed their unequivocal commitment to religious freedom and the rule of law:

*•“As a citizen, and as President, I believe that Muslims have the same right to practice their religion as everyone else in this country.... That includes the right to build a place of worship and a community center on private property in Lower Manhattan, in accordance with local laws and ordinances. This is America. And our commitment to religious freedom must be unshakeable. The*

*principle that people of all faiths are welcome in this country and that they will not be treated differently by their government, is essential to who we are.” (President Barak Obama)*

*•“We must do what is right, not what is easy. And we must put our faith in the freedoms that have sustained our great country for more than 200 years...there is no middle ground when it comes to religious liberty... (I)f we say that a mosque and community center should not be built near the perimeter of the World Trade Center site, we would undercut the values and principles that so many heroes died protecting. We would feed the false impressions that some Americans have about Muslims. We would send a signal around the world that Muslim Americans may be equal in the eyes of the law, but separate in the eyes of their countrymen.... And above all of that, we are Americans, each with an equal right to worship and pray where we choose. There is nowhere in the five boroughs that is off limits to any religion.” (Mayor Michael Bloomberg)*

**b. “Burn A Koran Day” proclaimed by Terry Jones**

When Terry Jones, the pastor of a small church in Gainesville, Florida, threatened to burn a copy of the Koran on September 11, 2010, he captured the attention of the world. Political, religious and military leaders from across the spectrum, including President Obama, quickly condemned “International Burn A Koran Day,” and urged Pastor Jones to cancel the event. Expressions of commitment to tolerance and diversity ultimately drowned out the hateful rhetoric and Jones refrained from burning the Koran – at least for that time being.

The high profile messages were joined by the voices of ordinary citizens and local political and religious leaders who worked together to affirm religious solidarity. For example, in Gainesville, Florida more than 20 religious organizations united in hosting a series of interfaith events incorporating Muslim, Jewish and Christian scriptures into worship services focused on peace and understanding. Political and religious leaders called upon members of the press to cover stories about positive events that were taking place to counteract the event they opposed. Under intense media pressure and international furor, Terry Jones backed down and canceled his event to burn the Koran.

*• “Our commitment to religious freedom must be unshakeable.” He urged the American people to “hang on to that thing that is best in us – that is our belief in religious tolerance.” (President Obama)*

*• “I am heartened by the clear, unequivocal condemnation of this disrespectful, disgraceful act that has come from American religious leaders of all faiths...as well as secular U.S. leaders and opinion makers.” (US Secretary of State Hillary Clinton)*

Human Rights First organized an online initiative to speak out against “Burn A Koran Day” in which supporters were asked to send their top ten reasons NOT to burn a Koran. More than 5,000 individuals submitted suggestions to counter Pastor Jones’ appeal to solicit “Ten Reasons to Burn a Koran.”

This episode illustrates that media coverage contributed to creating an environment whereby Terry Jones decided to cancel his event under intense pressure. In this case, free speech helped fight hate speech. In subsequent events held several months later, Terry Jones did proceed to burn the Koran- but he received very little press attention. Many people continued to condemn his actions, and he was broadly marginalized from any serious debate.

**c. Hate speech and religious freedom threatened in Temecula, California**

On January 26, 2011, the Planning Commission of Temecula unanimously approved plans for the construction of a 25,000 square foot mosque. Despite heated calls from some residents, efforts to

block the project failed. In response to the hateful rhetoric, many of the commissioners sent a clear message to their constituents. They rendered a decision, which was supported by local zoning laws and constitutional guarantees. The co-chairman of the Commission observed that he witnessed “democracy at its finest...and government at its finest... the entire community was free to come and talk.” In addition to lawmakers speaking out, intercultural and interfaith events were planned to answer questions about the project and about Islam. Leaders in this community took advantage of their positions to affirm tolerance and promote intercultural understanding as well as policies and practices of nondiscrimination. This shows that information creates knowledge, and that knowledge can fight fear and prejudice.

- On behalf of the city, Peter Thorson delivered a clear message that council members were required to base their decision on environmental and zoning concerns – *“not on whether they approve of Islam.”* (City Attorney Peter Thorson)
- *“We cannot let fear dictate our public policy.”* (Reverend Dominic Rivkin, Trinity Lutheran Church)
- *“I am here to voice friendship and support to the Muslim community...Let us not pretend that this issue is about parking, traffic, noise or anything other than anti-Islam activism...It is my hope that those opposing the mosque – or who are just concerned about its presence – will see that the true danger to our freedom and prosperity as a nation is not Islam, but those of any religion who seek to oppress others and undermine equality.”* (Reverend Dominic Rivkin, Trinity Lutheran Church).

<sup>i</sup> See Human Rights First, [Working paper on Incitement Laws and Religious Defamation Laws](#).

(<http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-FD-hrf-working-defam-relig.pdf>)

<sup>ii</sup> [The Human Rights Committee General Comment No. 34](#) clearly states the relationship between Articles 19 and 20, in its paragraph 50: “Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3”. The full General Comment 34 can be found at:

<http://www2.ohchr.org/english/bodies/hrc/comments.htm>

<sup>iii</sup> [http://www.humanrightsfirst.org/wp-content/uploads/Blasphemy\\_Cases.pdf](http://www.humanrightsfirst.org/wp-content/uploads/Blasphemy_Cases.pdf)

<sup>iv</sup> <http://www.humanrightsfirst.org/our-work/fighting-discrimination/ten-point-plan/>