

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 71<sup>ST</sup> SESSION DISCUSSION WITH ASMA JAHANGIR, SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF 6 AUGUST, 2007

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### Introduction

On 6 August 2007, Ms Asma Jahangir, Special Rapporteur on the freedom of religion or belief,<sup>1</sup> spoke to the Committee on the Elimination of Racial Discrimination ('CERD' or 'the Committee') about contemporary concerns that face both her mandate and that of the Committee.<sup>2</sup> The President of the Committee, Mr Regis de Gouttes, opened the meeting by stating that the CERD mandate is becoming increasingly broad including, in some circumstances, double discrimination including race and religion, and dissemination of ideas based on religious hatred through the media towards migrants, asylum seekers, non-nationals, indigenous persons, gypsies and other minorities or threatened populations. Because the CERD mandate is so broad, it is becoming more relevant to that of Ms Jahangir. The purpose of the meeting is therefore to discuss such overlap and the steps which should be taken to best enhance the protection of all groups suffering from discrimination.

Ms Jahangir opened by reinforcing the 'intersectionality' between race and religion, and encouraged both the importance of letting the mandates come together at certain points, as well as the caution which needs to be taken to prevent overbroad definitions and inclusions. Issues frequently arise when States use racial profiling as a proxy for religious discrimination, and vice versa. At the moment, both she and the Special Rapporteur on Racism, Xenophobia and Related Intolerance, Mr Doudou Diène, are hoping to draft a general comment to Article 20 of the International Covenant on Civil and Political Rights (ICCPR).<sup>3</sup>

<sup>1</sup> Commission Resolution 1986/20, 10 March 1986.

<sup>2</sup> General Assembly Resolution 2106 (XX), 21 December 1965 available at <http://www.ohchr.org/english/law/cerd.htm>

<sup>3</sup> General Assembly Resolution 2200A (XXI), 16 December 1966. available at <http://www.ohchr.org/english/law/ccpr.htm>

Ms Jahangir chose to mention a few distinctions between religion and race which are pertinent when considering how they are to be dealt with in international bodies. For example, religion can be chosen, but race cannot. Additionally, a doctrine of superiority based on racial differentiation is condemnable, but religious believers are free to propagate their religion as the optimal way of life.

## Interactive dialogue

### Limitations and definitions

Mr Amir took the floor first and focused his concerns on the limitations of the CERD mandate in Article 1 to only racial discrimination. As a result of this limitation, there is a gap in addressing religious discrimination and hatred before the treaty bodies. On the contrary, Mr Lindgren admitted that he is against discussions of religion in the context of race in the Committee because he sees CERD turning away from a treaty body and more towards an anthropology seminar in that context. Mr Amir's ultimate purpose in the intervention was to stress the importance not only of dialogue on religious discrimination, but also on action to bring it within the purview of some form of international treaty body or other legal tool. In response, Ms Jahangir discussed her expectation for the mandate of Special Rapporteur to continue for many years and in order to ensure it withstands the test of time she must not take such broad steps as to marry it with a treaty body.

Mr Yutzis asked whether and how race and religion can be defined. As an example, the Durban Conference did not conclude with a definition of race because the definitions are often times a result of who has power in the State. Secondly, and along the same lines, he was concerned about the definition of ethnicity, not only by legal bodies, but by individuals who choose to classify themselves in certain ethnicities. Ethnicity, in this light, would be nearly a compromise of what Ms Jahangir said about choosing your own religion, but not choosing your race. When it comes to choosing ethnicity, there is much debate.

Mr Kemal asked, concisely, whether it is important or useful for the Committee, or any legal establishment, to have a precise definition of the problem of religious/ethnic/racial discrimination they are being faced with today. Would the semantic conversation looking for a definition be a productive use of the Committee's time, and could a solution be reached? Ms Jahangir agreed with the scepticism implicit in Mr Kemal's statement and focused on her mandate being broad enough to encompass nearly all of the complaints she receives. Her problem is not a limitation on scope and, in fact, she takes many cases which she would not be able to take with a more clear-cut definition. She sees the current system as advantageous for the time-being.

### Islamophobia

Mr Amir proposed that since the 9/11 attacks in the United States, religious discrimination has become a far more widespread concern. He made the claim that Muslims, representing over one billion people in the world, are now being identified as part of an organisation which is 'terrorist.' This categorisation has entered political and social circles as well and religion takes on the image of a counter-modernising force, from which discrimination follows. Mr Kjaerum asked more pointed questions such as how the issue of Islamophobia in Europe can be appropriately addressed and how the derogatory use of the word Muslim in these countries should be handled. As a suggestion, he considered the use of the term 'Arabaphobia' in lieu of 'Islamophobia' in order to clarify when the link is more an issue of cultural rather than religious discrimination. Mr. Lindgren asked specific questions because of, as he stated, his reticence to bring religion into CERD. He asked first whether criticism of the Burka or the Nikab is a sign of Islamophobia and, second, if one who is born into Islam is free to convert.

In response, Ms Jahangir stated her understanding of what happens to Muslims all over the world, whereas the Committee only sees what is related to their mandate. She also sees Christian-phobia, and hate speech against Jews. She encourages healthy criticism and discussion and does not take action on these issues until a

situation meets the ICCPR Article 20 standards of intolerance and violence. With reference to the Burka and Nikab, Ms Jahangir receives reports of heated debates on this issue from predominantly Muslim States as well but she encourages the debates because disallowing dialogue will inhibit progress towards peace. Lastly, with reference to the right to leave Islam, Mr Lindgren was correct to say that it can be difficult to leave the religion, but she highlighted the difference between difficulty and legal impossibility. As long as people have the right to leave Islam, her mandate will not consider the existence of a violation of the freedom of religion or belief.

## Indigenous peoples

Mr Thornberry opened the dialogue on indigenous peoples by stressing the importance of religion as it is tied to land. He noted a strong intersection between Articles 1 and 5 of CERD as exemplified in the Guatemala,<sup>4</sup> Ukraine<sup>5</sup> and Argentina cases.<sup>6</sup> Often times, however, sacred sites are subsumed under the category of 'culture.' Contrary to the intersectionality of race and gender, for example, he does not think intersectionality is necessarily an appropriate term when discussing culture, ethnicity and religion, as the distinction between them is not clear and the definitions are overlapping. Mr Yutzis added that it is often times not only material possessions but also cultural and religious values which can be sought after citing the example of Nazism's use of religion as a tool for gaining power. Therefore, the Committee was hoping for clarification of its goals and fill in the gaps for issues of discrimination in religious/ethnic/cultural settings.

Along those same lines, Mr Pillai discussed the inseparability of religion and land on two levels: the first being where religious lands have been taken over by States and the indigenous peoples want to take the land back; and the second being when indigenous peoples reside on vast tracts of land whose ownership is not made clear. The latter concern arises primarily in developing nations where the desire to make economic leaps often supersedes concern for the inhabitants of the land. Mr Yutzis also discussed the dangers of robbing people of land, proposing that a spiritual and symbolic universe is taken in addition to economic resources.

Mr Cali Tzay, who is from an indigenous background, wanted to ensure clarification on how indigenous people are classified – that they are not ethnic groups or minorities, but a separate category altogether. For example, there are many Christian indigenous people who, when they say they are indigenous, are classified in the realm of shamanism and this is a kind of discrimination. He also encouraged the Committee not to look at land in terms of ownership by people, but in terms of partnership with people.

Ms Jahangir responded by first admitting that she has been overwhelmed and has not had the opportunity to research the topic as much as she would like. However, the continued research of this topic is in her immediate future goals as her mandate is not only freedom of religion, but also of belief. She thanked the Committee members for raising the issue because it highlighted its importance and will serve to fuel her future research on the matter.

## Conclusion

Ms Jahangir said she wanted to avoid the question of which is the most victimised religion because any violation of human rights is equally illegal. She did state that the majority of problems arise in countries with less respect for human rights and democracy, but she does not stress this in her official reports because of the potentially polarising effect of such a statement; in order for her mandate to last, she must remain unbiased in her work, treating all nations equally.

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<sup>4</sup> CERD/C/SR.1190, 10 March 1997. <http://www.unhchr.ch/tbs/doc.nsf/0/4a6e3defe6dee33f802564640059b97d?Opendocument>

<sup>5</sup> CERD/C/SR.958, 13 April 1993.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7e70cba4a6da017c802565e80059a056?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7e70cba4a6da017c802565e80059a056?Opendocument)

<sup>6</sup> CERD/C/304/Add.112, 27 April 2001.

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a3d88572085c6a12c1256a170051faf?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a3d88572085c6a12c1256a170051faf?Opendocument)

Lastly, Ms Jahangir mentioned the universality of equal rights and noted that when she speaks with religious leaders she stresses the importance of equal rights for not only all religions, but also all individuals within the religions, placing a particular emphasis on equal opportunity for women.

The President closed the session by acknowledging the importance of dialogues such as these, as intolerance and discrimination is exhibited in increasingly broadening fields. He therefore looked forward to their next meeting.

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