

STATEMENT BY THE HUMAN RIGHTS COUNCIL OF AUSTRALIA

Item 3
3 June 2009

The Human Rights Council of Australia (HRCA) thanks the Special Rapporteurs for their reports and welcomes their reports. We note that one is a final report, that of the Special Rapporteur on the Independence of Judges and Lawyers, and thank Mr Despouy for his substantial work on his mandate over the past 6 years.

We note also that two of the reports are first reports of new mandate holders, the Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on the Right to Health, and thank them for them. It is ridiculous to expect that their first reports will deal with everything contained in their mandates. That is why they are appointed for an initial period of three years with a possibility of extension of a further three years. We thank the new mandate holders for setting out their approach to their work and look forward to their reports over the coming years

The HRCA expresses its concern about the treatment of paragraph 4(d) of resolution 7/36 by the Special Rapporteur on the Freedom of Opinion and Expression in his report. That paragraph deals with 'the abuse of the right of freedom of expression'. Some States have also expressed concern about this and have said that it belongs with the items in paragraph 1 of the Special Rapporteur's report. It does not; that paragraph in the report deals exclusively with the material in paragraph 3 of resolution 7/36 and it would be a serious distortion of that part of the resolution to include in paragraph 1 of the report matter from another part of the resolution.

HRCA's concern with the Special Rapporteur's treatment of paragraph 4(d) of the resolution is that it ignores the other five elements in that paragraph of the resolution. The report therefore gives undue attention to one element, that dealing with 'the abuse of the right of freedom of expression', to the detriment of the other five elements. We express regret that paragraph 4 of Special Rapporteur's report does not place paragraph 4(d) of the resolution in its context and in proper balance with the other elements of that paragraph. We urge the Special Rapporteur to ensure that paragraph 4(d) of the resolution does not receive more of his attention than the other five elements of paragraph 4 of the resolution.

HRCA also welcomes the Special Rapporteur's indication that his work on 'the abuse of the right of freedom of expression' will be based on international law. The resolution itself instructs the Special Rapporteur to do this, specifically citing articles 19(3) and 20 of the International Covenant on Civil and Political Rights. It is essential that the work of Special Rapporteurs be based on international law and not on the political opinions of a political body, which is what this Council is.

The fact is that 'defamation of religion' is a concept not known in international law. I assume that is why it is not mentioned in resolution 7/36 or in the outcome statement of the Durban Review Conference.

The problem is that the law (article 19 and 20 of ICCPR), although quite clear and quite comprehensive, is regularly ignored. Many States have still not ratified the ICCPR and so do not accept the obligation under those provisions. Other States have ratified the ICCPR but have entered reservations that negate these provisions. Other States still have ratified without reservation but taken no effective action to discharge their obligations. We urge the Special Rapporteur to be active in encouraging all States to accept and implement the obligations under these provisions of the ICCPR.

We also respectfully draw to the attention of the distinguished Special Rapporteur the fundamental principle of interpretation of human rights law, that rights are required to be interpreted expansively and restrictions are required to be interpreted narrowly.

The Human Rights Council of Australia looks forward to the future reports of the new Special Rapporteurs and again thanks them and the retiring Special Rapporteur for their work.