

Countering Hate Speech Policy Note – Malaysia

There is no universally agreed-upon definition of hate speech, nor is the term hate speech codified in international law. In reviewing definitions of hate speech from varying institutions, ARTICLE 19 has identified that the term to encompass any expression imparting opinions or ideas bringing an internal opinion or idea to an external audience. Hate speech can take many forms, including written, non-verbal, visual, artistic, etc, and may be disseminated through any media, including internet, print, radio, or television.

In Malaysia, minority groups, including ethnic and religious minorities, migrants, and LGBTQ+ persons are most often victims of hate speech. At the same time, the term hate speech is often instrumentalized by majority groups to silence expression that is protected under international law, including that which may be offensive. Individuals and groups who do not engage in hate speech but speak out against the government, State officials, or a religion are often penalised, and political dissent is silenced.

Misidentifying hate speech has two problematic consequences: 1) speech that should be protected under international standards is restricted or criminalised, and 2) hate speech that should be prohibited is not.

As a result, it is important to distinguish between speech protected by international law and speech that may incite violence and must be prohibited.

Freedom of expression under International Law

Identifying expression as hate speech is not enough to determine how it must be dealt with under international law. Under international law, hate speech can be categorized into three broad categories:

- 1. Speech that must be prohibited:** Hate speech that amounts to incitement to discrimination, hostility or violence must be prohibited under Article 20(2) of the ICCPR, which states that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

was adopted in 2012 and includes conclusions and recommendations to combat speech that violates Article 20 of the ICCPR.

A 6-factor test from the Rabat Plan of Action determines whether or not speech falls under this first category. These factors include:

- Whether the social and political context that is conducive to violence
- The influence of the speaker
- Intent of speaker to incite violence
- The content and form of expression
- The extent of the expression, i.e. severity
- The likelihood and imminence of violence, discrimination or hostility occurring as a **direct** consequence of the expression

Restrictions on expression under Article 20(2) ICCPR must also meet be legal, have a legitimate aim, and be necessary and proportionate under Article 19(3) of the ICCPR.¹

2. **Speech that may be prohibited:** Other forms of hate speech, including threats of violence, harassment and assault may be prohibited so long as restrictions prohibiting them meet the 3-part test under Article 19(3) ICCPR. They must be:

- Provided for by law;
- In pursuit of a legitimate aim; and
- Must be necessary and proportionate in a democratic society.

3. **Lawful speech that must be protected from restriction:** All other forms of hate speech constitute protected expression. Hate speech that may be deeply offensive but does not meet the above criteria must not be restricted under international law. This includes blasphemy; expression against the state and public officials; and defamation.

Countering hate speech in Malaysia

Combatting hate speech in Malaysia requires a multi-stakeholder approach that includes:

- Government
- Non-governmental organisations, i.e. private actors, CSOs
- Religious groups
- Online actors, i.e. social media companies and users
- Youths and students
- Political parties
- Politicians
- Women
- Minorities

¹ ARTICLE 19, 'Implementing UN HRC Res 16/18 – A framework for inclusivity, pluralism and diversity', February 2017, https://www.article19.org/data/files/16_18_briefing_ONLINE.pdf

- Media

Human Rights Council Resolution 16/18 was adopted in 2011 and addresses “combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief”.² The Resolution provides helpful guidance for States, particularly on how to deal with hate speech that cannot be restricted.

From this Resolution, eight areas of action for States were identified. These eight areas of action, supported by recommendations from the Rabat Plan of Action, form the basis for the following practical suggestions for the Malaysian government to counter hate speech:

1. Create collaborative networks to build mutual understanding, promote dialogue and inspire constructive action in various fields

- Rather than further restricting expression to combat hate speech, which can lead to over-broad application and violations of the right to freedom of expression, the Resolution urges States to encourage open discussion and dissent. This can be done by taking the following actions:
 - Establishing relationships with religious leaders and police to build trust.³
 - Supporting inter-faith dialogue and interaction.⁴
 - Forming and maintain partnerships with international organisations, including the UN and ASEAN, to promote freedom of expression and counter hate speech, including by continuing to hold roundtable discussions with Parliamentarians on freedom of expression, hate speech, and internet regulation in Malaysia, involving CSOs and experts.
 - Committing to long-term involvement in the Istanbul Process. The Istanbul Process is a series of meetings between stakeholders to discuss practices involved in implementing Resolution 16/18.⁵

2. Create a mechanism within governments to identify and address potential areas of tension between members of different religious communities, and assist with conflict prevention and mediation

² UN HRC Resolution 16/18 on Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief (Resolution 16/18), A/HRC/Res/16/18, adopted without a vote on 24 March 2011.

³ UN Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence That Could Lead to Atrocity Crimes, July 2017, <https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf>

⁴ *ibid*, p 15.

⁵ ARTICLE 19, Implementing UN HRC Res 16/18 – A framework for inclusivity, pluralism and diversity, February 2017, February 2017, https://www.article19.org/data/files/16_18_briefing_ONLINE.pdf

- Working with a broad range of stakeholders will ensure that conflict prevention and mediation efforts are fruitful.

3. Train government officials

- Ensure that government officials can distinguish between hate speech protected under international law and hate speech that must be restricted.
- Ensure that the training is run by or involves CSOs or experts who have a strong understanding of international freedom of expression standards.

4. Encourage efforts of leaders to discuss within their communities the causes of discrimination, and evolve strategies to counter them

- Encourage religious leaders to implement the UN Fez Plan of Action and to leverage their influential role in communities. The Fez Process was a series of meetings held by the UN Office on Genocide Prevention and the Responsibility to Protect in 2015 involving religious leaders around the world with the goal of preventing incitement to violence. The Fez Plan of Action is the outcome of the Fez Process.⁶
- Provide necessary protection for religious leaders at risk for speaking out against intolerance.⁷

5. Speak out against intolerance

- Urge government officials to use their platforms to promote tolerance, rather than repeating harmful rhetoric.
- Encourage political parties to sign the charter or guidelines for a non-racist and tolerant society. Example: [Charter of European Political Parties for a non-racist society](#);

6. Adopt measures to restrict advocacy of discriminatory hatred that constitutes incitement to discrimination, hostility or violence.

- Criminal sanctions need to be properly justified, proportionate, and used as a last resort.⁸

7. Combat denigration and negative religious stereotyping of persons through education and awareness-building

- Develop public school curricula to include teaching about religion and beliefs in a way that encourages inclusion and respect⁹

⁶ UN Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence That Could Lead to Atrocity Crimes, July 2017,

<https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf>

⁷ Ibid

⁸ ARTICLE 19, Implementing UN HRC Res 16/18 – A framework for inclusivity, pluralism and diversity, February 2017, https://www.article19.org/data/files/16_18_briefing_ONLINE.pdf

⁹ UN Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence That Could Lead to Atrocity Crimes, July 2017,

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8. Recognise that the open, constructive and respectful debate of ideas plays a positive role in combating religious hatred, incitement and violence

A legal framework that respects the right to freedom of expression is the best way to ensure that constructive debate can take place. In Malaysia, this requires the following actions:

- Repealing the Sedition Act
- Repealing Printing Presses and Publications Act 1984.
- Reforming the Penal Code, including by addressing the following problematic provisions:
 - Sec 203A (disclosure of information)
 - Sec 124B-N (activity detrimental to parliamentary democracy)
 - Sec 298-298A (wounding of religious feeling)
 - Sec 504 (intentional insult with intent to provoke a breach of the peace)
 - Sec 505 (statements conducing to public mischief)
- Reforming the CMA 1998
 - Sec 211 (provision of offensive content)
 - Sec 233 (transmission of offensive communication)
- Broadening the scope of defences in Defamation Act 1957;
- Promoting access to information;
- Enacting comprehensive non-discrimination legislation in line with international human rights law and standards. See, for example: European Union Agency for Fundamental Rights and Council of Europe, Handbook on European non-discrimination law, 2018, available at: <http://fra.europa.eu/en/publication/2018/handbook-european-law-non-discrimination>;
- Developing, with the full and effective participation of civil society and SUHAKAM, a national action plan to promote inclusion, diversity, and pluralism, including by implementing the comprehensive recommendations put forward in [Human Rights Council Resolution 16/18](#) and the [Rabat Plan of Action](#), as well as the [Camden Principles on Freedom of Expression and Equality](#);
- Proposing a Gender Equality Act drawing definitions, principles and values from CEDAW and the CEDAW Committee's General Recommendations in order to address sexual and gender-based violence and gender-based discrimination at all levels and in all forms for both citizens and non-citizens; and
- Ensuring protection for individuals from bias-motivated crimes, including crimes motivated by a person's ethnicity, nationality, religion or belief, or sexual orientation or gender identity.