

Countering Hate Speech in Elections: Strategies for Electoral Management Bodies

IFES White Paper



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The International Foundation for Electoral Systems (IFES) supports citizens' right to participate in free and fair elections. Our independent expertise strengthens electoral systems and builds local capacity to deliver sustainable solutions.

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- Providing technical assistance to election officials
- Empowering the under-represented to participate in the political process
- Applying field-based research to improve the electoral cycle

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Executive Summary

This white paper aims to help election management bodies (EMBs) better understand the range of issues surrounding hate speech during the electoral cycle and the regulatory and non-regulatory options that may be brought to bear. The opening of the briefing paper summarizes applicable [international standards](#), foremost the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR); discrimination based on race, gender, and disability are also highlighted.

This summary is supplemented by a discussion of [national legislation](#) that may directly or indirectly deal with the issues of hate speech, incitement to hatred, and hate crimes (see text box right and [Annex 1](#)). EMBs are primarily concerned with constitutional provisions, election law, political party law, and legislation governing media and elections. At the same time, EMBs should be aware of all the legal and regulatory instruments that may come into play. By doing so, EMBs can identify other responsible regulatory, oversight, and enforcement bodies with whom to share information and coordinate a response.

EMBs need to be aware that regulatory responses to hate speech are [controversial](#) in that they involve restrictions on access to information, free speech, and even political and electoral rights. Fundamental guarantees such as free speech and anti-discrimination can come into conflict with each other and can be difficult to balance. As such, EMBs will need to tread carefully.

Moreover, regulatory responses are fraught with a range of other potential problems, including definitional issues, [implementation and enforcement challenges](#), and politicization and abuse of the law. EMBs will face [additional considerations](#) including the centrality of free speech and competing ideas to election campaigns, the need to maintain neutrality and treat candidates equally, the application of appropriate and proportionate penalties, and the need to provide for a safe electoral environment.

This paper also makes the point that incitement of hate directed against women in the electoral process is indeed hate speech, as some national and international definitions tend to leave gender/sex out of the definition. The authors refer to the International Foundation for Electoral Systems' (IFES) comprehensive violence against women in elections ([VAWIE](#)) framework¹ to address physical and psychological violence and intimidation against women for a more detailed treatment of the subject.

The remainder of the briefing paper looks at non-regulatory options available to EMBs and emphasizes the importance of external stakeholder outreach and collaboration as follows:

POTENTIAL POLICY AND REGULATORY FRAMEWORKS FOR ADDRESSING HATE SPEECH

- Constitution
- Criminal/Penal Code
- National Integration/ Cohesion/Coexistence Laws
- Election Law
- Political Party Law
- Media Law
- Anti-Blasphemy Law
- Anti-Discrimination Law
- Human Rights Law
- National Development Plan
- National Gender Policy/ Action Plan
- National Human Rights Action Plan
- Hate Speech Law
- Hate Crimes Law
- Cyber-Security Legislation
- National Security Legislation
- Codes of Conduct

¹ <http://www.ifes.org/publications/violence-against-women-elections>

Engage other stakeholders: Making inroads against hate speech will be contingent upon forming strategic partnerships and alliances, and working collaboratively. To achieve greater scope, scale, and sustainable success, EMB strategies to counter hate speech will need to leverage the existing mandates, capabilities, and resources of government institutions, independent agencies, and civil society.

Model good behavior: The baseline of any EMB strategy to combat hate speech should be to ensure that it does not engage in or tolerate discrimination or hateful speech toward any individual or group by the members of the institution or any of its election staff (permanent and temporary). This modeling behavior will extend to human resources practices, internal and external communications, the substance of regulations, the provision of services, the content and delivery of public information and voter education messages, the handling of complaints and appeals, and advocacy directed at electoral reforms.

Speak out against discrimination and hatred: As public officials, EMB chairpersons and commissioners have a platform from which to speak out against hate speech. By speaking out, EMB leaders can help to raise awareness of hate speech and its consequences, which, in turn, can help to mobilize a public response. EMB leaders, especially when they have public confidence, are well-positioned to explain the dangers of hate speech and incitement to hatred to the electoral process and democracy.

Open space for pluralistic public dialogue: EMBs are in a position to create opportunities and promote activities that expand public dialogue and debate during election campaigns. This may involve providing airtime to a diverse set of stakeholders. EMBs should support public forums, such as televised candidate debates, town hall meetings, and roundtable discussions, that are designed to promote issue-based discussions.

Contribute to learning: EMBs face a challenge in designing and delivering better strategies, programs, and messages during elections when information is lacking about the extent to which various electoral stakeholders understand hate speech and how this affects their mindsets and behaviors. Investments in public opinion surveys and focus groups can help EMBs better understand how, in what manner and to what extent speech impacts behavior. Research is also essential to understanding what counter strategies are effective in a given context.

Monitor, collect and report data: The collection, monitoring, and reporting of data on the occurrence of hate speech, as with instances of electoral violence, will also be essential to developing and putting into place effective risk-mitigation strategies and security plans, as well as informing investigation and adjudication processes. Government agencies and civil society actors may be involved in this process.

Mitigate risk through security planning: EMBs should apply available data on hate speech to mitigate electoral violence and safeguard the security of all electoral stakeholders. EMBs will need to engage various security actors in joint security planning and implementation. When police act as perpetrators or supporters of hate speech in elections, EMBs will need to collaborate with human rights commissions or police oversight commissions

COUNTERING HATE SPEECH IN INDONESIA

“[T]he cleric of Indonesia’s largest Muslim organization, Nahdlatul Ulama (NU), recommended that hate speech be considered a disgraceful act that must be deemed haram under all circumstances. According to the cleric, law enforcement against hate speech would provide a deterrent. With this statement, and as Indonesia braces for two successive election years in 2018 and 2019, the fight against hate speech just got a big political boost. It’s time to get serious.

[SOURCE: *The Jakarta Post* Editorial, <http://www.thejakartapost.com/academia/2017/11/28/editorial-countering-hate-speech.html/>]

to hold them accountable. EMBs should also engage organizations and service providers addressing gender-based violence to effectively respond to the differential forms of violence against women and men in the electoral process.

Adjudicate effectively and responsibly: If EMBs are responsible for adjudicating cases involving hate speech and incitement to hate during election campaigns, EMBs will need to avoid the pitfalls encountered by other judicial and administrative bodies. These include slow adjudication, broad interpretation, inconsistent jurisprudence, political bias, legal overreach and abuse, disproportionate penalties, and non-compliance with international obligations.

Train electoral stakeholders: Typically, EMBs are involved in training a range of electoral stakeholders from their own personnel to political party representatives, candidates and their surrogates, NGOs, and the media. Training programs should integrate themes relating to human rights, voting rights, non-discrimination, gender equality, protected and prohibited speech, what constitutes hate speech and incitement of hatred, and obligations under national law and international instruments.

Raise awareness and educate voters: Public information campaigns and voter education programs provide accurate information that dispels myths and misconceptions. Such efforts can help voters identify and address intolerance in their own lives and to recognize and resist hate speech purveyed by officials, candidates and their supporters, and the media. Longer-term [civic education](#) is also important to raising civic literacy levels and reducing the public's vulnerability to hate speech and calls to violence.

The use of hate speech during elections is a dynamic and rapidly evolving issue. Its scope and complexity will require a strategic approach that connects with and mutually reinforces the efforts of a range of stakeholders. Regulatory solutions can be controversial, difficult to reconcile when fundamental rights come into conflict, and their effectiveness is limited. As such, EMBs would be well advised to explore non-regulatory solutions in collaboration with both state and non-state actors. To date, rigorous quantitative research about how distinct populations understand and react to (or act upon) hate speech and about the effectiveness of counter measures in specific country contexts is limited. Comparative practice of EMBs is not readily accessible to the broader community of election practitioners, nor is information about how EMBs have successfully leveraged the experience of other government bodies or civil society. To better capture and disseminate learning about effective strategies and successful multi-stakeholder efforts, IFES invites EMBs and practitioners to share their experiences with epeace@ifes.org. IFES will periodically update this paper on the basis of emerging best practice.

1. Introduction

Democracies at various phases of development and consolidation have proven vulnerable to hate speech and its ill-effects.² Election campaigns provide particularly fertile ground for hate speech and incitement to hatred.³ Elected officials, political parties, candidates, other opinion makers, and members of “civil” society are all among the influential purveyors of hate speech. The authority wielded by, and the amplifying effect of, mass media, social media in particular, carries considerable weight.^{4,5}

For responsible electoral institutions, the problem is dynamic and complex. Remedies involving restrictions on free speech and on political and electoral rights are controversial, as they may limit fundamental rights in a democratic society. Indeed, some human rights activists and international institutions have insisted that the best response to hate speech is more speech.⁶

This white paper has been prepared by IFES for leaders of EMBs and other electoral stakeholders including practitioners. It is intended to help these stakeholders understand key issues and comparative practice related to hate speech and incitement to hatred and violence during electoral campaigns. It does not constitute an in-depth or comprehensive treatment of a subject that is highly dynamic and rapidly evolving. Rather, it seeks to build awareness and to provide EMBs with options for countering hate speech during election campaigns.

The options presented herein address both regulation ([Sections 3-6](#) and [Annex 1](#)) and strategies designed to expand access to information and the space for free speech and competing ideas ([Section 7](#)). The discussion also emphasizes the importance of external stakeholder outreach and collaboration, as no single institution can comprehensively address hate speech and its ramifications, especially during heated electoral periods ([Section 8](#)). The paper includes a gendered perspective throughout and provides illustrative examples that specifically address hate speech and electoral violence directed at women ([VAWIE](#)). A set of hyperlinked resources is included at the end of the paper ([Annex 2](#)).

2. Electoral Leadership and Hate Speech

“Hate speech lies in a complex nexus with freedom of expression; individual, group and minority rights; and concepts of dignity, equality and safety of person.”⁷ For EMBs, hate speech and incitement to hatred will also have significant implications for [electoral integrity](#) and [election security](#), requiring effective electoral leadership.

² <http://democracyjournal.org/arguments/electoral-violence-can-it-happen-here/>.

³ Denton, R. E. Jr. (2000), *Political Campaign Ethics: Any Oxymoron?* Praeger: Westport, Connecticut, p. 79.

⁴ <https://rm.coe.int/16800c170e>

⁵ <http://www.prismproject.eu/wp-content/uploads/2015/11/Backgrounds-Experiences-and-Responses-to-Online-Hate-Speech.pdf>

⁶ See, for example: http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/expert_papers_Bangkok/SRSubmissionBangkokWorkshop.pdf

⁷ <http://en.unesco.org/system/files/244834e1.pdf>

HATE SPEECH AS CAMPAIGN STRATEGY

“Elections [have] increasingly become a do-or-die situation with politicians using all means including unfair tactics to ‘capture’ power. The electioneering [rhetoric is] increasingly becoming inciting and violent with less restraint and consideration. There is the notion that [an] election is war and only the winner is a good strategist.”

[SOURCE: *Elections and Electoral Crises in Africa* at <https://www.ituc-africa.org>]

In terms of electoral leadership, elections involve opportunities and risks. At the most fundamental level, elections present the opportunity to build up a nation or the risk of tearing down democracy. As such, the quality of electoral leadership can have profound negative or positive impacts beyond the success of an election. Strong electoral leadership can mitigate serious challenges to the electoral process, while poor electoral leadership often exacerbates the same. Hate speech and incitement to violence during elections constitutes just such a challenge. In response, EMBs must exercise ethical leadership that internalizes and models concepts such as honesty, justice, duty of care, respect for human rights, and a focus on people. Electoral integrity will be contingent upon a system that effectively integrates morals, ethics, and laws:

- **Morals:** What is generally accepted to be right and wrong within a society.
- **Ethics:** Agreed standards of right and wrong conduct within a group or profession that provide a basis for disciplinary action; such as [codes of conduct](#) for election officials, political parties, and media.
- **Laws:** [Legal and regulatory frameworks](#) that govern right and wrong behavior and are enforceable through policing powers, adjudicative processes, and the threat and use of penalties (e.g., legislation governing human rights, protecting against discrimination, or countering hate speech).⁸

Finally, EMBs must effectively fulfill their obligation to provide a safe and secure electoral environment in which all electoral stakeholders can participate in a process free from threats and acts of violence.

3. Applicable International Standards

International conventions establish rules and standards by which state signatories agree to abide.⁹ International human rights instruments specifically recognize fundamental human rights and freedoms, including human dignity, equality, and the freedom of speech. Such instruments place prohibitions on discrimination, hate speech, and or incitement to hatred. And, they further establish the obligation of state signatories to uphold these rights and responsibilities through national legislation. In some cases, international tribunals and monitoring bodies are established to further compliance and enforcement.

The **Universal Declaration of Human Rights (UDHR)** adopted by the United Nations (UN) General Assembly in 1948 states, “All human beings are born free and equal in dignity and rights.” Article 2 provides for equal enjoyment of the rights and freedoms set forth in the Declaration “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of

INTERNATIONAL CONVENTIONS

International human rights instruments have acquired strong moral weight and widespread acceptance. To make international human rights conventions effective, their terms must be enshrined in national legislation.

[SOURCE: IFES, “The Hierarchy of Laws: Understanding and Implementing the Legal Frameworks that Govern Elections” (2016), p. 8]

⁸ This conceptual framework has been adapted from Erhard, W. at al. (2014), *Integrity: Positive Model that Incorporates the Normative Phenomena of Morality, Ethics, and Legality*.

⁹ http://www.ifes.org/sites/default/files/2016_ifes_hierarchy_of_laws.pdf, p. 6.

sovereignty.”¹⁰ Article 3 affirms the right of everyone to life, liberty and personal security. The UDHR does not specifically prohibit hate speech or incitement to hatred. Article 7 does, however, provide for equal protection for all against discrimination in violation of the Declaration, and also against incitement to discrimination. Article 20 and 21 pertain to the right to the freedom of assembly and association and the right to take part in government through genuine and periodic elections.

The **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**, adopted by the UN General Assembly in 1965, was the first international treaty to deal directly with hate speech. Article 4 of the CERD identifies four distinct types of hate speech:

- Dissemination of ideas based on racial superiority;
- Dissemination of ideas based on racial hatred;
- Incitement to racial discrimination; and,
- Incitement to acts of racially-motivated violence.

Article 4 specifically prohibits public authorities and institutions from promoting or inciting racial discrimination. It also requires that implementation measures duly regard the principles set out in both the UDHR and Article 5 of the CERD, which provides for equality before the law in the enjoyment of a large number of rights, *including freedom of expression*.¹¹

With the adoption of the **International Covenant on Civil and Political Rights (ICCPR)** in 1976, the UN General Assembly sought to directly address incitement to hatred. Article 19 of the ICCPR affirms the right of everyone to “hold opinions without interference.” It further states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” At the same time, Article 19 recognizes “special duties and responsibilities” that accompany the freedom of speech. Specifically, free speech may be subject to certain restrictions *only* as “are provided by law and are necessary: (a) For respect of the rights or reputations of others and (b) For the protection of national security or of public order, or of public health or morals.”¹² This is known as the three-part test of legality, legitimacy, and necessity.

Moreover, Article 20 places a duty upon states to prohibit, by law, *any incitement to hatred* by “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”¹³ Article 20 does not require that states prohibit all negative statements toward national groups, races, or religions nor does it forbid such prohibitions so long as they are in line with Article 19(3). Specifically, it makes the ban contingent upon *incitement* to discrimination, hostility, or violence.¹⁴ It inherently implies *advocacy* of national, racial, or religious hatred, requires that the advocacy involve incitement, and that the incitement be linked to discrimination, hostility, or violence.¹⁵ Some countries, most notably the United States, have taken the view that only incitement intended to cause *imminent* violence justifies

¹⁰ <http://www.un.org/en/universal-declaration-human-rights/>

¹¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

¹² Ibid.

¹³ Ibid.

¹⁴ Mrabure, K.O., *Counteracting Hate Speech and the Right to Freedom of Expression in Selected Jurisdictions*, undated, p. 167.

¹⁵ Muntarhorn, Vitit, *Study on the Prohibition of Incitement to National, Racial, Or Religious Hatred: Lessons from the Asia Pacific Region*.

restricting such a fundamental right as the freedom of speech.¹⁶

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** does not specifically mention “hate speech” directed at women. Article 2 does, however, “condemn discrimination against women in all its forms.”¹⁷ Article 1 of the Convention defines discrimination against women as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women ... of human rights and fundamental freedoms in the political economic, social, cultural, civil, or any other field.”¹⁸ Article 5 also calls upon states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices ... which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹⁹

Also applicable are:

- The **Convention on the Prevention and Punishment of the Crime of Genocide**, which prohibits “public and direct incitement to genocide;”²⁰
- The **Convention on Rights of Persons with Disabilities**, which obligates states to eliminate discrimination on the basis of disability, which may be understood to extend to hateful speech and incitement against electoral stakeholders with disabilities; and,
- The **UN Declaration on the Rights of Indigenous Peoples** (Article 8), which requires that states “prevent and redress any form of propaganda designed to promote or incite racial or ethnic discrimination directed against indigenous peoples and individuals.”^{21,22}

4. Constitutional Provisions and Legal Framework

Country-level legal frameworks are important to addressing hate speech and for establishing accountability under the law. Beyond enshrining protected rights and freedoms within a given country, they can provide a legal definition of hate speech, identify responsible institutions to counter incitement to hatred and set out the legal parameters for doing so.

All countries have a hierarchy of laws. This hierarchy typically includes a constitution or founding document, statutes or legislation, regulations, procedures and codes of conduct. The hierarchy determines the relative authority and scope of laws and how these derive from the constitution. Understanding the hierarchy of laws can help to develop a clear and consistent regulatory framework for hate speech and ensure that

EMB ISSUES FOR CONSIDERATION

- What can the EMB do directly under the law to combat hate speech?
- What other government agencies and independent bodies have responsibilities to counter hate speech and with which the EMB might collaborate on and coordinate a response?
- What legal reforms might be needed to address gaps or inconsistencies in the law or to provide greater clarity?

¹⁶ Mrabure, p. 167.

¹⁷ <http://www.un.org/womenwatch/daw/cedaw/>

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ <http://www.hrweb.org/legal/genocide.html>

²¹ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

²² <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

appropriate content and detail is included at each level.²³

EMBs should be aware of the full set of national constitutional provisions, articles of law, regulations, and key court rulings that address hate speech, along with any international obligations and where they fit into the hierarchy. By doing so, EMBs can better understand their obligations and limitations under the law, the legal options available to them, and the mandated responsibilities of other institutions with which they might partner.

This section highlights some constitutional and legal provisions that address hate speech. The primary focus here is on the intersection of elections, political parties, and the media. A geographic mix of illustrative examples is also included.²⁴

Constitutions

A number of countries directly reference hate speech or incitement to hatred in their constitutions. Article 16 of the Constitution of **South Africa** (1996) affirms everyone's right to freedom of expression. This right does not extend to propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.²⁵ Article 17 of the Constitution of **Fiji** (1998) contains similar restrictions on incitement to violence and advocacy of hatred. It goes further still by specifically protecting the rights of individuals and groups to be "free from hate speech." Human rights monitors have raised concerns about onerous restrictions on free speech under Article 17 as a whole and its potential for abuse.²⁶

Election Laws

In **Timor-Leste**, Article 13 of the *Government Decree 18/2017 on the Electoral Campaign* forbids the "use of oral or written language ... discriminating in terms of race, sex, ideology, and religious beliefs, social status or against any human rights."²⁷ **Nigeria's Electoral Act** includes detailed provisions that prohibit politically-motivated hate speech. According to the Act: "A political campaign or slogan shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal, or sectional feelings. Abusive, intemperate, slanderous, or base language or insinuations or innuendoes designed or likely to provoke violent reaction or emotions shall not be employed or used in political campaigns."²⁸ **Japan's Public Offices Election Law** calls upon candidates to refrain from delivering speeches broadcast on TV and radio that damage the dignity and honor of others.²⁹

Media Laws, Guidelines, and Codes of Conduct

Given the power of the media to amplify and spread hate speech to a wide audience, some jurisdictions place responsibility for prohibiting incitement to hatred with the media. Guidelines issued by the Press

²³ http://www.ifes.org/sites/default/files/2016_ifes_hierarchy_of_laws.pdf, p. 1.

²⁴ These illustrative examples are taken from secondary sources that are publicly available in the English language (as cited or linked). They are not drawn from original IFES research nor do they represent a comprehensive review, both of which were beyond the scope of the current undertaking. As noted in Section 2 of this white paper, placing restrictions on the fundamental exercise of freedom of speech and on political and electoral rights is highly controversial and is subject to overreach and abuse.

²⁵ <https://berkleycenter.georgetown.edu/quotes/constitution-of-south-africa-article-16-freedom-of-expression>

²⁶ <https://freedomhouse.org/report/freedom-press/2015/fiji>

²⁷ <https://www.laohamutuk.org/Justice/2017/EIPar/Government%20Decree%202018-2017en.pdf>

²⁸ Mrabure, p. 160.

²⁹ <http://aceproject.org/ero-en/regions/asia/JP/japan-public-offices-election-act-2016-1/view>

Council of **India**, to be observed during the electoral period, stipulate that “election campaigns among communal or caste lines [are] banned under election rules. Thus, the Press should eschew reports, which tend to promote feelings of enmity or hatred between people on the ground[s] of religion, race, caste, community, or language.”³⁰ *Guidelines for Election Broadcasters*, issued by the News Broadcasting Standards Authority, prohibit news broadcasters from broadcasting “any form of ‘hate speech’ or other obnoxious content that may lead to incitement of violence or promote public unrest or disorder as election campaigning based on communal or caste factors as prohibited under election rules. News broadcasters should strictly avoid reports which tend to promote feelings of enmity or hatred among people, on the grounds of religion, race, caste, community, region, or language.”³¹

In **Guyana**, the Elections Commission (GECOM) engaged the country’s leading media representatives in the process of drafting, ratifying, and implementing a *Media Code of Conduct* based on self-regulation by the sector. The Code applies not only to journalists but also extends to editors, media owners and operators in the broadcast and print media.³² In justifying the need for the Code, and the attendant compliance monitoring, the chairman of the GECOM noted a spike in “inciting articles and comments in the print and electronic media” in the lead up to national and local elections.³³ This need is further exacerbated by the fact that Guyana has neither broadcast legislation nor any media regulatory or watchdog bodies. The Code specifically references incitement to hatred and the grounds for incitement. Specifically, the media in its coverage of campaigns and elections, agree:

- To refrain from publishing or broadcasting any matter inciting racial hatred, bias, or contempt or any other matter with the potential to, or likelihood of, causing public disorder or threats to national security; and
- To refrain from ridiculing, stigmatizing, or demonizing people on the basis of gender, race, class, ethnicity, language, sexual orientation, or physical or mental disability.³⁴

Similarly, the Electoral Commission of **Zambia**, issued the *Journalist Media Code of Conduct*. It specifies, “All media shall report news on elections in an accurate manner and shall not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, political or religious conviction.”³⁵

Political Party Laws, Guidelines, and Codes of Conduct

The *Political Parties Act* in **Kenya** (2012) includes a Code of Conduct that bars political parties from engaging in violence and from encouraging its members and supporters to do so. It places further limits on advocating hatred that constitutes ethnic incitement, vilifying others, or inciting with the intent to cause harm, among other restrictions.³⁶ Guidelines for Political Parties issued by the Independent National Electoral Commission (INEC) in **Nigeria** prohibit the use of hate speech and discriminatory

³⁰ http://eci.nic.in/eci_main1/current/Press%20Note7_15012015.pdf

³¹ http://eci.nic.in/eci_main1/current/NBSA_07032014.pdf

³² See *Address by Dr. Steve Surujbally At the Launching of the Re-Established – GECOM Media Monitoring Unit* (26 August 2011).

³³ *Ibid*, p. 2.

³⁴ *The Media Code of Conduct for Reporting and Coverage of the Guyana General and Regional Elections* (2001). The original code was updated on multiple occasions for subsequent electoral periods. See: <http://www.gecom.org.gy/pdf/MEDIA%20CODE%20OF%20CONDUCT.pdf>.

³⁵ https://www.elections.org.zm/journalist_code.php

³⁶ <http://www.parliament.am/library/Political%20parties/qenia.pdf>

rhetoric during campaigns.³⁷ In **India**, the Election Commission is responsible for ensuring that campaigns adhere to a strict Model Code of Conduct. The *first point* of the Code stipulates that “no party or candidate shall include any activity [that] may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.”³⁸ A copy of the Code is provided along with necessary written permissions to hold rallies and public meetings during the election campaign.³⁹

In **Myanmar**, the Union Election Commission actively engaged political parties while drafting the *Political Party Code of Conduct*. The Code, which was accepted by all 91 political parties contesting the 2015 elections, promoted ethical principles for election campaigning. Under the Code, political parties committed to refraining from the incitement of violence, hatred, and fuelling racial, sectarian, or tribal trends that could threaten national unity. The prohibition applied to campaign events and any form of communications utilized during the campaign period.⁴⁰ While political parties generally complied with the Code, they failed to condemn hate speech conveyed by other groups. Nationalist organizations and like-minded individuals, who were not bound by the Code, used social media platforms to incite hate speech and fuel racial and religious tensions.

For a discussion of the broader range of laws that have been brought to bear against hate speech, please refer to [Annex 1](#).

5. Implementation and Enforcement Issues

Global experience suggests several key challenges with legal and regulatory frameworks designed to counter hate speech and incitement to hatred. These include definitional, implementation and enforcement issues, which are elaborated below.

Definitional Issues

Effective implementation of standards and laws governing hate speech requires several things. First and foremost, it requires a clear and consistent definition of the terms involved. Second, it requires a threshold by which adjudicatory bodies can determine whether hate speech has occurred, and whether it’s legitimately prohibited. Yet, there is no universally accepted definition of hate speech, incitement to hate, or other key terms within human rights law. As a result, courts and other public bodies around the world have applied assorted definitions involving various levels of detail. For example:

- The **UN’s International Committee on the Elimination of Racial Discrimination** defines hate speech as a “form of other directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.” Similarly, criminal codes in various countries generally refer to speech that “incite[s] any group of persons to commit an offense against any other group” or that “creates enmity between groups.”⁴¹

³⁷ Mrabure, p. 161.

³⁸ Ibid, p. 160. Also, *Election Commission of India Model Code of Conduct for the Guidance of Political Parties and Candidates*, which can be found at: http://eci.nic.in/eci_main/faq/faq_mcc.pdf.

³⁹ Mrabure, p. 160.

⁴⁰ https://www.eda.admin.ch/content/dam/countries/countries--content/myanmar/en/CodeofConductforPoliticalPartiesandCandidates_Eng.pdf Art 4.3

⁴¹ Sim Kok Eng,, p. 7. For example, the criminal codes of Malaysia, Burma/Myanmar, Singapore, Syria, and Timor-Leste. Or the criminal codes of Malaysia, Singapore, Vietnam, Bangladesh, Azerbaijan, Jordan, and India.

- The **European Court of Human Rights (ECHR)** defines hate speech as “all forms of expression which spread, incite, promote, or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination, and hostility towards minorities, migrants, and people of immigrant origin.”⁴²
- The **Broadcasting Complaints Commission of South Africa** defines hate speech as “material which, judged within context, sanctions, promotes, or glamorizes violence based on race, national or ethnic origin, color, religion, gender, sexual orientation, age, or mental or physical disability” or “propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.”⁴³

Too often, domestic legislation fails to clearly define hate speech and/or the grounds for incitement. And, in some cases, there is no reference to “incitement.” When a domestic legal or regulatory framework governing hate speech and incitement to hatred is being prepared for the first time, or if existing laws are being amended, two key questions must be addressed:

1. What are the grounds for incitement to hatred?

Article 20 of the ICCPR identifies three grounds for the prohibition of incitement to hatred, including **national, racial, and religious** grounds. Other international instruments, domestic legislation, and legal interpretations have clarified and elaborated a wider range of justifications for prohibiting incitement. In addition to national, racial, and religious grounds, these include:

<ul style="list-style-type: none"> • Language • Ethnicity • Social origin • Migrant or refugee status 	<ul style="list-style-type: none"> • Birth status • Indigenous origin or identity • Gender/Sex • Gender identify 	<ul style="list-style-type: none"> • Sexual orientation • Political or other opinion • Property ownership • Mental or physical disability
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2. What constitutes incitement?

As noted above, some domestic laws include no reference to incitement. Publicly available jurisprudence suggests that courts and other public bodies have variously considered several tests or thresholds to determine whether incitement to hatred has occurred.⁴⁴

The ECHR for example, applies several tests. If the speech is not prohibited outright from protections of the ECHR and in accordance with Article 17 (i.e., intent to destroy other rights enshrined in the Convention or the system of democratic values upon which it is based), the Court will examine whether the restriction imposed by the state on free speech fulfills the following requirements:

- The restriction was foreseen by national law;
- The reasons for the restriction are among the legitimate aims set out in Article 10; and,
- They are necessary in a democratic society to achieve one or more of the legitimate aims mentioned under Article 10.⁴⁵

⁴² <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>

⁴³ http://www.mediamonitoringafrica.org/index.php/codes/code_of_the_broadcast_complaints_commission_of_south_africa

⁴⁴ Sim Kok Eng, p. 8.

⁴⁵ Council of Europe, Factsheet, (November 2008), p. 3.

These requirements are consistent with the coherence between Article 19 and Article 20 of the ICCPR and the explicit recognition that a three-part test of legality, proportionality, and necessity be applied in incitement cases.⁴⁶

In each hate speech case before the ECHR, it considers:

- The **objective** of the person whose speech was subject to restrictions;
- The **content** of the speech;
- The **context** of the speech;
- The **profile** of the people who are targeted by the alleged hate speech.
- The **publicity** and potential impact of the speech (e.g., how widely was it disseminated); and,
- The **nature and gravity** of the restrictions applied.⁴⁷

Implementation Issues Around Hate Speech Legislation

Two overarching problems arise with implementation. At one extreme is a failure to implement legislation governing hate speech. At the other is overly broad, zealous, and politicized application of the law.

Inadequate Implementation: A failure to implement hate speech legislation can occur for several reasons. It requires political will, which may or may not exist. Citizens may be unaware of their rights and redress processes. In combination, these may result in an underutilization of the courts.⁴⁸ In some contexts, responsible bodies are overwhelmed by the increasing number of sources engaged in generating and sharing hate speech from traditional media, digital platforms and social media, to political parties, religious leaders and ordinary citizens.⁴⁹ When cases are brought at the national level, assessments have found some judicial decisions to be “vague, ad hoc, and lacking in conceptual discipline or rigor,” in keeping with the poor quality of the legislation upon which they are based.⁵⁰

Regardless of the reasons for inadequate implementation unchecked hate speech and incitement to hatred can have multiple negative consequences.

- It can serve to escalate hate speech within society.
- It may contribute to an increase in hate crimes and violence.

LIMITS OF LEGAL SOLUTIONS TO HATE SPEECH

“We must recognize the limits of legislation to combat hate speech and incitement. We need to develop a multilayered approach to fight the root causes of hate speech, racism, and discrimination.”

[SOURCE: Adama Dieng, *UN Special Adviser on Prevention of Genocide* <http://www.auschwitzinstitute.org/blog/genprev-in-the-news-26-march-2013/>]

⁴⁶ Sim Kok Eng, p. 14.

⁴⁷ Council of Europe Factsheet, (November 2008), p. 3. For a current discussion of how the ECHR applies, or does not apply to this framework, see http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁴⁸ <http://www.accord.org.za/conflict-trends/south-africa-kenyas-legislative-measures-prevent-hate-speech/>

⁴⁹ Ezeibe, Christian Chukwuebeka. *Hate Speech and Electoral Violence in Nigeria*, p. 6.

⁵⁰ Sim Kok Eng, p. 9. Note: Based on a review of laws and application of laws in the Asia-Pacific region.

- A spiral of violence can occur if victimized groups respond with counter attacks. It can further isolate already marginalized groups.
- And it can undermine group or broader public confidence in the police, governing institutions, and democracy, itself.⁵¹

Broad Interpretation, Over-Application, and Politicization: Alternatively, there is a significant risk that laws will be applied in a way that is overly broad, zealous, and politicized. Various international and regional human rights bodies have consistently affirmed that offensive speech is not hate speech and that, even in cases of hate speech, any prohibitions must be justified and narrowly applied. Both the United Nation’s Office of High Commissioner for Human Rights (OHCHR) and the ECHR, for example, have affirmed that the ICCPR’s protection of freedom of expression extends to speech deemed to be “deeply offensive.”⁵²

Specifically, free speech protections are “applicable *not only* to information or ideas that are inoffensive, positively received, or a matter of indifference, but also to those that offend, shock, or disturb the state or any segment of the population. Such are the demands of pluralism, tolerance, and broadmindedness without which there is no democratic society.”⁵³ Still, determining what is deeply offensive versus what is hateful can be extremely difficult as the speaker and the target of the speech are likely to view these concepts very differently. Some countries have broadly applied “incitement” not only with respect to national, religious, and racial hatred but also to criticism of authorities, institutions, and religions. In such instances, adjudicative bodies have failed to distinguish between robust criticisms or inflammatory speech and incitement to hatred as prohibited by Article 20 of the ICCPR.^{54, 55}

It is, however, important to distinguish between Article 20(2) of the ICCPR, which focuses on the *prohibition of incitement*, and Article 19(3)(a), which focuses on circumstances where restrictions on freedom of expression might be justified for the express purpose of *protecting the fundamental rights*

OFFENSIVE SPEECH VS. FIGHTING WORDS

Recent events in Charlottesville, have heightened debate in the United States about whether hate speech is protected under the First Amendment of the U.S. Constitution. As recently as June 2017, the U.S. Supreme Court unanimously affirmed that the government may not restrict offensive speech. In that case (**Matal vs. Tam**), the Supreme Court ruled: “Speech that demeans on the basis of race, ethnicity, gender, religions, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate.” U.S. courts have found that fighting words (i.e., words without social value, directed at a specific individual, and that would provoke a reasonable member of the group about whom the words were spoken) are not protected by the First Amendment. Experts say, however, that speech that is merely offensive or bigoted does not meet this threshold. Determining whether or not speech crosses the line is a legal question that must be considered on a case-by-case basis.

[SOURCE: <http://www.abalegalfactcheck.com/articles/hate-speech.html>]

⁵¹ *Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region*, p. 18.

⁵² <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁵³ Council of Europe Factsheet, (November 2008), p. 3.

⁵⁴ *Ibid.*

⁵⁵ *Ibid*, p. 1.

of others (which in the case of elections, includes the right to vote, be elected, and form political parties). The design and implementation of hate speech legislation must consider both elements of prohibition and protection. While a restriction on the fundamental right of freedom of expression might be reasonable in the legal or regulatory framework, in practice it can be challenging to determine the balance between a legitimate restriction, whether such a restriction is effective in protecting the rights of others, and what a violation of that restriction looks like. Finally, it is important to consider what meaningful remedies exist with respect to the protection or restoration of the rights of others that have been infringed (discussed further below).

Hate speech and incitement laws, often together with laws governing national security and terrorism, have been used to silence opponents including civil society activists, journalists, human rights defenders, and opposition members. The UN special rapporteur has expressly condemned the use of incitement laws for this purpose.⁵⁶ The Venice Commission has also noted, “the application of hate legislation must be measured in order to avoid an outcome where restrictions, which aim at protecting minorities against abuses, extremism, or racism, have the *perverse effect* [emphasis added] of muzzling opposition and dissenting voices, silencing minorities, and reinforcing the dominant ideology and political, social, and moral discourse.”⁵⁷

6. Implementation Issues of Particular Concern to Election Management Bodies

Beyond the general challenges associated with determining whether hate speech has actually occurred and rises to the level of a punishable offense, EMBs encounter an added layer of complexity given their role in the electoral process:

Protecting Free Political Speech and Public Discourse in Election Campaigns

In practice, it is extremely difficult to find the right balance between guaranteeing the fundamental freedom of speech and tackling the problem of prohibited speech. As the ACE Electoral Network notes, “this dilemma becomes even more acute during electoral campaigns.”⁵⁸ There are several reasons for this:

- First, an election is “precisely the moment when a variety of political views should be expressed. To limit expression of some of these views potentially limits not only rights of free speech, but also rights of democratic participation.”⁵⁹
- Second, within the highly charged context of an election campaign, “inflammatory statements are likely to have the effect of inciting people to violence, thereby infringing the democratic and free speech rights of others.”⁶⁰

The speed and alacrity with which any violation occurs during an electoral process also presents challenges.

In its General Comment No. 34, para 28 (2001) the OHCHR states that while it “may be legitimate

⁵⁶ Sim Kok Eng, p. 11.

⁵⁷ Outcome Document of the Durban Review Conference (November 23, 2008).

⁵⁸ <https://aceproject.org/ace-en/topics/me/mea/mec03d/default>

⁵⁹ Ibid.

⁶⁰ Ibid.

to restrict freedom of expression in order to protect the right to vote ... such restrictions must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate ...”⁶¹ The OCHR has also raised concerns about restrictions on political discourse resulting in prohibitions on door-to-door canvassing, restrictions on the number and type of written materials that can be distributed during election campaigns, blocking access during election periods to sources, including local and international media, of political commentary, and limiting access of opposition parties and politicians to media outlets.⁶²

Dealing With Politicians

Bearing in mind the centrality of free political speech and robust public discourse to democratic societies, it is also the case that politicians bear particular responsibilities when it comes to hate speech. As public figures, they have broad possibilities to spread hatred and incite violence and, being in positions of authority, their speech carries greater weight.⁶³ Hate speech is not limited to the extremes. It can easily spread to the rhetoric of mainstream parties.^{64, 65} The growing success of populist politicians and parties that employ hate speech and trivialize its use is a point of concern.⁶⁶ In practice, however, balancing such considerations against free speech and political discourse is difficult. Several country-level rulings have been appealed to the ECHR with differing results:

- In **Feret v. Belgium (2009)**, the Court upheld the conviction of a Belgian member of Parliament (also chairman of the Belgian National Front Party), who had distributed leaflets containing anti-Muslim and anti-immigrant slogans. The Court ruled that the conviction for inciting racial hatred was justified in the interest of protecting the rights of others, namely members of the immigrant community.
- In another case **Le Pen v. France (2010)**, the Court affirmed the conviction of the president of the French National Front Party for statements made about Muslims in an interview with *Le Monde* daily newspaper. It found that restrictions on the applicant’s freedom of expression had been necessary in a democratic society.
- Yet, in the case of **Erbakan v. Turkey (2006)**, the Court sided with the prime minister of Turkey (also chairman of the Welfare Party) that his free speech rights had been violated. The case involved a public speech in which the prime minister allegedly incited hatred and religious intolerance. The Court noted that while it was critically important for politicians to avoid comments likely to foster intolerance, the reasons given for prosecution were

HATE SPEECH COMMITTED BY POLITICIANS

When considering the spreading of hate speech, the ECHR has insisted on the special responsibilities of politicians not to use language that contributes to fueling intolerance and has applied stricter standards to them.

⁶¹ <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁶² Such concerns have been raised in response to actions taken in countries as diverse as the Republic of Korea, Finland, Japan, Tunisia, Togo, and Moldova.

⁶³ <https://rm.coe.int/16800c170e>

⁶⁴ Ibid.

⁶⁵ <http://www.reuters.com/article/us-usa-election-hatespeech-insight/hate-speech-seeps-into-u-s-mainstream-amid-bitter-campaign-idUSKBN13225X>

⁶⁶ <https://rm.coe.int/16800c170e>

insufficient to justify interference with freedom of expression as necessary in a democratic society.⁶⁷

While defending their own right to free speech, politicians may take a dimmer view of comments directed against them. As noted earlier, legislation governing hate speech has been subject to abuse in order to squash opposition. The OCHCR, in its draft General Comment No. 34 on Article 19 (para. 38) of the ICCPR noted, specifically in reference to the political process, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government are legitimately subject to criticism and political opposition.”⁶⁸ In such cases, adjudicators must determine whether statements are merely offensive or critical of political policies or whether they go so far as to incite hatred based on gender, race, religion, etc.

Maintaining Neutrality and Equal Treatment of Candidates

Politicization of the issue of hate speech presents a real challenge to EMBs as they seek to investigate candidates and political leaders for hate speech and to impose penalties on those found to have violated legal provisions. As the director of public prosecutions in **Japan** notes, “once you arrest a person from one side of the political divide, you are expected to arrest one from the other side so as to appear balanced. Never mind whether or not the other person has engaged in criminal activity.”⁶⁹

Applying Appropriate and Proportionate Penalties

As IFES has discussed elsewhere,⁷⁰ an effective remedy for an election offense or violation should: (1) ensure that the letter and spirit of the law is realized in practice (including to restore electoral rights or otherwise undo the harm caused by a violation); (2) be provided in a timely manner; (3) be proportional to the violation or irregularity in question; (4) be enforceable; (5) lead to deterrence or a change in behavior in question; and (6) reinforce the perception of fairness and credibility of the process. Beyond challenges associated with determining whether hate speech and incitement to hatred have occurred, adjudication bodies must apply penalties that meet these core elements of effectiveness. Of particular concern is ensuring that a remedy is proportionate to the violation. Some domestic legislation provides for extreme penalties (e.g., withdrawal of candidate registration or suspension of voting rights). This is problematic as it involves the restriction of two fundamental rights: the freedom of expression and electoral right.

In **India**, for example, any person who has been convicted of hate speech loses the right to contest elections under the *Representation of the People Act*. Also under consideration is whether or not the Election Commission (EC) should be empowered to de-recognize political parties. While the Supreme Court of India has recommended to the government that it enact measures to strengthen the EC’s power to curb hate speech, the question of whether it should be allowed to disqualify political parties or their members from competing in elections is highly controversial and is under review by the Law Commission.

⁶⁷ For a more detailed discussion of these and other cases, please see http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁶⁸ <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁶⁹ See: <http://www.asahi.com/ajw/articles/AJ201608050051.html>

⁷⁰ https://www.ifes.org/sites/default/files/2017_ifes_measuring_effective_remedies_for_fraud_and_administrative_malpractice.pdf

As noted earlier, **Japan's Public Offices Election Law** calls upon candidates to refrain from delivering speeches broadcast on TV and radio that damage the dignity and honor of others.⁷¹ The law places no such restrictions on the content of campaign speeches made on the street. It contains no penalties for hate speech. The law does include penalties against anyone who interferes in campaign activities (e.g., disrupting campaign meetings and candidate speeches). As a result, “any action to stop hateful and discriminatory words and deeds could be taken as interference in a campaign if directed at a candidate.”⁷²

In trying to come up with appropriate penalties, other proposals have been put forward. The European Commission Against Racism and Intolerance (ECRI) has advocated to the Council of Europe Member states to withdraw public financing of political parties that promote racism.⁷³ Some NGOs have also advocated for the expulsion of political parties from regional groupings. More research is needed on exactly what types of remedies can be meaningful and effective in cases of hate speech. It will also be important to look at whether certain types of remedies have a deterrence effect without being severely disproportionate to the offense in question.

Providing for a Safe Electoral Environment

Globally, electoral violence is both widespread and diverse.⁷⁴ In 2014, 27 countries spanning five continents experienced it including states with long-standing democratic institutions (e.g., India) and those beset by fragility and conflict (e.g., Afghanistan).⁷⁵ Too often, election campaigns provide a backdrop to violence and the commission of hate crimes (e.g., Nigeria, Kenya, Ethiopia, Sierra Leone, and Zimbabwe).^{76,77,78} Hate speech during campaigns does not automatically trigger electoral violence. Much depends upon contextual factors:

“There are certain environmental and structural factors within a society—such as a history of violence, the marginalization of certain groups, and prejudice—that create conditions in which hate speech is more likely to lead to violence. Hate speech is also more likely to lead to violence in societies where there is a stratified hierarchy, tenuous rule of law, state-sponsored violence, impunity, or widespread corruption. It is especially dangerous when the marketplace of ideas is closed and no alternative points of view are expressed.”⁷⁹

What hate speech during electoral campaigns does do is increase the *risk* of electoral violence.⁸⁰ EMBs, security actors, and others responsible for providing a safe electoral environment must be prepared to mitigate and manage this risk.

To effectively mitigate and manage this risk, EMBs need to understand the links between hate speech and other variables in the electoral process including electoral violence, electoral security and electoral integrity.

⁷¹ Legal language the dignity and honor of others can be quite broad and are not necessarily related to a person's nationality, gender, religion, ethnicity, etc.

⁷² <http://www.asahi.com/ajw/articles/AJ201608050051.html>

⁷³ *Preventing and Responding to Hate Crimes*, p. 55.

⁷⁴ <http://democracyjournal.org/arguments/electoral-violence-can-it-happen-here/>

⁷⁵ *Ibid.*

⁷⁶ *Preventing and Responding to Hate Crimes*, p. 55.

⁷⁷ Mrabure, pp. 160, 162.

⁷⁸ Ezeibe, p. 3.

⁷⁹ http://www.genocidewatch.org/images/OutsideResearch_Hate_Speech_and_Group-Targeted_Violence.pdf, p. 9.

⁸⁰ <http://democracyjournal.org/arguments/electoral-violence-can-it-happen-here/>

- **Electoral violence** is “any harm or threat of harm to any person or property involved in the election process, or the process itself, during the election period.”⁸¹
- **Electoral security** is the process through which electoral stakeholders, information, events and property are protected from harm or threat of harm.
- **Electoral integrity**, as defined by the UN Global Commission on Elections, Democracy, and Security, refers to “any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.”⁸²

Hate speech, which is often accompanied by intimidation and incitement, can trigger physical and psychological violence that directly undermines electoral security and electoral integrity. Hate speech may lead to actions that are clearly defined as offenses in law and that may qualify as a “hate crime.” In other instances, the speech itself may carry criminal penalties. Integrating hate speech counter measures into a more comprehensive electoral security and integrity strategy will require dedicated leadership, focused attention, and adequate resources.

In some cases, hate speech and hate crimes may be unleashed as an election tool by manufacturing offense as was demonstrated in Jakarta’s gubernatorial elections in 2017 where hardline organizations were able to mobilize mass support to defeat a candidate who was seen as offending the majority religion.⁸³ George Cherian, a professor in the Department of Journalism at Hong Kong Baptist University, has coined the term “hate-spin” to describe “a double-sided technique that combines hate speech (incitement through vilification) with manufactured offense-taking (the performing of righteous indignation).” In his insightful book *Hate Spin: The Manufacture of Religious Offense and Its Threat to Democracy*, examines how politicians in India, Indonesia and the United States, three of the world’s largest democracies, “have orchestrated the giving of offense and taking of offense as instruments in identity politics, exploiting the democratic and free speech space to undermine those very values.”⁸⁴

Hate speech, incitement, and violence are often “orchestrated by elites to intimidate voters.”⁸⁵ Hate speech can be used as a suppression tool against women and other marginalized groups, undermining free, fair, and inclusive democratic processes.

Hate Speech and Violence Against Women in Elections

Hate speech can incite psychological and physical violence against a range of female electoral stakeholders including voters, election officials, candidates, party leaders, activists, and journalists. As women’s political visibility rises, so does their vulnerability. Women may be targeted for their political participation, affiliations, or actions or simply for being women in male-dominated political arenas.⁸⁶ A

⁸¹ <http://www.ifes.org/issues/electoral-security>

⁸² <http://www.kofiannanfoundation.org/supporting-democracy-and-elections-with-integrity/global-commission-on-elections-democracy-security-2/>. For a conceptual framework on election integrity that identifies vulnerabilities by type, likelihood, and impact, please refer to: <http://www.ifes.org/news/ifes-assessment-evolves-maps-electoral-vulnerabilities>.

⁸³ <http://www.thejakartapost.com/academia/2016/11/03/ahok-and-hate-speech-the-unexpected-outcome-of-democracy.html>

⁸⁴ <https://mitpress.mit.edu/hate-spin>

⁸⁵ Ibid.

⁸⁶ Bardall, G., *Breaking the Mold: Understanding Gender and Electoral Violence* (2011), IFES White Paper Series.

recent study by the International Parliamentary Union study found that being young, a minority, or in the opposition further increases the risk of facing electoral/political violence female politicians.⁸⁷ Where gender discrimination and gender-based violence is prevalent, the risk of violence is also high.⁸⁸

IFES has developed a comprehensive framework to address violence against women in elections (VAWIE). Research and pilot programs conducted in Bangladesh, Kenya, Sri Lanka, Nepal and Haiti have affirmed that women, while experiencing many of the same types of electoral violence as men, experience certain types of violence in particular spaces unique to women. Addressing gender-based electoral violence requires a more comprehensive approach, one that involves collaboration among a diverse group of actors, including election administrators, security stakeholders, media, observer groups, and gender-based violence service providers.

While VAWIE focuses on issues of violence and intimidation beyond the narrow field of hate speech, it is important that this gender-specific concern is not overlooked. Of particular note in this respect is the prolific use of online hate speech to attack women candidates. IFES research continues to record extensive on-line harassment of women candidates in Kenya, Bangladesh, Sri Lanka, Nepal and other countries recently holding elections. Women in politics and public service face violent online encounters, including death threats, so-called “slut-shaming” and threats to their families. For a full discussion of IFES’ approach, please refer to the IFES VAWIE framework.⁸⁹ IFES is also currently conducting specific research called “VAWIE Online” looking at online threats and intimidation against women in elections – particularly with respect to female candidates.

HATE SPEECH AND ELECTORAL VIOLENCE BARRIERS TO WOMEN’S POLITICAL PARTICIPATION

In 2013, **Mexico** amended multiple laws, including the Election Law to confront political and electoral violence directed at women. A year earlier, the Association of Women Mayors and Councilwomen in **Bolivia** successfully advocated for passage of the *Anti-Gender Based Harassment and Violence in Politics Act*. The law defends the guarantee of women’s political rights and provides penalties for individual and collective harassment and political violence.

[SOURCE: IPU, Women in Parliament 2013: The Year in Review]

7. The Response: More Regulation or More Free Speech?

Up to this point, this paper has focused solely on legal and policy frameworks for countering hate speech. It has highlighted the limits of law-based approaches in effectively tackling the problem. It has flagged the highly controversial nature and potential for abuse of restrictions on free speech. And, it has noted the challenges in trying to balance fundamental rights when they come into conflict (e.g., free speech versus protections against discrimination). Moving forward, our discussion pivots. Specifically, we will move beyond legally based restrictions to consider more comprehensive solutions involving collaboration among electoral stakeholders. This part of the discussion is informed by the guidance of various human rights actors. For example:

⁸⁷ *Sexism, Harassment, and Violence Against Women Parliamentarians* (2016), IPU Issues Brief.

⁸⁸ http://www.genocidewatch.org/images/OutsideResearch_Hate_Speech_and_Group-Targeted_Violence.pdf, p. 9.

⁸⁹ http://www.ifes.org/sites/default/files/2016_ifes_violence_against_women_in_elections.pdf. For more on hate speech and political violence against women, please see also: https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf

The special rapporteurs representing the Office of the UN High Commissioner for Human Rights (OHCHR) have recommended that the strategic response to hate speech should be more speech. Specifically, in order to combat national, racial, and religious hatred, the right of everyone to freely express themselves must be guaranteed.⁹⁰

The British Human Rights NGO “Article 19” has called upon states to pursue a wider range of approaches to combat hate speech beyond prohibitions, to include measures that “guarantee and implement the right to equality and take positive steps to promote diversity and pluralism, to promote equitable access to the means of communication, and to guarantee the right of access to information.”⁹¹

The Durban Declaration Program of Action and the Framework Convention for the Protection of National Minorities of the Council of Europe also promote more speech as key principle in combatting discrimination and hate speech. Specifically, prohibitions on hate speech and incitement to hate should not prevent robust criticism, but rather should prevent more serious calls to hatred.⁹²

Within Organization for Security and Co-operation in Europe (OSCE) member states, the interpretation of obligations under various international and regional human rights instruments varies considerably. Speech subject to sanctions in one country is considered to be protected by freedom of expression in another.⁹³ In response, OSCE Ministerial Council Decision No. 10/05 emphasized “the need for consistently and unequivocally speaking out against acts and manifestations of hate, *particularly in political discourse* [emphasis added],” while balancing the right of free speech with the obligation to combat discrimination.⁹⁴

In the next section, we will explore additional strategies that EMBs can pursue within their own institutions and across networks of electoral stakeholders.

8. Strategies for Countering Hate Speech in Election Campaigns

What Can EMBs and Electoral Stakeholders Do?

There are a number of strategies that EMBs and electoral stakeholders can employ to counter hate

COUNTERING HATE SPEECH WITH MORE SPEECH

“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.”

[SOURCE: Joint submission by the special rapporteurs, OHCHR expert workshop on the prohibition of incitement to national, racial or religious hatred, July 6-7, 2011, Bangkok, Thailand]

⁹⁰ See: http://www2.ohchr.org/english/issues/opinion/articles1920_iccr/docs/expert_papers_Bangkok/SRSubmissionBangkokWorkshop.pdf

⁹¹ Sim Kok Eng, p. 21.

⁹² <http://www.un.org/en/durbanreview2009/ddpa.shtml>; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c10cf>

⁹³ *Preventing and Responding to Hate Crimes*, p. 54.

⁹⁴ <http://www.osce.org/mc/17462?download=true>

speech and incitement to hate in election campaigns. It is important to note that the suggested strategies are not limited to negative options, as with rules-based restrictions, but include a range of positive measures. While there will be responsibilities and tasks that are unique to EMBs and which only they can pursue, it is also quite clear that no single institution or actor can successfully tackle hate speech in isolation.

Stakeholder Engagement

Making inroads will be contingent upon forming strategic partnerships and alliances, working collaboratively, and leveraging existing mandates, capabilities, and resources. In short, to achieve greater scale, scope, and sustainable success of efforts to combat hate speech, EMBs will need to work with external stakeholders.

Among the governmental actors and independent agencies, the EMBs may need or want to engage on hate speech interventions are:

- Ministries of Interior/Police
- Public Prosecutors' Offices and the Courts
- Human Rights Commissions/Ombudsman's Offices
- State bodies dealing with minorities or communal relations
- State media
- Media regulatory and oversight bodies
- Ministries of Education
- Local government authorities
- Special commissions (e.g., those set up to implement the provisions of a peace agreement)
- Ministries of Women's Affairs

EMBs will also want to engage civil society organizations. There are several benefits of working with civil society to counter hate speech. The following list is adapted from *Hate Speech Explained: A Toolkit* by Article 19.⁹⁵

- Civil society organizations (CSOs) play a leading role in advancing the promotion and protection of human rights;
- CSOs bring together diverse groups to engage in inter-group dialogue;
- CSOs have greater leeway than EMBs to facilitate informal interactions;
- CSOs often represent and support groups most adversely affected by hate speech and violence;

STRATEGIC EFFECTIVENESS

A recent study by Georgetown University found that when state and non-state actors used strategic combinations of methods, they were able to more effectively combat electoral violence.

[SOURCE: <https://government.georgetown.edu/sites/government/files/Georgetown%20-%20USAID%20Electoral%20Violence%20Study.pdf>, p. 33]

⁹⁵ *Hate Speech Explained: A Toolkit* by Article 19, p. 57.

- CSOs bring valuable grassroots networks and community connections that EMBs lack;
- CSOs bring creative thinking and innovative approaches to combating hate speech;
- CSOs will have different options and opportunities for countering hate speech than EMBs; and,
- Government institutions, CSOs, and the private sector can leverage their respective capacities and resources to achieve greater scope and more significant results.

So, exactly what strategies and actions can EMBs undertake?

Model Good Behavior

The baseline response for any EMB should be to ensure that, as an institution (including its members and staff at all levels) it does not engage in discriminatory practices or hateful speech toward any individual or group. This would relate to:

- Internal human resources practices (including recruitment, hiring, remuneration, disciplinary actions, and terminations);
- Internal communications and interactions among personnel;
- External communications, whether through direct contact or dissemination through the mass media, and interactions with the public;
- The handling of requests and the provision of services to all electoral stakeholders (e.g., voter registration, party or candidate registration, routine and special voting services, etc.);
- The allocation of resources (e.g., campaign financing or the allocation of airtime, as proscribed by the law);
- The preparation of regulations or advocacy of electoral reforms (e.g., with respect provisions addressing voting rights, public participation, campaigning, and media and elections);
- The content and delivery of all public information and voter/civic education messages and products;
- The conduct of any investigations or adjudication of complaints and appeals and the application of penalties; and
- The establishment of a policy and an office for gender equality and social inclusion.

Public institutions, including EMBs, should also conduct their affairs in a transparent manner and provide access to information on an equal basis. By operating openly, EMBs can help to rebuff efforts by others to manipulate group identities and to scapegoat minorities or marginalized groups for political purposes.⁹⁶

In order to consistently model good behavior and put its “best face forward,” EMBs will likely need to undertake in-house training for its personnel (more on this below) that directly addresses international obligations, constitutional provisions, and domestic legal and regulatory requirements regarding

⁹⁶ *Hate Speech Explained: A Toolkit* (2015 edition) prepared by Article 19, p. 49.

discrimination and/or hate speech. Codes of ethical conduct and public service standards for election officials and guidelines for those authorized to speak officially on behalf of the EMB should directly address the issues of discrimination and hate speech.

Speak Out Early and Often Against Discrimination and Hatred

As public officials, EMB chairpersons and members have a platform from which to speak about, and by which to sensitize the public and key stakeholders to the impacts of hate speech and incitement to hatred. EMB leaders can and must speak out about the use of hateful speech during election campaigns. By speaking out, EMB leaders can help raise awareness of hate speech and its consequences, which in turn, can help mobilize a public response. Electoral leaders are also uniquely qualified to explain to electoral stakeholders the dangers of hate speech to electoral democracy.

Doing so will require the ability to recognize hate speech when it happens as well as the political will to publicly reject the use of such language. It will also require familiarity with all international obligations, constitutional requirements, and domestic legal provisions concerning human and political rights, discrimination, the freedom of expression, and legitimate limitations on free speech rights. To avoid exacerbating confusion, it will also involve an understanding of and the *consistent* use of applicable legal definitions (e.g., “hate speech” and “incitement to hatred”).

At an address to re-launch the Guyana Elections Commission’s (GECOM’s) Media Monitoring Unit, for example, Chairman Dr. Steve Surujbally noted:

“Early this year, we began witnessing the resurgence of the publication of inciting articles and comments in the print and electronic media ... [including those] associated with the 2011 General and Regional Elections, some of which carry content that could lead to conflict. Everyone would agree that this is something which all key stakeholders should guard against relative to the maintenance of national peace and tranquility ... GECOM is extremely averse to conducting its business [elections] in an atmosphere of hostility and violence.”⁹⁷

In a keynote speech at an awards ceremony of the Ghana Journalists’ Association, Mrs. Charlotte Osei, the Chairperson of the Electoral Commission of Ghana, seized the opportunity to address hateful and inflammatory commentary on Ghanaian talk radio and online. Mrs. Osei made an impassioned appeal to the media:

“Journalists are more powerful than passive conveyer belts, passing on any message to listeners, viewers, or readers. We cannot afford a passive media ... It is time to collectively start fighting for our national peace and stability, in the same way we fight for political power.”⁹⁸

MODELING BEST PRACTICE AND SPEAKING OUT

“Public officials should be instructed on the importance of avoiding statements that might promote discrimination or undermine equality, and must understand the dangers of trivializing violence or discrimination, including in the form of ‘hate speech,’ as well as the possibility that **silence in the face of such challenges equates to tacit endorsement.**”

[SOURCE: *Hate Speech Explained: A Toolkit (2015 edition)* prepared by Article 19, p. 50]

⁹⁷ Surujbally, p. 1.

⁹⁸ Keynote Speech Delivered by Mrs. Charlotte Osei, Chairperson of the Electoral Commission of Ghana, At the 21st Ghana Journalists’ Association Awards Night (August 27, 2016).

In **Kenya**, the National Cohesion and Integration Commission (NCIC), through a press conference held on July 14, 2017, noted with concern the increasing ethnic and political polarization and proliferation of hate speech on vernacular radio stations and social media. The NCIC identified 176 social media accounts perpetrating hate speech on social media. The NCIC stated that the administrators of these pages would be held accountable. The NCIC reported that a total of 31 cases were under prosecution in various courts across the country, with 30 more cases under various stages of investigations. At this writing, the NCIC had investigated nine cases. Three cases had gone to court with defendants released on bond.⁹⁹

By speaking out, EMB leaders can play a key role encouraging a broader dialogue on intolerance, discrimination, hate speech, and incitement to hatred and violence.¹⁰⁰ Beyond speaking from the EMB's own podium, via the mass media and at public events, EMB leaders can also encourage the use of high-level government forums and joint (i.e., multi-agency communiqués) to give further authority to such statements.

Open Space for Pluralistic Public Dialogue

As noted earlier, many of the leading human rights institutions and NGOs have raised concerns about the nature, uses, and limits of legal approaches to dealing with hate speech. The more effective solution, they contend, is to counter hate speech with more speech, (i.e., to open the space for free speech and thereby enable counter speech). On one hand, EMBs must be careful not to appear to give an advantage to particular political actors or speakers. On the other, they can promote activities aimed at expanding public dialogue and debate during elections. For example:

- Sponsoring televised candidate debates, roundtable discussions, town hall style meetings, or other public forums that promote issues-based discussions; and,
- Supporting civil society initiatives directed at public awareness raising, voter and civic education, issue-based campaigns, engagement of marginalized groups and women, inter-group dialogue, and tolerance with a specific focus on hate speech and incitement to hatred in electoral campaigns.

EFFECTIVE STRATEGIES TO COUNTER HATE SPEECH

What works:

- Warning of consequences
- Shaming and labeling
- Empathy and affiliation
- Humor
- Images

Not effective:

- Hostile or aggressive tone, insults
- Harassment and silencing

Mixed results:

- Fact checking (more effective with uninformed audiences/ not effective with entrenched audiences)

*[SOURCE: Benesch, S. et al.,
Considerations for Successful Counter
Speech (2016)]*

⁹⁹ <http://cohesion.or.ke/index.php/media-centre/latest-activities/477-hate-mongers-on-social-media-warned>

¹⁰⁰ *Hate Speech Explained*, p. 49.

Contribute to Learning

To design better strategies, programs, and messages to deal with hate speech during election campaigns, EMBs need to know to what extent various electoral stakeholders understand hate speech and how this affects mindsets and behaviors. They also need to understand what counter strategies work within their own country context. In both cases, research has exposed differences from country to country.¹⁰¹ Toward this end, EMBs can commission their own action-oriented research or participate in studies being undertaken by others. Examples of existing research are provided below.

In **Kosovo**, IFES took a market research-based approach to discovering how hate speech influences individuals' voting behaviors.¹⁰² The study specifically examined young people's perceptions of the meaning of hate speech, where hate speech is used and by whom, and how hate speech influences their feelings and behavior. Generally, focus group participants perceived hate speech in terms of expressions or language used to offend, humiliate, or discriminate against an individual or group on the basis of nationality, ethnicity or political affiliation. The common finding across all six focus groups was that politicians were the main group of people who use hate speech. Generally, participants claimed that hate speech is increasingly present and that they are exposed to hate speech on a daily basis via television, social media, news coverage, and protests. Overall, participants perceived that political leaders have personal incentives to use hate speech against their political opponents or other groups. At least in the Kosovo context, youth participating in the focus groups widely condemned the use of hate speech and indicated that they would be more inclined to vote against candidates who made hateful statements.¹⁰³

Researchers at the Kenya Institute of Mass Communication also undertook surveys and focus groups to learn how aspiring journalists understood hate speech. Respondents provided a wide range of answers about what constituted hate speech, some of which touched upon issues of intent, incitement, violence, and discrimination perpetrated against others. A majority indicated they were aware of laws governing hate speech in Kenya, but most could not cite any specific law or legal provision. Most thought hate speech legislation would "hamper" their work, citing concerns about restrictions on freedom of expression, withholding of information, limits on how information is produced and presented (if at all), conflicts within the media sector on how to cover sensitive topics, unbalanced or inaccurate reporting, and exposure to lawsuits. Some also identified positive aspects of such legislation, for example, requiring journalists to be accurate, careful, and diligent in handling information as well as adhering to high professional standards." Research findings were used to develop the Guidelines for Monitoring Hate Speech in the Electronic Media in Kenya, which provided journalists with a reference point and checklist.¹⁰⁴

Internews, an international NGO, completed another related study in Kenya using interviews with key stakeholders. It found that while the media did disseminate information during elections, it failed to perform its watchdog role. Rather than pressing candidates on issues and holding them to account for their public statements and promises, the media simply became megaphones for the candidates.¹⁰⁵ The research findings were used to design and deliver training on conflict sensitive reporting prior to the 2013 general elections. During those elections, rather than reinforcing conflict through their own coverage and content, the media employed two strategies for countering hate speech: (1) self-

¹⁰¹ See: http://www.bricks-project.eu/wp/wp-content/uploads/2016/10/relazione_bricks_eng2-1.pdf

¹⁰² The study utilized a small number of focus groups to provide qualitative rather than quantitative data.

¹⁰³ For more information on the study, please see: https://www.ifes.org/sites/default/files/2016_ifes_the_influence_of_political_hate_speech_as_a_tool_on_youth_of_k.eng_.pdf

¹⁰⁴ Musyoka, Veronica Katungu (September, 28, 2013), *The Law on Hate Speech and Its Implications for Media in Kenya*.

¹⁰⁵ http://www.cco.regener-online.de/2016_1/pdf/gustafsson2016.pdf

ensorship and (2) condemnation (i.e., naming and shaming those purveying hate speech and incitement to violence).¹⁰⁶

Monitor, Collect, and Report Data

Monitoring, collecting, and reporting data on the occurrence of hate speech, as with instances of political and electoral violence, is essential to developing effective risk mitigation plans and strategies as well as informing investigation and adjudication processes. As noted earlier, limited or no availability of data to map and track trends in the frequency and spread of hate speech, especially incitement to proscribed acts of hatred, is a particular problem in many countries. Where such efforts exist, work may be undertaken by government agencies, civil society organizations, or both. It may seek to capture hate speech occurring “on the ground” or via mass media.

Civil society groups involved in such activities may include groups dedicated to advancing human rights, eliminating discrimination, observing elections, mitigating political and electoral violence, implementing peace agreements, or promoting responsible media practices. Some will be very specifically focused, for example monitoring online hate speech and incitement to violence. Peace Tech Lab, produces regular online reports relating to hate speech in **South Sudan** as part of a broader initiative to analyze online hate speech in South Sudan in order to help mitigate the threat of hateful language in fueling violence on-the-ground.¹⁰⁷

The GECOM in **Guyana** has, for multiple elections, operated its own Media Monitoring Unit (MMU).¹⁰⁸ The main aim of the MMU is to work toward creating and maintaining a suitable environment under which the GECOM can carry out its institutional mandate in a manner commonly accepted as providing for “peaceful, free and fair” elections.¹⁰⁹ The existence of the MMU is directly linked to a Media Code of Conduct that guides journalists in their coverage of election issues and processes.¹¹⁰ The Code specifically prohibits incitement of racial hatred and demonizing of people on the basis of gender, race, class, ethnicity, language, sexual orientation, and physical or mental ability.¹¹¹ The MMU’s scope of work specifically highlights the MMU’s role in compiling “a body of incontrovertible *evidence-based information* [emphasis added] of local media performance during the electoral process and using as a standard, the Code of Conduct and the norms associated with international best practices in journalism.”¹¹²

In **Macedonia**, the Helsinki Committee for Human Rights implemented a project to create an internet

MONITORING BY CHIEF ELECTORAL OFFICERS IN INDIA

The Election Commission of **India** (ECI) has directed its state-level chief electoral officers to closely monitor campaigns on a daily basis including video recording of all campaigns. The collection of such factual evidence is essential should an official need to file a First Information Report. Ultimately, the ECI has censured many political leaders for hate speech during election campaigns.

[SOURCE: Mrabure, p. 164]

¹⁰⁶ Ibid.

¹⁰⁷ <http://www.peaceteclab.org/hate-speech-in-south-sudan>

¹⁰⁸ Surujbally.

¹⁰⁹ Ibid, p 3. Election authorities in Malawi, Nepal, Bangladesh, and Bosnia have reportedly used this Code of Conduct as a model.

¹¹⁰ Ibid.

¹¹¹ <http://www.gecom.org.gy/pdf/MEDIA%20CODE%20OF%20CONDUCT.pdf>

¹¹² Surujbally.

platform for mapping, monitoring, and reporting hate speech in public spaces and the media.¹¹³ For this purpose, an online government portal (www.govornaomraza.mk) was created. A public information campaign was undertaken to raise public awareness about hate speech and to promote the web-based portal. The portal enabled citizens to receive and report information on hate crimes. Prior to the introduction of the portal, Macedonians had no statistics or data on hate crimes. Data collected by the platform has been analyzed to develop recommendations to better combat hate speech.¹¹⁴

The experience of India, Guyana and Kenya, among others, highlights the need within responsible institutions, including EMBs, to employ teams well versed in digital forensics within established legal parameters. Such capacity is essential to identifying and tracking hate speech and its proponents online as well as documenting evidence for adjudication purposes. Recognizing that social media has become a primary source of psychological violence against elected women leaders,¹¹⁵ monitors should integrate a stronger gender lens into their methodologies. Monitoring online hate speech might also be able to identify and expose “troll factories” that are scaling up and strategically coordinating hate speech campaigns (sometimes for profit) in an attempt to impact elections. Police in **Indonesia** arrested the administrator of a Facebook group affiliated with a hate speech group called Saracen, which had 800,000 affiliated Facebook accounts according to police.¹¹⁶

Mitigate the Risk of Violence Through Effective Security Planning

Available data on hate speech should be applied to proactive and strategically-oriented planning to mitigate political and electoral violence and to safeguard the security of electoral stakeholders, including groups at risk of proscribed acts of hatred. In active or post-conflict environments, increased threats and, usually, increased numbers and variety of security actors, have often required the creation of a coordinating security body. These coordination bodies provide a forum for regular meetings of electoral and security actors to ensure appropriate preparation, planning, communication throughout the electoral period and to facilitate joint election security administration and management.

To ensure the comprehensiveness and effectiveness of such efforts to address hate speech, the coordinating body should be comprised of various agencies with some responsibility for the provision of electoral security, for example, the EMB, the police, any

INTER-AGENCY RESPONSE TO HATE SPEECH

In the lead up to 2015 regional elections in **Indonesia**, the Ministry of Communications, National Police, Elections Supervisory Agency, and General Elections Commission stepped up their cooperation to monitor and combat hate speech. The minister for Communications and Information of Indonesia, while citing the regulatory, law enforcement, and technology-based strategies being implemented by the government, endorsed public awareness campaigns as an “even more effective way to stop the spread of discriminatory and hateful speech.” The minister called upon public figures, civil society and prominent individuals to engage in awareness raising activities.

[SOURCE: Muntarbhorn, Vitit. Study on the Prohibition of Incitement to National, Racial, Or Religious Hatred: Lessons from the Asia Pacific Region, undated]

¹¹³ *White Paper on the Situation with Hate Speech in the Republic of Macedonia*, prepared by the Helsinki Committee for Human Rights of the Republic of Macedonia, pp. 29-35.

¹¹⁴ A good example of the project’s Q&A based fact sheet can be found at: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1096/Bela_kniga_en.pdf

¹¹⁵ <http://www.ipu.org/pdf/publications/issuesbrief-e.pdf>

¹¹⁶ <https://en.tempo.co/read/news/2017/08/28/055903802/President-Livid-about-Hate-Speech-Group-Saracen>

ministry responsible for crisis (or emergency) management, and defense forces. Coordination strategies should also seek to constructively engage non-state actors, such as relevant civil society and gender-based violence service providers who bring diverse perspectives. Providing space for dialogue and input can help to de-escalate tense situations and provide an alternative to violence.

Adjudicate Effectively and Responsibly

Election offences regarding hate speech will often come under the jurisdiction of the courts. However, if the EMB has any responsibility for adjudicating hate speech and incitement to hate during election campaigns it will be important to fulfill this duty effectively and responsibly. Specifically, the EMB will need to avoid the pitfalls encountered by judicial and administrative bodies in many jurisdictions worldwide. As noted earlier, these have included broad interpretation of the law, inconsistent jurisprudence, political bias, legal overreach and abuse, disproportionate penalties, and a failure to comply with international obligations.

In response, EMBs need to have in place regulations and procedures to effectively and consistently handle investigations, manage complaints, and adjudicate fairly and transparently. Such policies and procedures need to apply to adjudication by the EMB itself and situations where it is responsible for preparing and forwarding details for investigation or adjudication by another body. For a full discussion on international standards pertaining to electoral dispute resolution, please refer to the IFES publication [*Guidelines for Understanding, Adjudicating and Resolving Disputes in Elections*](#) (GUARDE).

The starting point for effective adjudication will be clear definitions of what constitutes legitimate and prohibited speech and incitement to proscribed acts of hatred, the grounds for incitement, and pre-established criteria (also referred to as “tests” or “thresholds”) for determining whether incitement has occurred. EMBs implementing regulations or guidelines should provide for timely and effective investigation and adjudication, and the application of effective remedies. To facilitate uniform application, the EMB may consider developing supporting tools such as checklists and standardized forms for documenting investigative findings and administrative rulings. Training should also be conducted for all personnel involved in investigation and adjudication of hate speech and incitement to hatred. Training should build the capacity of responsible personnel to successfully identify hate speech and hate crimes, collect and secure evidence, fulfill reporting requirements, and build cases.¹¹⁷ It should also address differential approaches that may be required when hate speech results in violence (e.g., maintaining a victim’s confidentiality in cases of gender-based violence, as compared to standard electoral dispute resolution [EDR] practices).

EMBs should also carefully consider the application of appropriate remedies for incidents of hate speech. In some instances, the removal of campaign material may be a more effective and less politicized remedy than a heavy fine. Conversely, where a legitimate claim of hate speech exists, the failure to effectively sanction the violation may lead to a culture of impunity and ultimately reinforce the use of hate speech as a legitimate campaign tactic.

EMBs should also consider alternative dispute resolution (ADR) as a way to de-escalate tensions and pre-empt electoral violence. A good example of ADR being used to de-escalate tension and mitigate potential violence occurred in Kenya, during the 2017 election. Four people were stabbed to death at a county tallying center leading to fears of retaliatory violence by the ethnic group to which two of them belonged. Civil society Conflict Mitigation Panels (CMP) worked with county administration to discuss the incident and develop appropriate strategies to respond. CMP members met with several community leaders urging them to maintain peace and monitored warning signs of violence/revenge attacks. Calm

¹¹⁷ *Preventing and Responding to Hate Crimes*, p. 28.

was restored in the area as a result of this ADR intervention and the murder cases were referred to the formal justice system.

Train Electoral Stakeholders

References to adequate training appear throughout this discussion. The EMB may be involved in training for a range of electoral stakeholders including its own personnel, political party representatives, candidates and their surrogates, civil society actors, and the media. If collaborating with other institutions, such as the police or the courts, in the investigation and adjudication of hate speech and incitement to hatred, it may also be involved in joint training programs.

The starting point for any training should revolve around building awareness of human and voting rights, non-discrimination, protected and prohibited speech, and what constitutes hate speech and incitement to proscribed acts of hatred. It will need to review the country's international obligations, constitutional provisions, domestic legal requirements, and applicable codes of conduct as they relate to hate speech and incitement. It will also need to delve into compliance and enforcement issues and the responsibilities of a range of electoral stakeholders.

Trainings for EMBs, security and judicial personnel, political parties, and other electoral stakeholders on awareness and response to violence against women in elections should be a standard part of the toolkit used to address violence against women in elections and ensure that it is mainstreamed throughout all election programming. In addition to outreach, trainings on the electoral process and the issue of violence against women in elections can be offered to and in conjunction with development and community stakeholders typically outside the electoral process. This should include gender-based violence prevention and response organizations, women's health organizations, and CSOs, and security, health, and legal service providers.

In **Kenya**, the National Cohesion and Integration Commission prepared a training program and manual on the enforcement of the country's *Law on Hate Speech*. While the manual is specifically directed at police officers, it provides a useful template for structuring training modules and developing content specific to the investigation and prosecution of hate speech.

Raise Awareness and Educate Voters

Awareness-raising and education efforts play a necessary role in helping the general electorate understand what constitutes hate speech, to recognize it when it occurs, and to better appreciate the harm done not only to individuals and groups but to whole communities, democratic institutions, and society at-large. Such efforts can combat "negative stereotypes of, and discrimination against, individuals on the basis of protected characteristics."¹¹⁸

Public information campaigns and voter education programs based on "accurate information can [also] dispel popular myths and misconceptions, and equip individuals with greater confidence to identify and challenge manifestations of intolerance in their day to day lives."¹¹⁹ In designing their public information and voter education products, EMBs must ensure that all content, whether text or images, is conflict, racially/ethnically, and gender sensitive. EMBs will also want to distribute all products to a wide array of civil society organizations, media outlets, and educational institutions in official and minority languages. Messaging and distribution may also need to be tailored for various at-risk groups.

¹¹⁸ *Hate Speech Explained*, p. 55.

¹¹⁹ *Ibid.*

SCENARIO-BASED TRAINING

As part of its electoral leadership work, IFES has begun using scenario-based training exercises to develop partners' capacity to think in more complex, systemic, and interdependent ways. This type of training involves **heat experiences** that disrupt and disorient participants' habitual ways of thinking, **colliding perspectives** that expose them to different points of view, and **elevated sense-making**, which requires that they integrate and understand these differing experiences and perspectives.

One such scenario ("PACIFICA") tests participant's leadership skills when confronted with escalating hate speech and violence during an election campaign. This training was piloted in Sri Lanka with EMB, media and police personnel. During post-exercise debriefings, EMB representatives emphasized that, for the first time, they had the opportunity to view the electoral process through the eyes of other stakeholders.

It proved a transformative experience. EMB members and staff affirmed the importance of cooperating with other stakeholders and establishing relationships before a crisis occurs. They also stated their desire to cast a "wider net" when thinking about stakeholder outreach and engagement. According to one participant, "Taking on the role of a human rights advocate gave me a new perspective on the benefits of coordinating with external stakeholders especially when the Election Commission lacks a mandate to act."

Greater awareness and understanding will enable voters to hold candidates and politicians accountable for spreading hate speech and inciting hatred.¹²⁰ While awareness-raising and education is necessary, it may also be insufficient to counter hate speech. The OSCE has noted that it may also be necessary to denounce purveyors of hate speech or challenge their arguments and claims.¹²¹ The role of holding the purveyors to account in the court of public opinion may include a range of actors including civil society, the media, other candidates and politicians, and public figures.

Reinforce Election Education Through Long-Term Civic Education

Given the pernicious nature of hate speech and the extent to which it is amplified and enabled by the media, particularly by the internet and social media, long-term civic education should also be part of a more comprehensive strategy to counter hate speech. The EMB may already have an election or broader democracy curriculum developed and deployed in cooperation with the Ministry of Education or the university system. If

CREATIVE APPROACHES TO ENGAGING THE ELECTORATE IN A DISCUSSION ABOUT HATE SPEECH

- Films and documentaries
- Activities coinciding with memorable dates
- Museums and exhibitions
- Music, dance, and theater performances
- Vigils
- Sport and sporting events
- Community actions against vandalism and graffiti

[SOURCE: Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region, p. 62-65]

¹²⁰ http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1096/Bela_kniga_en.pdf

¹²¹ *Preventing and Responding to Hate Crimes*, p. 53.

so, it should consider adding a module dedicated to hate speech in elections. If working in secondary schools, such programs might also engage with parents and teachers about how to talk to children about hate speech, how to recognize it, and what can be done against it.¹²² It is also possible that the Ministry of Education has its own civic education, human rights or non-discrimination courses that address hate speech (e.g., in cooperation with an NGO or human rights commission). If so, an EMB-supported democracy curricula would benefit from linking with and leveraging existing courses in order to achieve synergies and scale up implementation for better results.

National action planning processes may also provide opportunities to contribute to curriculum development. In 2016, **Finland's** Ministry of Education and Culture launched an Action Plan to prevent hate speech and racism and to foster social inclusion. The initiative responds to the large influx of immigrants to the country over a short period of time and a general population that has little if any experience interacting with immigrants. The Action Plan takes a pro-active, rapid, and preventative approach to a problem that was previously considered primarily from a legal point of view. Under the Action Plan, the Ministry of Education and Culture will focus on tackling hate speech, strengthening multiculturalism, and promoting equality throughout its institutional network; through its government-subsidized projects, grant application processes, and selection criteria; and in cooperation with other organizations. Some key initiatives will include:

- Building the skills and capacities of teachers and other professionals who work formally and informally with young people;
- Helping public libraries to promote active citizenship, multiculturalism and democracy; and
- Spreading the “Show Racism the Red Card” project in football and other team sports to promote equality.¹²³

The Council of Europe has initiated a No Hate Speech Movement to address and combat hate speech by mobilizing young people to speak up for human rights and democracy online. The campaign also seeks to reduce acceptance of hate speech by reporting and denouncing it. The No Hate Speech Movement is composed of national campaigns in over 40 countries and one of their campaign priorities is to promote July 22 as the European Day for Victims of Hate Crime.¹²⁴

Launched in April 2016 the SOMEONE (SOcial Media EducatiON Every day) initiative in **Canada**, consists of a web-based portal of multimedia materials aimed at preventing hate speech and building resilience to radicalization that leads to violent extremism. The materials target youth, school and community members, public policy officials, as well as the broader public by focusing on the development of critical thinking and information literacy skills, and encouraging democratic dialogues in online and offline spaces.¹²⁵

Campaigns such as these can be great partners to the EMBs during the election period and beyond.

Advocate for a Better Legal Framework to Combat Hate Speech

If domestic legislation is inadequate to the task of countering hate speech during the electoral period, if

¹²² *Preventing and Responding to Hate Crimes*, p. 57.

¹²³ For more information on the 10-point Action Plan, please see: http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75432/Meaningful_in_Finland.pdf

¹²⁴ For more information on No Hate Speech Movement please see: <https://www.coe.int/en/web/no-hate-campaign>

¹²⁵ <http://projectsomeone.ca>

it presents challenges with respect to implementation, and/or if it fails to meet international obligations and best practices, the EMB should lend its unique perspective and expertise to legal reform efforts. Some EMBs shy away from electoral reform advocacy, citing the lack of any legal mandate to engage in such activities. At a minimum, however, EMBs should be able to engage in “information sharing” and “awareness raising” with lawmakers. Since a body of law impacts campaigns and elections, not just election laws themselves, the EMB should also consider joining broader-based advocacy coalitions where the interests of the EMB and other groups intersect (e.g., as they relate to the advancement of human rights, elimination of discrimination, mitigation of violence, and opening the space for free speech, civil society activism, and independent media). Broader coalitions serve to demonstrate public interest in the issue of hate crime beyond the immediate electoral period and beyond specific targeted groups.¹²⁶

Role of Other Stakeholders

As stated earlier, no single institution or actor can successfully tackle hate speech in isolation. EMBs need the support of various institutions who in their own right have a role to play in combating hate speech in the interest of protecting fundamental human rights.

ELECTORAL STAKEHOLDER	CHECKLIST OF STRATEGIES FOR COUNTERING HATE SPEECH DURING THE ELECTORAL CAMPAIGN
Political Parties	<ul style="list-style-type: none"> ● Check language of platforms, manifestos and speeches of and monitor candidates ● Field more diverse candidates (e.g., women, people with disabilities, different ethnicities, and faiths) and make diversity and human rights an important party platform ● Sign code of conduct to not engage in hate speech and violence ● Distance the party from radical groups who commit hate speech and incitement to violence
Judiciary	<ul style="list-style-type: none"> ● Adjudicate hate speech complaints within the framework of the national constitution and applicable laws and in accordance with international standards of complaints adjudication.
Community and Religious Leaders	<ul style="list-style-type: none"> ● In respective spheres of influence promote tolerance, unity in diversity and universal values such as human dignity and respect ● Use moral authority to counter hate speech publicly ● Promote gender equality and respect for women, minorities, persons with disabilities

¹²⁶ *Preventing and Responding to Hate Crimes*, p. 65.

<p>Civil Society Organizations</p>	<ul style="list-style-type: none"> ● Counter hate speech with anti-hate speech, counter narratives, and pro-unity peace messages online ● Monitor hate speech incidents and report regularly ● Inform and educate communities on the benefits of tolerance and social cohesion for peace and economic development ● Include interfaith groups in events and activities ● Engage in targeted programs that address violence against women in elections and mobilizing people against violence in elections ● Monitor enforcement of laws governing hate speech with an eye to politicization and abuse
<p>Media</p>	<ul style="list-style-type: none"> ● Follow legislation and codes of conduct relating to hate speech ● Exercise editorial responsibility ● Develop public service announcements and counter narratives to combat hate speech and promote social inclusion/cohesion ● Investigate and report on hate speech, organized hate-speech campaigns and expose politicians utilizing hate speech without amplifying their hate speech ● Ethical Journalism Network’s five-point guide: Report Facts; Know the Laws; Show Humanity; Listen to Affected; Challenge Hate¹²⁷
<p>Social Media Platforms</p>	<ul style="list-style-type: none"> ● Monitor key words/engaging managers ● Promote “sticker campaign” when user reads hate speech click icon to counter and disagree with it ● Bloggers can expose fake news and rumors and counter with messages of peace and unity
<p>Legislators</p>	<ul style="list-style-type: none"> ● Address gaps in the legal framework governing hate speech and incitement to violence and provide for clarity and consistency (and compliance with international obligations) ● Ensure implementation and enforcement of hate speech laws and policies complies with international obligations and best practices ● Cross check hierarchy of laws but also horizontally – electoral laws, media laws, cyber laws, criminal laws, etc.
<p>Government</p>	<ul style="list-style-type: none"> ● Speak out against hate speech on principle. Do not be silently complicit for fear of losing votes or invoking a backlash ● Integrate anti-hate speech in school curriculum ● Integrate anti-hate speech into national action planning

¹²⁷ <http://ethicaljournalismnetwork.org/ejn-launches-new-migration-reporting-guidelines-gfmd>

<p>Security Actors</p>	<ul style="list-style-type: none"> ● Engage in joint electoral security planning with the EMB, police, CSOs and community leaders, etc. to mitigate risks during the campaign ● Engage in training to understand international and national human rights protections, electoral security and particularly hate speech and incitement to violence ● Provide security for those targeted by hate speech and incitement to violence within the scope of the law to ensure equal conditions and guarantee equal protection to all participants throughout the electoral process¹²⁸ ● Conduct thorough, timely and impartial investigations within mandate of the law
<p>International Community/Donors</p>	<ul style="list-style-type: none"> ▪ Invest in countering hate speech programming, monitoring and research ▪ Mainstream conflict sensitive approaches in electoral assistance ▪ Coordinate strategies for countering hate speech across sectors – democracy support, governance, rule of law, education, peace processes

9. Conclusion

The use of hate speech during elections, particularly in the campaign period, is a dynamic and rapidly evolving issue. Its scope and complexity will require a strategic approach that connects with and mutually reinforces the efforts of a range of stakeholders. Regulatory solutions can be controversial, difficult to reconcile when fundamental rights come into conflict, and their effectiveness is limited. As such, EMBs would be well-advised to explore non-regulatory solutions in collaboration with both state and non-state actors. To date, rigorous quantitative research about how distinct populations understand and react to (or act upon) hate speech and about the effectiveness of counter measures in specific country contexts is limited. Comparative practice of EMBs is not readily accessible to the broader community of election practitioners, nor is information about how EMBs have successfully leveraged the experience of other government bodies or civil society. To better capture and disseminate learning about effective strategies and successful multi-stakeholder efforts, IFES invites EMBs to share their experiences at epace@ifes.org. IFES will periodically update this paper on the basis of emerging best practice.

¹²⁸ <http://www.osce.org/odihr/elections/339581?download=true>

THE HUMAN BODY – AN ANALOGY

The analogy of the human body illustrates how the principle of oneness can govern social organization. Within the body, millions of cells, with an extraordinary diversity of forms and functions, collaborate to make the existence of the human being possible. They give and receive whatever is needed for their individual function as well as for the growth and welfare of the whole. No one would try to explain the life of a healthy body in terms of concepts used so freely to describe society nowadays, such as the concept of self-interested competition for scarce resources. Nor would one argue that in order for the body to function better, all of its cells should become identical; such uniformity would make the body incapable of carrying out any of the complex functions necessary for its existence. The principle that governs the functioning of the human body is unity in diversity. It is possible to conceive of human society in a similar way.

[SOURCE: Developed by the Institute for Studies in Human Prosperity and used in IFES' People Against Violence in Elections (PAVE) Curriculum that addresses election violence including hate speech and promotes social harmony. (https://www.globalprosperity.org/documents/ISGP_Advancing_Toward_the_Equality_of_Women_and_Men.pdf?2ddadabc)]

Annex 1: Range of Laws Used to Address Hate Speech

The discussion herein includes constitutional provisions and laws and policies specific to elections and a broader set of frameworks that have been brought to bear against hate speech.

Criminal/Penal Codes

Some countries treat hate speech as a criminal law issue. **Canada's** Criminal Code includes “publicly inciting hatred against any identifiable group as an offense,” one that can be prosecuted as an indictable offense with a maximum prison sentence of two years or as a summary conviction carrying a maximum sentence of up to six months imprisonment. Statements of truth and subjects of public debate and religious doctrine are excepted from the offense.¹²⁹ An “identifiable group” is defined as “any section of the public distinguished by color, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability.”¹³⁰

Norway's Criminal Code prohibits hate speech, which is defined as publicly making statements that threaten or ridicule someone or that incite hatred, persecution, or contempt for someone due to their skin color, ethnic origin, sexual orientation, religion, or philosophy of life. There has been considerable public and judicial debate in Norway about how to balance this ban against hate speech with constitutionally guaranteed free speech. Norwegian courts have been restrictive in the use of the hate speech ban and a public committee on free speech (1996-1999) recommended that the ban be abolished, but the Norwegian Parliament voted to strengthen it either by clarifying its terms or extending its provisions.¹³¹,¹³²

The **Czech Republic's** Criminal Code specifically prohibits hate speech (Section 356). A penalty of up to two years of imprisonment is applied to a person who incites hatred against “any nation race, ethnicity, religion, class or other group of persons.” The law (Section 355) also punishes public defamation of any nation, its language, any race or ethnic group, or any group of persons on account of their actual or perceived race, ethnicity, nationality, or religion. In such cases, a penalty of up to two years imprisonment is allied. Additionally, the code (Section 352) prohibits the threat and use of violence against individuals or groups on account of their actual or perceived race, ethnicity, nationality, or religion. The applicable penalty in such as case is six months to three years imprisonment.¹³³

OTHER LAWS AND POLICIES USED TO ADDRESS HATE SPEECH

- Criminal and Penal Codes
- National Cohesion and Integration Laws and Policies
- Anti-Discrimination Laws
- Human Rights Laws
- National Development, Human Rights Action, and Gender Action Plans
- Hate Crimes Legislation
- Hate Speech Legislation
- Cyber Legislation
- National Security Legislation
- Blasphemy Laws

¹²⁹ For more on this law, please see <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>. Also, the landmark judicial decision in the case of *R. v. Keegstra* (1990).

¹³⁰ <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>

¹³¹ https://en.wikipedia.org/wiki/Hate_speech

¹³² <http://www.loc.gov/law/foreign-news/article/norway-proposed-criminal-law-amendment-to-include-internet-in-public-space-public-act-definition/>

¹³³ https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-V-2015-035-ENG.pdf

Special Legislation

In some post-conflict and violence-prone countries, legislation aimed at national reconciliation has also sought to deal with the issue of hate speech. The *National Cohesion and Integration Act* (2008) of **Kenya** criminalizes the use of hate speech and bars the use of threatening abusive or insulting words or behavior in any medium if they are intended to spur ethnic hatred. The law established the Kenya National Cohesion and Integration Commission whose mandate it is to promote ethnic harmony and to investigate complaints of ethnic or racial discrimination or any issue affecting ethnic and racial relations.¹³⁴

Anti-Discrimination Legislation

Hate speech in **South Africa** is prohibited both by the constitution and the *Promotion of Equality and Prevention of Unfair Discrimination Act* (2000). According to the latter, “no person may publish, propagate, advocate, or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to: (a) be hurtful, (b) be harmful or to incite harm, or (c) promote or propagate hatred.” Prohibited grounds include race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age disability, religion, conscience, belief, culture, language, and birth.¹³⁵

Human Rights Legislation

New Zealand’s Human Rights Act (1993) protects the freedom of expression, while making it unlawful to use threatening, abusive, or insulting words or material to excite racial hostility against any group of people, by reason of their color, race, or ethnic or national origin.¹³⁶ **Australia** has moved beyond threats of incitement, to look at the words themselves and their impact on the person(s) being targeted. Section 18C of the *Racial Discrimination Act* (1975) states: “(1) It is unlawful for a [person](#) to do an act, otherwise than in private, if (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and (b) the act is done because of the race, colour or national or ethnic origin of the other [person](#) or of some or all of the people in the group.”¹³⁷ Free speech advocates have criticized this provision and advocated to narrow its scope. The Human Rights Commission and the courts have also come under political pressure for enforcing the law.

National Development and Human Rights Action Plans

In recent years, some countries’ national development plans have assumed a greater human-rights focus with an emphasis placed on the role of minorities and migrant workers in the national development process. A number of countries (e.g., the Philippines, Indonesia, and Thailand) have also adopted human rights plans, which have considerable potential to integrate anti-discrimination measures. While such plans often refer to issues of ethnicity, gender, and other distinct communities such as Muslims or indigenous cultural communities, the issue of hate speech tends to be implied rather than directly addressed. Still, plans that involve activities aimed at improving cross-cultural understanding may help to prevent hate speech and related crimes.¹³⁸

¹³⁴ Mrabure, p. 163.

¹³⁵ <http://www.justice.gov.za/legislation/acts/2000-004.pdf>

¹³⁶ <https://www.hrc.co.nz/your-rights/human-rights/human-rights-legislation-new-zealand/>

¹³⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/rda1975202/s18c.html

¹³⁸ Muntarbhorn, p. 23.

Hate Crimes Legislation

Hate crimes legislation typically does not address hate speech, but may be triggered if hate speech incites criminal acts in which victims were selected on the basis of their group identity. This type of legislation typically defines acts that are already crimes as distinct offenses and/or provides for enhanced penalties. Such legislation may also require that the government collect data on hate crimes.¹³⁹ **Macedonia** pursued a multi-stakeholder approach to formulate amendments to the country's legal framework governing hate crimes. The government convened a working group comprised of representatives of the ministries of Interior and Justice, the Prosecutor's Office and Appellate Court in Skopje, the Commission for Protection from Discrimination, the Macedonian Academy for Sciences and Arts, and representatives from academia, civil society, and the international community. The group achieved broad agreement on necessary amendments, particularly regarding the Criminal Code and police by-laws. Draft amendments reflecting the group's input were finalized for consideration and adoption by Parliament.

Hate Speech Legislation

Ireland's Prohibition to Incitement to Hatred Act (1989) forbids words or behaviors that are "threatening, abusive, or insulting and/or are intended to, or likely to, stir up hatred against a group of persons ... on account of their race, color, nationality, religions, ethnic or national origins, membership of a traveling community, or sexual orientation."¹⁴⁰ In the **United States** the Anti-Defamation League ADL developed the first model hate crime legislation. Since then, 45 states plus the District of Columbia have laws based on or similar to ADL's model. ADL also led a large coalition of organizations that spearheaded the passage of the landmark Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in 2009, which ensured a federal hate crimes law. ADL also has launched a *#50StatesAgainstHate* campaign that advocates passage of comprehensive hate crimes legislation in all 50 states of the USA.¹⁴¹

Cyber Legislation

The growth of the internet and social media has provided another platform for hate speech. In some countries, cyber-related legislation includes hate speech prohibitions. The Council of Europe's *Protocol to the Convention on Cyber Crime (2007)*, for example specifically address the prosecution of acts of a racist and xenophobic nature carried out through computer systems.¹⁴² In **Singapore**, the *Internet Code of Practice* prohibits material that "glorifies, incites, or endorses ethnic, racial or religious hatred, strife, or intolerance."¹⁴³ **Germany** passed legislation in June 2017 under which social media companies may be fined as much as \$57 million if they do not delete illegal, racist or slanderous comments and posts within 24 hours. This legislation makes Germany the most aggressive among Western nations in forcing large multi-national companies like Facebook, Google and Twitter to crack down on hate speech and other extremist messaging on their digital platforms.¹⁴⁴

National Security Legislation

In recent years, states have increasingly used national security laws and anti-terrorism laws to combat hate speech and incitement to hatred. Such laws are problematic in that they tend to conflate

¹³⁹ *Preventing and Responding to Hate Crimes*, p. 19.

¹⁴⁰ <http://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/html>

¹⁴¹ <https://www.adl.org/what-we-do/combat-hate/hate-crimes>

¹⁴² Council of Europe Factsheet, (November 2008), p. 2.

¹⁴³ Sim Kok Eng, p. 7.

¹⁴⁴ <https://www.theverge.com/2017/6/30/15898386/germany-facebook-hate-speech-law-passed>

“incitement to hatred” with “incitement to terrorism,” “violent extremism,” and/or “radicalization.”¹⁴⁵ States are obligated under international law to prohibit terrorism.¹⁴⁶ Threats to national security constitute an acceptable restriction to free speech under the ICCPR.¹⁴⁷ However, such restrictions must comply with the three-part test of legality, legitimacy, and necessity set out in Article 19(3).¹⁴⁸ Too often, however, “states’ responses to terrorism have led to unjustifiable or disproportionate restrictions on fundamental rights,” key among them the freedom of expression.¹⁴⁹ The *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, which were adopted in 1995 by a group of experts in international law, national security, and human rights sought to provide guidance in this area. The *Johannesburg Principles* provide that expression may be limited as a threat to national security *only* if the state can demonstrate that: (1) The expression is intended to incite imminent violence; (2) It is likely to incite such violence; and (3) There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.¹⁵⁰

Blasphemy Laws

In some countries, media laws addressing defamation, libel, and slander have been used to address hate speech. Research carried out by the Pew Research Center found that, as of 2014, about a quarter of the world’s countries and territories had anti-blasphemy laws or policies. The vast majority of anti-blasphemy laws are in the Middle East and North Africa (90% of MENA countries have such laws) although they can be found in all regions (29% of the countries in the Americas, 24% in the Asia-Pacific region, 16% in Europe, and 8% in Sub-Saharan Africa).¹⁵¹ As an example, the Criminal Code of **Oman** states that “any person who promotes or incites religious or sectarian conflicts or theorems of hatred or strife among the populations shall be punished by imprisonment for a maximum of 10 years.”¹⁵²

This approach is problematic. International jurisprudence and independent bodies have raised concerns about conflating defamation and hate speech, as the former aims only to protect an individual’s reputation from false statements of fact that cause damage to their reputation and do not involve advocacy of hatred. As such, they do not rise to the threshold of hate speech as defined by international instruments. As part of a review of blasphemy laws in Europe, for example, the Venice Commission made clear that, in a democracy, religious groups, as other groups, must tolerate public criticisms of their activities, teachings, and beliefs, *so long as these do not constitute hate speech, incitement to disrupt public order, violence, and discrimination against people who adhere to specific religions.*¹⁵³

¹⁴⁵ *Hate Speech Explained*, p. 34.

¹⁴⁶ <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> , p. 8.

¹⁴⁷ Article 19, p. 34.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 35.

¹⁵⁰ <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

¹⁵¹ <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>

¹⁵² Muntarbhorn, p. 19.

¹⁵³ Council of Europe Factsheet, p. 2.

Annex 2: Resources

Websites

- Anti-Defamation League (<https://www.adl.org/education/resources/tools-and-strategies/confronting-hate-speech-online>)
- Article 19 (<https://www.article19.org/>)
- Council of Europe – No Hate Speech Movement (<http://www.coe.int/en/web/no-hate-campaign>)
- International Network for Hate Studies (<http://www.internationalhatestudies.com/cyber-hate-initiatives-3/>)
- Southern Poverty Law Center (<https://www.splcenter.org/>)

Manuals, Guides, and Toolkits

- *10 Ways to Fight Hate: A Community Resource Guide* (<https://www.splcenter.org/20170814/ten-ways-fight-hate-community-response-guide>)
- *Best Practices in Electoral Security* (https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf)
- *Counter Speech: Examining Content That Challenges Extremism Online* (<https://www.demos.co.uk/wp-content/uploads/2015/10/Counter-speech.pdf>)
- *Countering Online Hate Speech* (<http://unesdoc.unesco.org/images/0023/002332/233231e.pdf>)
- *Defusing Hate: A Strategic Communication Guide for Countering Dangerous Speech* (<https://www.ushmm.org/m/pdfs/20160229-Defusing-Hate-Guide.pdf>)
- *Fundamental Human Rights-Based Police Training* (<http://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training-manual-police-trainers>)
- *Hate Crimes Laws: A Practical Guide* (<http://www.osce.org/odihr/36426>)
- *Hate Speech Explained: A Toolkit* (<https://www.article19.org/resources.php/resource/38231/en/%E2%80%98hate-speech%E2%80%99-explained:-a-toolkit>)
- *Hate Speech and Group Targeted Violence* (http://www.genocidewatch.org/images/OutsideResearch_Hate_Speech_and_Group-Targeted_Violence.pdf)
- *Hate Speech Q&A Factsheet* (http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1096/Bela_kniga_en.pdf)
- *Manual for Combatting Hate Speech Online* (<https://rm.coe.int/168065dac7>)
- *Preventing and Responding to Hate Crimes | A Resource Guide for NGOs in the OSCE Region* (<http://www.osce.org/odihr/39821?download=true>)
- *Prevention of Radicalization and Manifestations of Hate at the Grassroots Level: Guidelines for Local Authorities* (<https://rm.coe.int/168071b265>)
- *Violence Against Women in Elections* (<http://www.ifes.org/publications/violence-against-women-elections>)
- *We Can! | Taking Action Against Hate Speech Through Counter and Alternative Narratives* (https://www.academia.edu/33272321/WE_CAN_Taking_Action_against_Hate_Speech_through_Counter_and_Alternative_Narratives)
- *Social Media and Conflict in South Sudan, Peace Tech Labs* (<http://www.peacetechnology.org/hate-speech-in-south-sudan>)

- *Think Critically/ Working with youth to develop and apply critical thinking skills to the social media platforms that they engage with every day:* http://projectsomeone.ca/wp-content/uploads/2016/04/Think_Critically.pdf

Sample Materials

- *Guyana Code of Conduct* (<http://www.gecom.org.gy/pdf/MEDIA%20CODE%20OF%20CONDUCT.pdf>)
- *Finland Action Plan* (http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75432/Meaningful_in_Finland.pdf)
- *India Code of Conduct* (http://eci.nic.in/eci_main/faq/faq_mcc.pdf)
- *Kenya Police Training Manual on Hate Speech 2017* (http://www.ifes.org/sites/default/files/kenya_-_hate_speech_manual.pdf)
- *Kenya Anti-Hate Speech Media Messages 2017:*
 - “If you engage in hate speech, you are breaking the law”: (<https://www.facebook.com/NCIC.Cohesion/videos/vb.100005729719026/701100860090898/?type=2&theater>)
 - “Hate Speech is not Free Speech. Hate Speech Costs Lives. Hate Speech Kills Dreams. Hate Speech Destroys Unity. Hate Speech Ruins Businesses. Hate Speech Robs Dignity. It is not Free. Is it Worth the Price? ONE TRIBE KENYA. CHOOSE PEACE”: (<https://www.facebook.com/NCIC.Cohesion/videos/vb.100005729719026/701101523424165/?type=2&theater>)
 - “A House Divided Against Itself Does Not Stand. Stop Hate Speech”: (<https://www.facebook.com/NCIC.Cohesion/videos/vb.100005729719026/700225930178391/?type=2&theater>)

Other References/Studies

- *Considerations for Successful Counter Speech* (<https://dangerousspeech.org/wp-content/uploads/2016/10/Considerations-for-Successful-Counterspeech.pdf>)
- European Court of Human Rights: Hate Speech Fact Sheet (June 2017) (http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)
- *Gender-Based Political Violence* (http://www.unwomen.org/mdgf/downloads/MDG-F_Bolivia_C.pdf)
- *Preventing Hatred or Silencing Voices* (<http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/AmySim.pdf>)
- *#Silence Hate | Study on Hate Speech* (http://www.bricks-project.eu/wp/wp-content/uploads/2016/10/relazione_bricks_eng2-1.pdf)
- *Hate Spin: The Manufacture of Religious Offense and Its Threat to Democracy*, Cherian George, MIT Press, 2016 (<https://mitpress.mit.edu/hate-spin>)
- *The Freedom to Be Racist? How the United States and Europe Struggle to Preserve Freedom and Combat Racism*, Erik Bleich, Oxford University Press, 2011 (<https://global.oup.com/academic/product/the-freedom-to-be-racist-9780199739691?cc=us&lang=en&#>)

The list provided here is but a small set of the significant number of resources that the authors have come across in their research. Readers are invited to send links to relevant resources to epeace@ifes.org.



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