

Hate Speech in Myanmar

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ABSTRACT

Freedom of expression can be abused in concerning with race, religion or nation, politics and gender and it transfers into a hate speech. This research intends to investigate the gap between the legal ideals and actual practice, especially to understand effectiveness or impact of a draft for the Protection against and Prevention of Hate Speech Law in Myanmar. This paper analyzes the Domestic Laws such as the Constitution of the Republic of the Union of Myanmar, 2008 and the Penal Code, 1861 and the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW) and the Genocide Convention relating to international Conventions and international other documents. This research uses a qualitative approach research method, applying analysis of laws. The draft law is required to balance the right to freedom of expression and the prohibition of hate speech. International human rights laws and standards recognize all protected characteristics of human rights that should be comprised all protecting range of any actions to define "hate speech" in the draft law and should not be restricted to ethnicity, religion, nation, politic and gender. The Government should provide the upcoming Law Protection against and Prevention of Hate Speech in Myanmar urgently.

1. Introduction

1.1. Background: Hate Speech in Myanmar and Introduction of Draft Law

The Ministry of Religious Affairs and Culture of Myanmar has submitted a draft for the Protection against and Prevention of Hate-Speech Law, 2017 to the Pyihtaungsu Hluttaw. Though the 4th draft law had been submitted to the Pyihtaungsu Hluttaw, it has not been approved yet. This paper notes that this draft law defines the term "hate speech" and creates some punishments for individuals or groups that encourage it. In order to prohibit hatred and violence in free speeches and online, a draft law was developed in many groups of the society in Myanmar (Agenzia Fides, 2017). One of the objectives of this paper is to suggest the draft law for support protection and prevention of hate speech in Myanmar.

1.2. Objective and Structure of Article

- Introduction to hate speech
- Analysis of Myanmar initiatives against hate speech compared with international human rights standards
- Firstly, this paper provides an overview of the historical background and definitions of hate speech and introduction of law and draft law in Myanmar. Secondly, it describes international

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human rights instruments and a human rights approach to hate speech (legal framework and legitimate limitations of freedom of expression). Thirdly, it details incidents of hate speech in Myanmar and Government and non-governmental actors' initiatives to actively counter hate speech. Finally, it describes the current issues of hate speech such as the communal violence erupted in Rakhine State, various forms of hate speech in Myanmar and Myanmar legislative process.

1.3. Research Questions

- What is hate speech and how can it be responded in Myanmar?
- How to protect the laws against hate speech in Myanmar live up to relevant international standards, such as those in the ICCPR, ICERD and CEDAW?
- What are the legal issues relating to hate speech in Myanmar?

1.4. Research Methodology

This research used a qualitative approach research method, applying analysis of laws and cases. The main focuses of the study for legal analysis are the Constitution of the Republic of the Union of Myanmar, 2008 and the Penal Code, 1861 relevant to the Domestic Law and the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW) and the Genocide Convention relating to international Conventions and Reports and General Comments from the Human Rights Committee and Judgment of the European Court of Human Rights relating to International documents.

The results are obtained and analyzed by comparing domestic laws and international human rights standards and critically analyzing the current cases. The data is collected by doing the research using the library, internet, Human Rights Center and academic journals. There are likely the legal concepts that can be used to help develop the proposal for understanding the research problem.

2. What is Hate Speech?

2.1. History of Hate Speech

Freedom of expression and speech is vital human rights which can also facilitate to protect other rights. Freedom of expression is described too openly and then it can be abused in concerning with race, religion or nation, politics and gender, it is transferred into hate speech (Elena Mihajlova, 2013).

2.2. Different Definitions of Hate Speech

There is no universally acceptance definition of the hate speech but rather various definitions lie in the world. In Europe, "hate speech" means all kinds of expression which disperse, inspire, develop or justify racial hatred, nationalism, anti-Semitism or other types of hatred based on prejudice against minorities, migrants and people of immigrant origin (Olga Jubany & Malin Roiha, 2015). European Court of Human Rights expresses hate speech is a starting point in one of its judgments in *Erbakan v. Turkey* (2006) where it concluded that XXX pertained to hate speech (Vasu Mohan & Catherine Barnes, 2018).

Hate speech is described a material which, judged within context, sanctions, or violence based on race, national or ethnic origin, color, religion, gender and age under the Broadcasting Complaints Commission of South Africa (Vasu Mohan & Catherine Barnes, 2018).

Hence, it is very important and complex for defining the term of hate speech. If it is meaningfully defined in the national law and the international instruments, many characteristics of freedom of expression and other human rights can be protected.

'Hate speech' is called 'a-moun sagar' in Myanmar, and not only is it not a term recognised in international human rights law but also it is not defined in Myanmar's legal framework (Thant Sin, 2015).

In Myanmar, Section.2 (j) of the Protection against and Prevention of Hate-Speech Law (Forth Draft), 2017 provides that "Hate Speech" means any speech or bodily action which can lead to division or discrimination or hatred, and cause conflict or riot or violation concerning religious or ethnic affairs. However, any expression based on religious faith with an honest intent, and any reasonable expression for the public interest shall not be applied to the provisions of this law. In the draft law, the term of hate speech should not only base on religion and ethnicity but also on politics and gender.

There should be clear and more precisely expression on the term 'hate speech' based on racial hatred, religion, ethnic, xenophobia, anti-Semitism or other forms of hatred. Moreover, the draft law needs to provide the protection and limitation of hate speech or free speech.

3. International Standards

3.1. Key Human Rights Instruments

In international human rights law, there are several instruments that prescribe protection against hate speech. There are the International Covenant on Civil and Political Rights (ICCPR) for hatred on the basis of nationality or religion, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) preventing the expressing ideas of supremacy or subsidiarity of people classified by "race", the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW) inhabiting hatred based on people's sex and the Genocide Convention prohibiting direct and public incitement to genocide. In addition, CERD General Recommendation, Human Right Committee Resolution, Rabat Plan of Action, Special Rapporteur reports and others are important human rights instruments in this respect.

3.2. A Human Rights Approach to Hate Speech

Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) restricts the freedom of expressions which respect the rights or defamations of human beings and protect the national security or public order or of public health or morals. Article 19 is definitely correlated to Article 20 of the ICCPR, which also limits the expression which spreads hatred or war, discrimination or violence (Elena Mihajlova, 2013).

State Parties of the UN's International Convention on the Elimination of Racial Discrimination condemn the hate speech which repudiates the human dignity and equality and prejudices the individuals and groups in the society under Article 4 of this Convention.

In addition, Article 3(c) the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Genocide Convention), Article 25(3)(e) of the Rome Statute of the International Criminal Court (1998) (Rome Statute), ICC) not only prohibit "direct and public incitement to genocide" but also prevent stimulation to other discriminatory violations of international criminal law.

In OHCHR's Expert workshops (2011), the Special Rapporteur on freedom of religion keenly attended for the prevention of stimulation to national, racial or religious hatred which headed to taking on the Rabat Plan of Action on the restriction of activism of national, racial or religious hatred that creates stimulation to discrimination, aggression or violence.

States should guarantee enjoyment of the equal human rights and safeguard of the law for people since International human rights law also gives protection of human dignity and

equality of individuals and groups of the society (Article 19, 2015). The Government should refer to the principles of the international and regional standards for drafting the laws and protecting criminal offences because they are good legal standards that include the principles are clear and effective.

4. Hate Speech in a Myanmar Context

4.1. Incidents of Hate Speech in a Myanmar

There is one challenge of the ethnic and religious minorities in Myanmar. Above 200 persons were murdered and thousands of people were disturbed by ethnic violence in 2012. A year later, there was a dispute in Rakhine state, the western part of Myanmar and then 43 persons were murdered by crashes which broke out. Against this conditions, the rapid emergence of new online spaces has mirrored some of these intensions, and consequently, dealing with intolerance and hate speech online is becoming a new important issue (Iginio Gagliardone and Gabriela Martinez, 2015).

4.2. Government Initiatives and Non-Governmental Actors

In Myanmar, the Hate Speech Bill was discussed by the Pyihtaungsu Hluttaw to relate the current minority situation in Rakhine State. The Independent Commission of Enquiry, headed by former UN Secretary General Kofi Annan was established by the State Counselor Aung San Suu Kyi to settle the issues which arose from violating the human rights in Rakhine State on May 31st 2017. In August 2017, the Commission issued the final report on the recent situation by giving recommendations to develop the minority situation (Agenzia Fides, 2017). The Independent Commission of Enquiry demands on the Government of the Union of Myanmar to keenly contest "the language of hatred", even though there is a "robust legal framework". In addition to legislative action, it calls "to promote tolerance through civic education, cultural activities and awareness-raising, in order to eliminate misinformation about religion" (Agenzia Fides, 2017).

The abuse of religion for political purposes is forbidden in Section 364 of the Constitution of the Republic of the Union of Myanmar, 2008. Moreover, a draft law shall be provided to punish any act which promotes spirits of hatred, enmity or conflict between racial or religious communities against this Constitution.

Whoever by words, either spoken or written or by sign, or by visible representation, or otherwise, promotes or attempts to promote sense of enmity or hatred between different classes and religion shall be convicted with imprisonment which may extend to two years, or with fine, or with both in Section 153A and Section 295A of the Penal Code, 1861. In practice, the Government has not convicted under these sections of the Penal Code which criminalises incitement, or taken any significant steps to stop intolerance in the event of the Buddhist nationalist Ma Ba Tha distributed leaflets and DVDs videos to spread false information about the country's Muslim communities (Samatha Stanley, 2017).

In the Protection against and Prevention of Hate-Speech Law (Forth Draft), Myanmar, 2017, "if whoever commits and violates the prohibitory offence against the above sections 10,11,12,13 and 14, he shall be charged with a sentence of minimum penalty for two months imprisonment or with a sentence of maximum penalty for three years imprisonment."

In Myanmar, criminal measures to restrict the most severe forms of "hate speech" should be considered an exceptional and last resort measure in accord to Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights and the Rabat Plan of Action.

The local civil society has created a keen voice in openly condemning the spread of hate speech on the web and they try to protect it by censorship (Iginio Gagliardone and Gabriela Martinez, 2015).

Politics and the Myanmar's 2020 general election may be undermined and disturbed by fake news and hate speech flowing on Facebook and mobile messaging apps such as Viber. Facebook is now hiring “dozens” more Myanmar language content observers to search for hate speech. It is also doing with civil society to identify “specific hate figures” that should be barred, and come up with new technical solutions to the problem.

5. Conclusions and Recommendations

There are numerous things of the effective implementation of standards and laws governing hate speech. Firstly, it needs to clarify the definition of the term of hate speech. Secondly, it desires a point by which adjudicators can decide whether hate speech has happened and how it's limited. As it is not yet exactly defined the term hate speech within human rights law, courts and other public bodies in the earth have exercised various meaning in different levels (Vasu Mohan, Catherine Barnes, 2018).

International human rights laws and standards recognized all protected characteristics of human rights that should be comprised all protecting range of any actions to define “hate speech” and should not be restricted to ethnicity, religion, nation, politic and gender. In addition, it is recommended that the ICCPR, ICERD and all other core international human rights treaties should be signed and ratified without any delay by the Government of Myanmar.

The fourth draft Law for the Protection against and Prevention of Hate-Speech needs to build respect for pluralism and diversity in Myanmar, and open space for dialogue that genuinely has the potential to prevent violence and discrimination. So, the Government should provide the upcoming Law Protection against and Prevention of Hate Speech in Myanmar urgently.

In conclusion, there is a requirement for more clearness in the definition over what online or offline hate speech is. Moreover, more open discussions about racism or religion or politics, with clear boundaries between hate speech and free speech, are needed.

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