

Hate Speech in Myanmar

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Abstract

In Myanmar, a draft law for protection against “hate speech” was discussed in various interreligious groups of the society with an intention to try those who incite hatred and violence in public speeches and on the web, or promote defamation. The objective of this paper is to make suggestions in the upcoming law for protection against “hate speech” in Myanmar and to analyze Myanmar initiatives against hate speech compared with international human rights standards. Qualitative approach research methods such as legal and case law analysis are also applied in this paper. There have been various forms of hate speech that took place in Myanmar, which resulted in communal violence erupted in Rakhine State. The Myanmar government should undertake measures to build mutual understanding and dialogue between groups. This requires prominent individuals to speak out against hatred and violence. In the bill, the definition of “hate speech” should be clear and more precisely expressed. In addition, it requires providing exactly whether hate speech has occurred and how to limit the law against hate speech or free speech. It also has vague terms on what kinds of expression are not allowed, which can be easily abused. It criminalizes misusing religion for political purposes which are not allowed under international standards.

Keywords: Expression, Free Speech, Hate Speech, Hatred and Violence

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 was submitted to the Pyihtaungsu Hluttaw, it has not been approved yet. This paper noted that this draft law defines the term "hate speech" and establishes some punishments for individuals or groups that promote it. In Myanmar, a draft law was developed in various groups of the society with an intention to stop those who spread hatred and violence in public speeches and on the web, or promote calumny. (Agenzia Fides, 2017) One of the objectives of this paper is to make suggestions on the draft law for strengthening protection against hate speech 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 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:

Qualitative approach research methods such as legal and case law analysis are also applied in this paper. The main focus 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 are the main focus of the study.

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 speech and expression is fundamental human rights, playing vital role in exercising and protecting other rights. However, freedom of expression can be abused in certain

situations such as race, religion or nation and even genocide. In these cases, freedom of expression is described too broadly and is transferred into a hate speech. (Elena Mihajlova, 2013) **2.2**

Different definitions of hate speech

There is no common international definition of the hate speech but rather several definitions exist in parallel. In Europe, “hate speech” is all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance against minorities, migrants and people of immigrant origin. (Olga Jubany & Malin Roiha, 2015) European Court of Human Rights takes this definition of hate speech as 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)

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 and age. (Vasu Mohan & Catherine Barnes, 2018)

Hence, the term ‘hate speech’ refers only to several of the protected characteristics out of the wide range of protected characteristics envisaged in the national and international instruments for protection of human rights.

‘Hate speech’ is called ‘a-moun sagar’ in Myanmar, and not only it is 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. In addition, it requires providing exactly whether hate speech has occurred and how to limit the law against 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) calls for a ban on expressing ideas of superiority or inferiority of people categorised by “race”, the Convention on the Elimination of All Forms of

Discriminations against Women (CEDAW) that hatred such as that based on people's gender and the Genocide Convention prohibits 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 reputations of others and protect the national security or public order or of public health or morals. Article 19 is certainly related to Article 20 of the ICCPR, which additionally limits the expression which propagates war or advocates hatred, discrimination or violence. (Elena Mihajlova, 2013)

Article 4 of the UN's International Committee on the Elimination of Racial Discrimination accorded that State Parties condemn the hate 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.

In addition, "direct and public incitement to genocide", prohibited in 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) and prohibition of incitement to other discriminatory violations of international criminal law.

The Special Rapporteur on freedom of religion actively attended in OHCHR's Expert workshops (2011) on the prohibition of incitement to national, racial or religious hatred, which led to the adoption of the Rabat Plan of Action on the restriction of advocacy of national, racial or religious hatred that creates incitement to discrimination, hostility or violence.

International human rights law guarantees equality and non-discrimination for all person. States are obligated to guarantee equality in the enjoyment of human rights, and equal protection of the law. (Article 19, 2015) International and regional standards on good legal drafting include the principle that laws should be clear to those who are affected by the government and criminal offences are placed in laws.

4. Hate speech in a Myanmar context

4.1 Incidents of hate speech in a Myanmar

One challenge in the process has concerned with ethnic and religious minorities. In 2013, 43 people were killed due to crashes that were break out after a dispute in the Rakhine state that is in the western part of the country. A year earlier, more than 200 people were killed and thousands were displaced because of ethnic violence. Against this conditions, the rapid emergence of new online spaces has reflected some of these deeply rooted tensions in a new form. Dealing with intolerance and hate speech online is an emerging issue. (Iginio Gagliardone and Gabriela Martinez, 2015)

4.2 Government initiatives and non-governmental actors

The Pyihtaungsu Hluttaw discussed the Hate Speech Bill that was immediately linked to the current tragic situation of the Muslim minority in Rakhine State in Myanmar. In August 2017, the Independent Commission of Enquiry¹ nominated by the State Counselor Aung San Suu Kyi, led by former UN Secretary General Kofi Annan, published its final report on the situation in Rakhine State by presenting recommendations to improve the relations between Muslim and Buddhist communities.

The Independent Commission of Enquiry calls on the Government of the Union of Myanmar to actively combat "the language of hatred", even though there has a "robust legal framework". However, in addition to legislative action, it demands "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, any act which is promoted feelings of hatred, enmity or discord between racial or religious communities against this Constitution. A law shall be provided to punish such activity.

Whoever by words, either spoken or written or by sign, or by visible representation, or otherwise, promotes or attempts to promote feeling of enmity or hatred between different classes and religion shall be punished 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 line with Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights and the Rabat Plan of Action.

¹ On May 31, the Government of Myanmar announced that it will establish an Independent Commission of Enquiry, including an international personality, concerning the violation of human rights and related issues in Northern Rakhine State since 25th August 2017, and that the Ministry of Labour, Immigration and Population of Myanmar, the United Nations Development Programme (UNDP), and the Office of the United Nations High Commissioner for Refugees (UNHCR) agreed on the texts of the Memorandum of Understanding (MOU) for repatriation and resettlement of the displaced persons to Northern Rakhine State.

The local civil society has constituted a strong voice in openly condemning the spread of online hate speech, but at the same time calling for alternatives to censorship. (Iginio Gagliardone and Gabriela Martinez, 2015)

Facebook is now hiring “dozens” more Myanmar language content reviewers to search for hate speech. It is also working with civil society to identify “specific hate figures” that should be banned, and come up with new technical solutions to the problem. Fake news and hate speech circulating on Facebook and mobile messaging apps such as viber may destabilise politics and disrupt the preparations for Myanmar's 2020 general election.

5. Conclusions and recommendations

Effective implementation of standards and laws governing hate speech needs several things. First and foremost, it requires a clear and reliable 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 numerous definitions involving various levels. (Vasu Mohan, Catherine Barnes, 2018)

The protective scope of any measures to address “hate speech” should encompass all protected characteristics that are recognised under international human rights law, and should not be limited to ethnicity and religion. It is recommended that the Myanmar Government must sign and ratify the ICCPR, ICERD and all other major international human rights treaties without any delay.

The forth 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 need for more clarity in the definition over what online or offline hate speech is. Additionally, more open discussion about racism or religion or politic, with clear boundaries between hate speech and free speech, are needed.

Acknowledgement

I am heartily thankful to the Denmark- Myanmar Programme on the Rule of Law and Human Rights whose encouragement, supervision and support from the preliminary to the concluding level enabled me to develop an understanding of the subject.

Thanks are due to my Professor, Head of Department of Law, Yangon University of Distance Education, for the consistent support and valuable guidance. Lastly, I offer my regards and blessings to all of those who supported me in any respect during the completion of the paper.

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